



Date: 16 May 2025

Our Ref: RFI4824

Tel: 0300 1234 500

Email: infogov@homesengland.gov.uk

[REDACTED]
By Email Only

Dear [REDACTED]

RE: Request for Information – RFI4824

Thank you for your request for information which was processed in accordance with the Freedom of Information Act 2000 (FOIA). Please accept our apologies for the delay in providing this response to you. Our handling of your request has fallen outside the time for compliance as set out in the FOIA and below the standards we strive to provide. We also recognise that we have not kept you sufficiently informed as to the progress of your request, we are really sorry about this.

You requested the following information:

We act for [REDACTED] and [REDACTED]. They entered into a Lease with Heylo Housing Registered Provider Ltd on [REDACTED] and our application for registration is with the Land Registry.

We attach a copy of the Land Registry Entries relating to Heylo's title and draw your attention to Entry No. 3 in the Proprietorship Register - a restriction in favour of the Homes and Communities Agency relating to a Grant Agreement dated 12 March 2020.

Would you please let us have a copy of the Grant Agreement.

Response

We can inform you that we do hold the information that you have requested. Heylo Housing Limited entered into Grant Funding Agreement with Homes England for the Shared Ownership Affordable Homes Programme 2016 to 2021.

Please see enclosed Annex A which contains a copy of the grant agreement. We have withheld some information from disclosure under the following exemptions.

Section 40 – Personal information

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





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

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

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

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

Section 43 - Commercial interests

In addition to the above, we have redacted some information from the Grant Funding Agreement contained in Annex A relating to the approved bid for funding on the grounds engages section 43(2) of the FOIA as it is commercial in nature and its release would be likely to prejudice the commercial interests of Homes England and other interested parties to the information.

Homes England has identified that the information about the approved bid for funding contained within the Grant Funding Agreement, if released, would be likely to prejudice the effective operation of Affordable Homes Programme.

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

Arguments in favour of disclosure:

- Homes England acknowledges there is a general public interest in promoting accountability, transparency, public understanding and involvement in how Homes England undertakes its work and how it spends public money.

Arguments in favour of withholding:

- The allocation of grant funding is subject to a robust assessment process that includes a detailed value for money review ensuring that we protect and allocate public funding efficiently and effectively. If this information were to be released, it is likely to drive reduced competition by encouraging developers to bid for the maximum grant possible, informed by grants given in other applications, under different circumstances. This could place pressure on the remaining programme budget and may result in the target number of homes not being met. This in turn could drive an unnatural increase in land and house prices which could impact market stability. Furthermore, this





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would not be in the public interest as this could put potential homes in jeopardy and would be likely to undermine Homes England's position and ability to deliver against its objectives and targets in our Strategic Plan;

- If information regarding funding amounts per individual scheme were in the public domain there could be expectations from the public and potential future partners about the value of funding applications and the value of potential works. This would mean that prices could be inflated and negotiating positions put at risk. This would not be in the public interest as it would be likely to result in poorer value for public money;
- Disclosure would be likely to be prejudicial to the commercial interests of both Homes England and Heylo Housing third parties as there is a reasonable expectation that such information provided to Homes England in this capacity would not be disclosed. This may deter future partners from sharing commercial information with Homes England which would be likely to harm our ability to negotiate effectively and achieve value for public money;
- The withheld information contains the commercial information of Heylo Housing, and their funding from the Affordable Homes Programme. If partners felt that Homes England would reveal confidential commercial information in relation to projects where we are collaborating it would be likely that future partners would be unwilling to work with us or be wary of being open and transparent. This would be likely to cause significant risk in Homes England being able to invest public money and resources in the widest possible net of partners in order to achieve best value for money. It is imperative that Homes England is able to attract competitive partners and is respected in the market as a positive force; and
- Homes England has been unable to identify a wider public interest in disclosing the information requested.

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

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

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

Advice and Assistance

We have a duty to provide advice and assistance in accordance with Section 16 of the FOIA. To comply with this duty, we are able to confirm that additional information about the affordable homes programme can be accessed online here:

<https://www.gov.uk/government/publications/grant-agreement-examples-for-the-affordable-homes-programme-2021-to-2026>





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We are providing the specific grant agreement you requested in the interests of transparency. However, we note that the publicly available template in the link above is very similar to the agreement you have requested. We trust this information will be of interest to you.

Right to Appeal

If you are not happy with the information that has been provided or the way in which your request has been handled, you may request an internal review. You can request an internal review by writing to Homes England via the details below, quoting the reference number at the top of this letter.

Email: infogov@homesengland.gov.uk

Information Governance Team
Homes England
The Lumen
2nd Floor
St James Boulevard
Newcastle Helix
Newcastle upon Tyne
NE4 5BZ
United Kingdom

Your request for review must be made in writing, explain why you wish to appeal, and be received within 40 working days of the date of this response. Failure to meet this criteria may lead to your request being refused.

Upon receipt, your request for review will be passed to an independent party not involved in your original request. We aim to issue a response within 20 working days.

You may also complain to the Information Commissioner's Office (ICO) however, the Information Commissioner does usually expect the internal review procedure to be exhausted in the first instance.

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

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

The Lumen, 2nd Floor
St James Boulevard
Newcastle Helix
Newcastle upon Tyne, NE4 5BZ

0300 1234 500
@HomesEngland
www.gov.uk/homes-england





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

Yours sincerely,

The Information Governance Team

For Homes England

The Lumen, 2nd Floor
St James Boulevard
Newcastle Helix
Newcastle upon Tyne, NE4 5BZ

0300 1234 500
@HomesEngland
www.gov.uk/homes-england





dated *12th March* 2020

Homes and Communities Agency

and

HH NO.2 LIMITED

Grant Agreement

in relation to the Shared Ownership Affordable Homes Programme 2016-2021

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Grant Agreement

dated

13th March 2020

Parties

- (1) **Homes and Communities Agency**, a body corporate under Section 1 of the Housing and Regeneration Act 2008, of One Friargate, Coventry, CV1 2GN (the **Agency**); and
- (2) **HH NO.2 LIMITED**, a private limited company incorporated under the laws of England and Wales with registered number 11159014, whose registered office is at 5th Floor One New Change, London, United Kingdom, EC4M 9AF (the **Grant Recipient**).

Introduction

- (A) The Agency 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 Grant Recipient has submitted a bid to the Agency for grant funding to assist the Grant Recipient in the acquisition of affordable housing.
- (C) The Agency has agreed to advance grant funding to the Grant Recipient pursuant to the Agency's Shared Ownership and Affordable Homes Programme 2016-2021 (**SOAHP 2016/21**) to facilitate the delivery of certain affordable housing schemes subject to and in accordance with the terms of this Agreement.
- (D) Grant funding paid by the Agency to the Grant Recipient pursuant to this Agreement is social housing assistance as defined in Section 32(13) of the Housing and Regeneration Act 2008.
- (E) The Agency understands that the Grant Recipient will let the Affordable Home Ownership Dwellings to the Landlord.
- (F) The parties have agreed that on any such disposal to the Landlord contemplated in recital (E), the Landlord, which is not an asset owning body, shall not have responsibility for the repayment of social housing assistance (as defined in Section 32(13) of the Housing and Regeneration Act 2008).
- (G) The Agency in exercising its powers under Sections 33 and 34 of the Housing and Regeneration Act 2008 has agreed and determined in this particular case that the Grant Recipient shall, at all times and notwithstanding any disposal to the Landlord, retain responsibility for discharging its obligations in relation to the repayment of social housing assistance (as defined in Section 32(13) of the Housing and Regeneration Act 2008) given under this Agreement and the element of social housing assistance which is treated to have been given to the Landlord for the purposes of Section 33(7) shall be nil.
- (H) The grant funding provided under this Agreement is (at its date) made in compliance with the requirements set out in the European Commission's Decision of 20 December 2011 concerning public service compensation granted for Services of General Economic Interest (2012/21/EU).

- (I) This Agreement together with statutory and other instruments constitutes an entrustment (within the meaning of the SGEI Decision) from the Agency to the Grant Recipient to provide suitable accommodation for families and individuals who are failed by the housing market.

1 Definitions and interpretation

1.1 Definitions

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

Acceptance Date means the date upon which the Agency accepts a scheme for the delivery of Affordable Home Ownership Dwellings in IMS pursuant to Condition 5.1 (*Firm Schemes*);

Acquisition Costs means the costs (drawn from the categories set out in the Heads of Authorised Expenditure) incurred in respect of such Firm Scheme by the Grant Recipient in respect of the acquisition of the Property;

Actual Acquisition Costs means in respect of each Firm Scheme the amount of Acquisition Costs actually incurred by the Grant Recipient in acquiring the Properties comprising the Firm Scheme as such amount is warranted and certified by the Grant Recipient pursuant to Condition 14.2.3 (*Grant Claim Procedures*);

Additional Scheme means a scheme for the delivery of Affordable Home Ownership Dwellings proposed by the Grant Recipient in addition to those comprised within the Original Approved Bid;

Additional Scheme Acceptance Date means the date upon which the Agency confirms acceptance of an Additional Scheme pursuant to Condition 8.11 (*Firm Scheme substitution and additions*);

Affordable Home Ownership means low cost home ownership on Help to Buy: Shared Ownership Lease terms;

Affordable Home Ownership Dwelling means a Property permanently let out or intended to be permanently let out on Affordable Home Ownership terms;

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

Agreed Principles means the terms set out in Part 1 of Schedule 3 (*Agreed Principles*);

Agreed Purposes means the purposes for which each of the Affordable Home Ownership 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 to the Grant Recipient by the Agency under the provisions of this Agreement;

Allocated Grant means £999,750 being the maximum amount of grant payable by the Agency to the Grant Recipient in respect of the Approved Bid (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 the Agency under Condition 12.3 (*Review, Monitoring and Reporting*);

Annual Review Meeting means the first Review Meeting in each Financial Year;

Approved Bid means the aggregate of the New Schemes accepted by the Agency in IMS as at the date of this Agreement and summarised in Schedule 1 (*Approved Bid*) (as the same may be amended, added to, supplemented, substituted or varied in accordance with the terms of this Agreement);

Area means a geographical area prescribed by the Agency from time to time in which a Help to Buy Agent operates;

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

Bid Default means the Agency determines (acting reasonably) that proper progress against the Grant Recipient's projections in the Approved Bid has not been made by the Grant Recipient in delivering the Approved Bid;

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 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 URB Recovery Determination;

Capital Grant Recoverable means such amount of Capital Grant, Uplift Amount and interest thereon as the Agency is entitled is entitled to Recover under the Recovery Determination;

CEDR means the Centre for Effective Dispute Resolution;

Change in Control means a change in control, which means the power of a person (or persons acting in concert) to secure that the affairs of another are conducted directly or indirectly in accordance with the wishes of that person (or those persons acting in concert) whether by means of:

- (a) in the case of a company or industrial and provident society:
 - i being the beneficial owner of more than 50% of the issued share capital of or of the voting rights in that company or society; or
 - ii having the right to appoint or remove a majority of the directors; or

- iii otherwise controlling the votes at board meetings of that company or society by virtue of any powers conferred by:
 - A the articles of association or rules (as the case may be);
 - B any shareholders' agreement; or
 - C any other document regulating the affairs of that company or society;
- (b) in the case of a partnership:
 - i being the beneficial owner of more than 50% of the capital of that partnership; or
 - ii having the right to control the composition of or the votes to the majority of the management of that partnership by virtue of any powers conferred by:
 - A the partnership agreement; or
 - B any other document regulating the affairs of that partnership;
- (c) in the case of a limited liability partnership (LLP):
 - i being the beneficial owner of more than 50% of the capital of that LLP; or
 - ii having the right to control the composition of or the votes to the majority of the management of that LLP by virtue of any powers conferred by:
 - A the members' agreement; or
 - B any other document regulating the affairs of that LLP; or
- (d) in the case of an individual being a connected person (as defined in Section 839 of the Income and Corporation Taxes Act 1988 (as amended)) to that individual;

Competent Authority means for the purposes of Condition 12 (*Review, Monitoring and Reporting*) and Condition 21 (*Data Protection*) any or all of:

- (a) a committee of the United Kingdom parliament;
- (b) a minister of the British Crown;
- (c) the Commission of the European Union; or
- (d) a court of England and Wales or the Court of Justice of the European Union;

Completed Firm Scheme means a Firm Scheme in relation to which the Agency has paid the Firm Scheme Grant;

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

Confidential Information means in respect of the Agency all information relating to the Agency'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 the Grant Recipient becomes aware in its capacity as a party to this Agreement or which is received by the Grant Recipient in relation to this Agreement from either the Agency or any of its advisers or from any third party if the information was obtained by that third party directly or indirectly from the Agency or any of its advisors in whatever form in either case (including information given orally and any document electronic file or other means of recording or representing information which includes derives or is copied from such information) and in the case of the Grant Recipient means such specific information as the Grant Recipient shall have identified to the Agency 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;

Controller means the individual or body which controls the Grant Recipient or the holding company of the Grant Recipient or the Landlord;

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 DPA;

Data Subject has the meaning ascribed to it in the DPA;

Decision Allowable Costs means those costs incurred by the Grant Recipient in providing the Affordable Home Ownership Dwellings as specified in Schedule 1 (*Approved Bid*) (calculated using generally acceptable accounting principles) as follows:

- (a) the Acquisition Costs;
- (b) all other direct costs of providing the Affordable Home Ownership Dwellings;
- (c) other costs permitted under the SGEI Decision of operating the Affordable Home Ownership Dwellings as affordable housing;

Decision Net Costs means under the SGEI Decision the maximum amount of aid which may be provided without Unlawful State Aid arising;

Decision Revenue means all income (including all Public Sector Subsidy but excluding Firm Scheme Grant) which the Grant Recipient or the Landlord receives for the purposes of or earns from the Affordable Home Ownership Dwellings;

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

Disposal means a transaction the effect of which is that the legal or beneficial interest in any Affordable Home Ownership Dwelling or in a Property transfers to, becomes vested in, is leased to or reverts to another person and **Dispose** shall be construed accordingly;

DPA means the Data Protection Act 1998;

EIR means the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such statutory instrument;

EIR Exemption means any applicable exemption to EIR;

Excess Sum means the difference between the Firm Scheme Grant figure immediately prior to the operation of the procedure referred to in Condition 17.1.4(a) (**Withholding of grant**) and the revised figure for Firm Scheme Grant agreed between the parties pursuant to Condition 17.1.4 (*Withholding of grant*);

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

FA 2004 means the Finance Act 2004;

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 until the expiry of the Term;

Firm Scheme means each scheme for the acquisition of the Properties as has been fully detailed in IMS and accepted by the Agency through IMS:

- (a) as a Firm Scheme as at the date hereof; or
- (b) in accordance with Condition 5.1 (*Firm Schemes*); or
- (c) in accordance with Condition 8.4 (*Firm Scheme substitution and additions*) or Condition 8.11 (*Firm Scheme substitution and additions*).

Firm Scheme Completion Date means the date set out in the Firm Scheme Completion Timetable by which the all the Properties comprised within the Firm Scheme must have been acquired;

Firm Scheme Completion Timetable means the timetable for the acquisition of the Properties comprised within each Firm Scheme as agreed by the Agency through IMS;

Firm Scheme Details means:

- (a) in respect of each Firm Scheme comprised within the Original Approved Bid, the descriptive and other details in respect of that scheme summarised in Schedule 1 (*Approved Bid*) but as more particularly described in IMS and as accepted by the Agency through IMS; or

- (b) in respect of any other Firm Scheme, the descriptive and other details in relation to that scheme set out (and as accepted by the Agency) in IMS,

in each case 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 the Agency in respect of a Firm Scheme as set out in the relevant Firm Scheme Details;

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 Exemption means any applicable exemption to FOIA;

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 the Grant Recipient or the Landlord;
- (b) a Prohibited Act has been committed by or on behalf of the Grant Recipient (in respect of which the Waiver Condition has not been satisfied);
- (c) any Consent necessary to the delivery of the Approved Bid is withdrawn or revoked;
- (d) the Grant Recipient or the Landlord ceases operating or trading;
- (e) a Change in Control has occurred which was not authorised by the Agency in accordance with Condition 16 (*Change in Control*); or

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

- (a) the Grant Recipient's Investment Partner status is lost, removed or relinquished;
- (b) the Grant Recipient (either by its own actions or omissions, or those of the Landlord, its contractors or agents) harms the Agency's reputation or brings the Agency or SOAHP 2016/21 into disrepute;
- (c) the Grant Recipient is in breach of the Special Conditions;

Fundamental Termination Amount means the amount calculated by deducting the aggregated amount of all Firm Scheme Grant paid to the Grant Recipient pursuant to Condition 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 Grant Recipient pursuant to that Condition prior to such date;

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

Grant Recipient Party means:

- (a) the Grant Recipient any agent or employee of the Grant Recipient and the Grant Recipient's Representative;
- (b) any subsidiary or holding company of the Grant Recipient or any subsidiary to any such holding company as subsidiary and holding company are defined in Section 1159 of the Companies Act 2006;

Grant Recipient's Representative means the Grant Recipient's Development Director or such other person agreed by the Agency to act as the Grant Recipient's representative from time to time for the purposes of this Agreement;

GW1 Event means the occurrence any of the following:

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

GW2 Event means any of the following:

- (a) the Grant Recipient's Investment Partner status is lost, removed or relinquished; or
- (b) the Grant Recipient fails to deliver all the Affordable Home Ownership Dwellings which it was committed to deliver under this Agreement by 31 March 2022; or
- (c) the Landlord's status as Registered Provider is lost, removed or relinquished;

GW3 Event means any of the following:

- (a) an Insolvency Event occurs in relation to the Grant Recipient or the Landlord;
- (b) a Prohibited Act has been committed by or on behalf of the Grant Recipient or the Landlord (in respect of which the Waiver Condition has not been satisfied);
- (c) the Grant Recipient or the Landlord ceases operating or trading;
- (d) there has been a Change in Control which has not been authorised by the Agency pursuant to Condition 16 (*Change in Control*);
- (e) any Consent necessary to deliver the Approved Bid is withdrawn or revoked; or

- (f) the Grant Recipient or the Landlord (either by its own actions or omissions, or those of its contractors or agents) harms the Agency's reputation or brings the Agency or SOAHP 2016/21 into disrepute;

Heads of Authorised Expenditure means the heads of expenditure set out in Part 1 to Schedule 4 or such other heads of expenditure the Agency may in its absolute discretion agree in relation to any Firm Scheme **provided that** any costs falling within the heads of expenditure set out in Part 2 to Schedule 4 shall not be capable of being treated as Acquisition Costs;

Help to Buy Agency Agreement means an agreement (or any other formal arrangement) entered into between the Grant Recipient and the Help to Buy Agent in whose Area a Firm Scheme is located and pursuant to which the Help to Buy Agent undertakes such roles or activities as the Agency may prescribe from time to time including inter alia the provision of a one stop service to qualifying applicants enquiring and applying for home ownership, marketing, the provision of lists of qualifying applicants to grant recipients and provision of information in respect of such services;

Help to Buy Agent means a body appointed by the Agency to undertake such roles or activities as the Agency may prescribe for Help to Buy Agents from time to time;

Help to Buy: Shared Ownership Lease means a shared ownership lease in the form appended to this Agreement at Annexure 1 with such necessary variations as may be made by the Grant Recipient to reflect the nature of the dwelling (a house or a flat) and any changes to the Agency's model form of shared ownership lease from time to time and with such non-material variations as may be agreed between the Grant Recipient and the individual purchaser (without prejudicing the Agency's interest or rights under this Agreement);

HRA 2008 means the Housing and Regeneration Act 2008;

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

Information has the meaning in relation to:

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

Information Commissioner has the meaning set out in Section 6 of the DPA 1998;

Insolvency Event means the occurrence of any of the following in relation to the Grant Recipient or the Landlord:

- (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 the Agency (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 the Agency, 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 assets of the Grant Recipient;
 - v any analogous procedure or step is taken in any jurisdiction;

other than any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within ten (10) Business Days of commencement; or
- (e) any expropriation, attachment, sequestration, distress or execution affects any asset or assets of the Grant Recipient which has a Material Adverse Effect in relation to the Approved 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 the Agency as having "Investment Partner Status" under the Agency's Investment Partner qualification procedure from time to time;

Landlord means Heylo Housing Registered Provider Limited, a private limited company incorporated under the laws of England and Wales with registered number 6573772, whose registered office is at 5th Floor, One New Change, London EC4M 9AF;

Landlord Permitted Disposal means:

- (a) the grant of a Help to Buy: Shared Ownership Lease in respect of an Affordable Home Ownership Dwelling to an individual purchaser and/or the acquisition by the occupier of an increased share of the equity of an Affordable Home Ownership Dwelling including the transfer of the entirety of the Landlord's interest in the relevant dwelling to such individual where required under the terms of such Help to Buy: Shared Ownership Lease on final staircasing thereof; and/or
- (b) the disposal of the Landlord's interest in the relevant dwelling to the Grant Recipient following and pursuant to receipt by the Landlord of written notice of final staircasing from the individual purchaser; and/or
- (c) a disposal by the Landlord of its interest in the relevant dwelling to the Grant Recipient.

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

Lease has the meaning given to it in paragraph 1.3 of Schedule 5 (*Special Conditions*) of this Agreement and is to be in the form annexed at Annexure 3 with such necessary variations as may be made by the Grant Recipient to reflect the nature of the dwelling (a house or a flat) and with such non-material variations as may be made by the Grant Recipient (without prejudicing the Agency's interest or rights under this Agreement);

Legislation means:

- (a) any Act of Parliament;
 - (b) any subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978;
 - (c) any exercise of the Royal Prerogative;
 - (d) any enforceable EU right within the meaning of Section 2 of the European Communities Act 1972;
- in each case in the United Kingdom; and
- (e) any regulations, orders, bye-laws or codes of practice of any local or statutory or EU Competent Authority or United Kingdom Competent Authority (as the case may be) having jurisdiction over the territory in which the Firm Scheme is situated;

Material Adverse Effect means the effect of any event or circumstance which is reasonably likely to be materially adverse to the ability of the Grant Recipient to deliver the

Approved Bid 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;

Milestone means each stage in the delivery of the Firm Scheme agreed by the parties and set out in IMS (including as a minimum a Firm Scheme Completion Date);

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

Milestone Extension Event means any of the following:

- (a) exceptionally adverse weather conditions;
- (b) delay in receipt of any necessary permission or approval of any statutory body or other person which the Grant Recipient has taken all practicable steps to avoid or reduce;
- (c) the use or threat of terrorism and/or the activity of the relevant authorities in dealing with such use or threat;
- (d) fire, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation, earthquakes, riot and civil commotion;
- (e) failure by any statutory undertaker, utility company or other like body to carry out works or provide services;
- (f) any accidental loss or damage to the development or any roads servicing it;
- (g) any failure or shortage of power, fuel or transport;
- (h) any blockade or embargo;
- (i) 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;
- (j) any impediment, prevention or default, whether by act or omission by the Agency except to the extent caused or contributed to by any default, whether by act or omission, of the Grant Recipient

unless:

- A any of the events arise (directly or indirectly) as a result of any wilful or negligent default or wilful or negligent act of the Grant Recipient or (where there has been a Permitted Disposal Trigger Event) the Landlord; or
- B in respect of the event referred to in (f) above, such event arises as a result of any failure by the Grant Recipient (whether wilful or otherwise) to notify the relevant statutory undertaker or utility company of the requirement for works or services to be completed by the date required to enable the Grant Recipient to complete the Firm Scheme by the Firm Scheme Completion Date;

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

New Scheme means a named scheme for the delivery of Affordable Home Ownership Dwellings accepted by the Agency as part of the Original Approved Bid;

Non Compliance Notification Date means the date on which the Agency notifies the Grant Recipient 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 Condition 19.7 (*Default Events and Termination*);

Notification Failure means in relation to each of Conditions 6.3.1 (*Changes to Firm Schemes*), 6.3.3 (*Changes to Firm Schemes*), a failure by the Grant Recipient to advise the Agency within the period specified in the relevant Condition as to whether it wishes to proceed with a Firm Scheme or to withdraw it from the Agreement;

Officer's Certificate means a certificate in the form set out in Schedule 2 (*Officer's Certificate*) (or in such other form as the Agency may prescribe from time to time) signed by the Grant Recipient's Representative or such other person may be agreed by the Agency from time to time;

Open Book Basis means the full and transparent disclosure and declaration of all information which the Grant Recipient or a Grant Recipient Party or (where there has been a Permitted Disposal Trigger Event), the Landlord is required to maintain, keep or disclose under this Agreement including all price components including profit margins, central office overheads, Property management overheads, preliminaries, contingencies and the cost of all materials, goods, equipment, work and services, apportionments of such items together with all and any books of accounts;

Original Approved Bid means the aggregate of the New Schemes accepted by the Agency in IMS as at the date of this Agreement;

Permitted Disposal means any of the following:

- (a) a lease of one or more of the Affordable Home Ownership Dwellings to the Landlord

- (b) the grant of a Help to Buy: Shared Ownership Lease in respect of an Affordable Home Ownership Dwelling to an individual purchaser and/or the acquisition by the occupier of an increased share of the equity of an Affordable Home Ownership Dwelling including the transfer of the entirety of the Grant Recipient's interest in the relevant dwelling to such individual where required under the terms of such Help to Buy: Shared Ownership Lease on final staircasing thereof;
- (c) a disposal to a statutory undertaker for the purposes of the supply or transmission (whether exclusively or otherwise) of statutory services to the Firm Scheme which does not materially prejudice the use or amenity of the Affordable Home Ownership Dwellings;
- (d) a disposal pursuant to or required by a planning obligation within the meaning of s106 or s299A of the Town and Country Planning Act 1990 in connection with the Firm Scheme which does not materially prejudice the use or amenity of the Affordable Home Ownership Dwellings;
- (e) the grant of any mortgage or charge;

Permitted Disposal Trigger Event means a disposal permitted pursuant to limb (a) of the definition of Permitted Disposal;

Personal Data has the meaning ascribed to it in the DPA;

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

Procurement Law means (as the case may be):

- (a) prior to the date on which the United Kingdom ceases to be a Member State of the European Union all applicable United Kingdom and European Union procurement Legislation and any implementing measures including European Union Directives 2014/23/EU (on the award of concession contracts) and 2014/24/EU (on Public Procurement); the Public Contracts Regulations 2015, the Concession Contracts Regulations 2016 insofar as the same are applicable; and
- (b) on or after the date the United Kingdom ceases to be a Member State of the European Union 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;

Prohibited Act means:

- (a) offering, giving or agreeing to give to any servant of the Agency 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 the Agency relative to this Agreement in connection with which commission has been paid or has been agreed to be paid by the Grant Recipient or on its behalf, or to its knowledge, unless before the relevant agreement is entered into particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Agency;
- (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
- (d) defrauding or attempting to defraud or conspiring to defraud the Agency;

Project Change means a change to a Firm Scheme proposed by the Grant Recipient pursuant to Condition 6.1 (*Changes to Firm Schemes*) prior to the payment of the Firm Scheme Grant;

Property means the property or properties acquired or to be acquired by the Grant Recipient which comprise a Firm Scheme and which are or will be let on Affordable Home Ownership terms prior to the payment of Firm Scheme Grant and **Properties** shall be construed accordingly;

Public Sector Subsidy means all funding or subsidy in relation to a Firm Scheme in money or money's worth (including the Firm Scheme Grant) received or receivable by the Grant Recipient from public sector bodies including for this purpose funding from the European Commission, government bodies (whether national or local) 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 the Agency not provided under this Agreement;

Quarter means the period between each Quarter Date;

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

Recover has the meaning set out in the URB Recovery Determination;

Recovery Determination means (as the context requires) the URB Recovery Determination or the Recovery of Capital Grants and Recycled Capital Grant Fund General Determination 2017 (or any successor determination);

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

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

Regulator means the Regulator of Social Housing established by it pursuant to 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 or any other affairs of the Agency;

Regulatory Framework means the Regulatory Framework for Social Housing in England as amended or replaced from time to time;

Regulatory Standard means the Regulatory Standards set by the Regulator pursuant to its powers under Section 194 HRA 2008;

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 acquisitions necessary to the delivery of the Firm Scheme or perform the Grant Recipient's obligations under this Agreement;

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

Restriction means the restriction set out in Condition 11.7 (*Operational Obligations*);

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

Review Meeting means a meeting held pursuant to Conditions 12.7 (*Review, Monitoring and Reporting*) and Condition 12.8 (*Review, Monitoring and Reporting*);

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

- (a) the Grant Recipient is unable to make the representations and give the warranties set out in Part 2 of Schedule 3 (*Representations and Warranties*) (in any case in whole or in part) or is in breach of any representation or warranty set out in such Schedule and there is or is likely to be a resulting Material Adverse Effect in relation to that Firm Scheme;
- (b) the withdrawal or revocation of any Consent required to enable the Grant Recipient to deliver that Firm Scheme;
- (c) a breach of the Grant Recipient's obligations under any of Condition 9 (*Acquisition Obligations*) or Condition 11 (*Operational Obligations*) other than Condition 11.6 (*Operational Obligations*) in relation to that Firm Scheme;

- (d) the Grant Recipient has breached or otherwise failed to comply with any term of this Agreement and such breach or failure has or will have a Material Adverse Effect in relation to the Firm Scheme;
- (e) a failure or inability by the Grant Recipient to comply with the requirements of Conditions 14.1 (*Grant Claim Procedures*) to 14.2 (*Grant Claim Procedures*) (as applicable);
- (f) the Firm Scheme Completion Date is not attained and following discussions with the Grant Recipient the Agency (acting reasonably) considers that the Firm Scheme is unlikely to be complete by 31 March 2022;
- (g) the Grant Recipient fails to deliver the Firm Scheme by 31 March 2022;
- (h) a failure by the parties to agree a revised Firm Scheme Grant figure pursuant to Condition 18.3.3(a) (*Repayment of Grant*);
- (i) where the Secure Legal Interest held by the Grant Recipient is a leasehold interest, the lease is forfeited or otherwise determined by the Grant Recipient's landlord; or
- (j) a failure by the Grant Recipient's solicitor to comply with the Solicitor's Undertaking.

Scheme Termination Event means this Agreement is terminated in relation to one or more particular Firm Schemes pursuant to Condition 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 106 Agreement means an agreement in respect of and affecting any Affordable Home Ownership Dwelling (or prospective Affordable Home Ownership 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 or an agreement with any competent authority or body relating to other services;

Section 106 Scheme means a Firm Scheme where the development of Affordable Home Ownership Dwellings is part of a larger non Affordable Home Ownership Dwellings scheme and required pursuant to a Section 106 Agreement;

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

- (a) freehold title registered with title absolute;
- (b) leasehold title registered with title absolute where the lease has at least 99 years unexpired duration from the date the Property was purchased by the Grant Recipient; or
- (c) freehold title registered with possessory title or leasehold title registered with good leasehold title (where the lease has at least 99 years

unexpired duration from the Property was purchased by the Grant Recipient) and in each case defective title indemnity insurance in favour of the Grant Recipient with a limit of indemnity to at least the Firm Scheme Grant for the Property;

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);

SGEI Decision means the European Commission's Decision on Services of General Economic Interest dated 20 December 2011 (2012/21/EU);

SGEI Decision Overpayment means the extent to which Public Sector Subsidy (including Agreement Funding) exceeds the Decision Net Costs;

SGEI Information means such information about or relating to the Decision Allowable Costs, the Decision Revenue, the Decision Net Costs and such other information as the Agency may reasonably request;

SGEI Review means a review by the Agency of the provision of Agreement Funding to determine whether an SGEI Decision Overpayment has arisen in relation to any Firm Scheme;

SOAHP 2016/21 Funds means grant funding made available pursuant to the SOAHP 2016/21 or care and support funding made available by the Department of Health (if any);

Solicitor's Undertaking means an undertaking given by the Grant Recipient's solicitors in the form annexed at Annexure 2 to:

- (a) submit an application to HM Land Registry to register the Restriction within the time frame set out in Condition 11.11; and
- (b) deal with any requisitions raised by HM Land Registry in respect of the application promptly with a view to ensure that the Restriction is properly registered;

Special Conditions means the conditions set out in Schedule 5;

Specified Default means the occurrence of any of the following:

- (a) a failure by the Grant Recipient to comply with its obligations in any of Conditions 11.5, 11.6.3 or 11.6.4 (*Operational Obligations*) or Condition 12 (*Review Monitoring and Reporting*) and/or any information supplied in connection with its obligations in Condition 12 (*Review Monitoring and Reporting*) (including that within the Officer's Certificate), is materially deficient, misleading or inaccurate;
- (b) the Grant Recipient is unable to make the representations and give the warranties set out in Part 2 of Schedule 3 (*Representations and Warranties*) (in any case in whole or in part) or is in breach of any representation or warranty set out in such Schedule and there is or is

likely to be a resulting Material Adverse Effect in relation to the Approved Bid;

- (c) a failure by the Grant Recipient to comply with any obligation to pay or repay the Agency any amount due under this Agreement; or
- (d) the Grant Recipient has breached or otherwise failed to comply with any term of this Agreement and such breach or failure has or will have a Material Adverse Effect in relation to the Approved Bid;

State Aid means (as the case may be):

- (a) any aid granted by a Member State of the European Union or through the resources of such Member State in any form whatsoever which distorts or threatens to distort competition by favouring a particular undertaking or the production of certain goods, in so far as such aid affects trade between European Union Member States; or
- (b) any aid benefit or advantage (which includes but is not limited to assets, rates, funds and land) granted by or through a public sector body which is subject to any United Kingdom Competition Requirements;

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

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

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

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

SW2 Event means the occurrence of any of the following:

- (a) the Grant Recipient is unable to give the confirmations or certifications required by IMS or to make the representations and give the warranties referred to in Condition 14.2 (*Grant Claim Procedures*) or Condition 14.2 (*Grant Claim Procedures*) (in any case in whole or in part); or
- (b) a material breach by the Grant Recipient of any obligation under this Agreement in relation to a Firm Scheme (other than one comprised within an SW1 Event or SW3 Event in relation to that Firm Scheme) and which:
 - i the Grant Recipient has not taken steps to remedy it to the Agency's satisfaction (acting reasonably); or
 - ii which is incapable of remedy;

- (c) any Consent necessary to deliver the Firm Scheme is revoked or withdrawn;

SW3 Event means a failure by the Grant Recipient to deliver a Firm Scheme in accordance with the Firm Scheme Completion Timetable (in circumstances where the Agency did not agree revised Milestone Dates in accordance with Condition 7) (*Time extensions*);

Term means the period of time from the date hereof until 31 March 2022 subject to earlier termination by the Agency of the entirety of this Agreement or any extension pursuant to Condition 7.1 (*Time extensions*);

Total Termination Event means this Agreement is terminated as a whole pursuant to Condition 19.3 (*Default Events and Termination*), Condition 19.5 (*Default Events and Termination*) or Condition 19.7 (*Default Events and Termination*);

Transparency Obligations means the obligations set out in Condition 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 Competent Authority means:

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

United Kingdom Competition Requirement means any Legislation which:

- (a) is in force and/or in effect and/or applies (in England) on or after the date the United Kingdom ceases to be a Member State of the European Union; and
- (b) which regulates any aid funding assets or advantage granted or directed by a public sector body to the extent that the same has the ability to threaten to or actually distort either competition or an economic market in the United Kingdom and/or in any part of the European Economic Area and/or in any other country or countries;

Unlawful State Aid means (as the case may be):

- (a) State Aid which has been granted in contravention of Article 108(3) Treaty of the Functioning of the European Union (**TFEU**), does not benefit from an exemption from notification and has not been approved by a decision of the European Commission under Article 107(2) or (3) TFEU;

- (b) State Aid which has been granted after the United Kingdom ceases to be a Member State of the European Union to the extent that the same is granted contrary to or is an infringement of any United Kingdom Competition Requirement;

Unlet Affordable Home Ownership Dwelling means an Affordable Home Ownership Dwelling which is not subject to a Help to Buy:Shared Ownership Lease at the point of claim for Firm Scheme Grant (pursuant to Condition 14 (*Grant Claim Procedures*));

Uplift Amount means an amount of the type described in the URB Recovery Determination and calculated for the purposes of Condition 18 (*Repayment of grant*) in accordance with the methodology set out from time to time in the Capital Funding Guide;

URB Recovery Determination means the Recovery of Capital Grants from Unregistered Providers General Determination 2017 and any successor determination or other instrument;

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

Waiver Condition means provision of satisfactory evidence by the Grant Recipient to the Agency that the relevant Prohibited Act was committed by an employee acting independently of the Grant Recipient and the Agency is satisfied that the Grant Recipient has taken such action as is appropriate taking in to account the nature and the circumstances of the relevant Prohibited Act. "Acting independently" for these purposes means not acting with the authority or knowledge of any one or more of the directors of the Grant Recipient;

Withdrawn Scheme means a Firm Scheme withdrawn by the Grant Recipient pursuant to Condition 6.3.1 or Condition 6.3.3 (*Changes to Firm Schemes*);

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

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 condition, sub-condition, paragraph, schedule or section heading is, except where it is expressly stated to the contrary, a reference to such condition, sub-condition, paragraph, schedule or section heading of this Agreement.

1.2.4 Any reference to this Agreement or to any other document shall include (except where expressly stated otherwise) any variation, amendment or supplement to such document to the extent that such variation, amendment or supplement is not prohibited under the terms of this Agreement.

1.2.5 Any reference to any enactment, order, regulation, determination or similar instrument shall (except where expressly stated otherwise) be construed as a reference to the enactment, order, regulation, determination or instrument

(including any EU instrument) as amended, replaced, consolidated or re-enacted.

- 1.2.6 A reference to a person includes firms, partnerships and corporate bodies and their successors and permitted assignees or transferees.
- 1.2.7 Headings are for convenience of reference only.
- 1.2.8 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 A document in the agreed form is to be the form of the relevant document agreed between the parties and for the purpose of identification initialled by each of them or on their behalf (in each case with such amendments as may be agreed by or on behalf of the parties) or in the form set out in a Schedule or an Appendix to this Agreement.
- 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 the Agency (or any officer of the Agency) is required or a notice is to be given by the Agency, 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 the Agency by notice in writing to the Grant Recipient.
- 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 "Property" 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 the Agency acting reasonably shall be interpreted as requiring the Agency to act in a commercially reasonable manner.
- 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 The Grant Recipient shall in relation to the delivery of its obligations under this Agreement be responsible as against the Agency for the acts or omissions of any Grant Recipient Party or the Landlord as if they were the acts or omissions of the Grant Recipient.

- 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 the Agency shall, unless otherwise expressly stated in this Agreement or agreed in writing by the Agency, relieve the Grant Recipient of any of its obligations under this Agreement or of any duty which it may have hereunder to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, examination, acknowledgement or knowledge nor confer impose or imply any liability or responsibility on or on behalf of the Agency 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 Firm Scheme Details summarised in Schedule 1 (*Approved Bid*) and the Firm Scheme Details set out in IMS (and accepted by the Agency through IMS) the Firm Scheme Details in IMS shall prevail.

2 Purpose

- 2.1 The Agency has agreed to make the Allocated Grant available to the Grant Recipient to acquire the Affordable Home Ownership Dwellings 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 Firm Schemes.

3 Acknowledgements, Representations and Warranties

- 3.1 Without prejudice to any other term of this Agreement, the Grant Recipient:
- 3.1.1 expressly acknowledges the Agreed Principles and agrees to observe them and to be bound by them;
- 3.1.2 represents and warrants in the terms set out in Part 2 of Schedule 3 (*Representations and Warranties*) to the Agency on the date hereof and on each day during the currency of this Agreement; and
- 3.1.3 acknowledges and agrees that the Agency 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.

4 Financial or commercial standing of the Grant Recipient

The Grant Recipient must notify the Agency immediately on the occurrence of any event which impacts adversely on the Grant Recipient or the Landlord's financial or commercial standing including any change to the information in that regard supplied to the Agency as part of the Grant Recipient's application for Investment Partner status or supplied to the Agency pursuant to Condition 12 (*Review, Monitoring and Reporting*);

5 Firm Schemes

5.1 The Grant Recipient must, not less than thirty (30) Business Days prior to the first projected Firm Scheme Completion Date of the Properties comprising the New Scheme, upload such details of each New Scheme comprised within the Approved Bid as are required onto the Agency's IMS and where the relevant scheme is accepted by the Agency through IMS, it will become a Firm Scheme for the purposes of this Agreement with effect from the Acceptance Date.

5.2 The Grant Recipient represents and warrants to the Agency in relation to each Firm Scheme that:

5.2.1 the Firm Scheme:

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

5.2.2 the Grant Recipient:

- (a) intends to enter into a binding contract with the owner of the freehold interest in the Properties to purchase the Properties comprising the Firm Scheme and will enter into such a binding contract prior to a claim for any Firm Scheme Grant for such Properties pursuant to Condition 14;
- (b) has obtained all Consents necessary for the delivery of the Firm Scheme to the Submitted Standards and for the 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.

5.3 The Agency has no obligation to make any payment of grant to the Grant Recipient in relation to anything other than a Firm Scheme.

5.4 Under no circumstances shall the Agency be obliged to accept any Firm Scheme if the Agency (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 SOAHP 2016/21 or other programme commitments) to provide Firm Scheme Grant in relation to the relevant scheme.

6 Changes to Firm Schemes

6.1 The Grant Recipient may propose changes to any Firm Scheme at any time prior to the Firm Scheme Completion Date. Any such changes must be proposed via IMS.

6.2 Where a Project Change is proposed, the Agency will be entitled to accept or reject such change or to accept it subject to adjustment by the Agency.

6.3 If the Agency:

6.3.1 accepts the Project 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, the Agency will notify the Grant Recipient and the Grant Recipient will have twenty (20) Business Days from the date of receipt of the Agency's notification to advise the Agency as to whether it 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 Project Change. If:

- (a) the Grant Recipient wishes to withdraw the Firm Scheme, the Agency will permanently withdraw the Firm Scheme Grant allocated to such scheme;
- (b) the Grant Recipient wishes to proceed with the Firm Scheme, it must immediately amend the Firm Scheme Details in IMS to reflect both the Project 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 the Agency (through IMS);
- (c) the Grant Recipient wishes to retract the Project Change, it must do so immediately via IMS and the Firm Scheme will proceed as contemplated ante the Grant Recipient's submission of the Project Change;
- (d) a Notification Failure occurs, the Agency shall be entitled (but not obliged) to treat such failure as a decision by the Grant Recipient to withdraw the Firm Scheme from this Agreement.

6.3.2 accepts the Project Change (including any change to the Firm Scheme Grant figure) as proposed by the Grant Recipient, 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;

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

- (a) the Grant Recipient wishes to withdraw the Firm Scheme, the Agency will permanently withdraw the Firm Scheme Grant allocated to such scheme;
- (b) a Notification Failure occurs, the Agency shall be entitled (but not obliged) to treat such failure as a decision by the Grant Recipient to withdraw the Firm Scheme from this Agreement.

6.4 The Agency will not be obliged to pay any Firm Scheme Grant to the Grant Recipient in relation to any Firm Scheme unless any changes required to the Firm Scheme Details by Condition 6.3 (*Changes to Firm Schemes*) have been made and have been accepted by the Agency in IMS.

6.5 The Agency will take reasonable steps to contact the Grant Recipient during the period specified in each of Conditions 6.3.1 (*Changes to Firm Schemes*) and 6.3.3 (*Changes to Firm Schemes*) to remind the Grant Recipient of the need for the appropriate notification, but any failure on the Agency's part to do so will not preclude the Agency from treating a Firm Scheme as withdrawn where there has been a Notification Failure under any of those Conditions.

6.6 Under no circumstances will the Agency be required to accept any Project Change which would have the result of increasing the amount of the Allocated Grant or the Firm Scheme Grant in relation to the relevant Firm Scheme.

7 Time extensions

7.1 Where a Milestone Failure occurs or is in the opinion of the Agency reasonably likely to occur (having regard to the information pursuant to Condition 11.2 (*Operational Obligations*) or Condition 12 (*Review, Monitoring and Reporting*)) and such failure is directly caused by a Milestone Extension Event, the Agency shall, subject always to Condition 7.3 (*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.

7.2 The Agency shall not be obliged to extend a Milestone Date:

7.2.1 unless a Milestone Extension Event exists; or

7.2.2 in circumstances where such extension would (when taken individually or together with other extensions in relation to the Grant Recipient) in the Agency's reasonable opinion materially and adversely affect the delivery of the Approved Bid or (when taken individually or together with other extensions in relation to the Grant Recipient or other grant recipients of the SOAHP 2016/21) materially and adversely affect the Agency's projected expenditure profile in relation to any year of the SOAHP 2016/21 and in particular (but without limitation) such expenditure profile in relation to the last quarter of the relevant Financial Year.

7.3 The Agency shall not under any circumstances be required or obliged to extend a Firm Scheme Completion Date beyond 31 March 2022 but may at its sole discretion elect to do so.

8 Firm Scheme substitution and additions

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

8.2 If the Grant Recipient wishes to submit a Substitute Scheme, it must submit to the Agency through IMS such details of the relevant Substitute Scheme as the Agency may require. In submitting the details of the Substitute Scheme, the Grant Recipient is deemed to make and give the same representations and warranties in relation to the Substitute Scheme as it gives pursuant to Condition 5.2 (*Firm Schemes*) in relation to a Firm Scheme.

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

- 8.3.1 the Substitute Scheme offers value for money;
- 8.3.2 the Substitute Scheme is consistent with the Approved Bid (including the scheme cost information and information in relation to the level of the Grant Recipient's contribution);
- 8.3.3 the Grant Recipient's performance in respect of other Firm Schemes has satisfied the terms of this Agreement;
- 8.3.4 the Substitute Scheme can be fully delivered by 31 March 2022 (or such earlier date as is set out in IMS);
- 8.3.5 no Bid Default, Fundamental Default nor Specified Default subsists; and
- 8.3.6 the Submitted Standards submitted in respect of such scheme by the Grant Recipient are satisfactory,

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

- 8.4 Where the Agency accepts a Substitute Scheme into the Approved Bid pursuant to Condition 8.3 (*Firm Scheme substitution and additions*) it will confirm its acceptance of such scheme to the Grant Recipient through IMS.

- 8.5 With effect from the Substitute Scheme Acceptance Date:

- 8.5.1 the Substitute Scheme shall constitute a Firm Scheme and shall be immediately subject to the whole terms and conditions of this Agreement; and
- 8.5.2 the details set out by the Grant Recipient in respect of the Substitute Scheme in IMS and as confirmed by the Agency through IMS shall be deemed to be Firm Scheme Details for the purposes of this Agreement.

- 8.6 It is agreed by the parties that any Firm Scheme Grant received by the Grant Recipient in relation to the Undeliverable Scheme shall be deemed to have been received by the Grant Recipient in relation to the Substitute Scheme.

- 8.7 The Grant Recipient acknowledges and agrees that an Undeliverable Scheme constitutes a "project" for the purposes of and falls within Paragraph 6(e) of the URB Recovery Determination.

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

- 8.9 Where Condition 8.8 (*Firm Scheme substitution and additions*) applies, the Grant Recipient shall submit to the Agency through IMS such details of the proposed Additional Scheme as the Agency may require. In submitting such details, the Grant Recipient makes the same representations and warranties in relation to the proposed Additional Scheme as it makes to the Agency pursuant to Condition 5.2 (*Firm Schemes*).

- 8.10 The Agency shall consider the Additional Scheme and if the Agency is satisfied that:

- 8.10.1 the Additional Scheme offers value for money;

- 8.10.2 the Grant Recipient's performance in respect of other Firm Schemes comprised within the Approved Bid has been of an acceptable standard and has satisfied the terms of this Agreement;
- 8.10.3 the Additional Scheme can be fully delivered by 31 March 2022 (or such other date as is set out and agreed by the Agency in and through IMS);
- 8.10.4 no Bid Default, Fundamental Default nor Specified Default subsists; and
- 8.10.5 the Submitted Standards submitted in respect of such scheme by the Grant Recipient are satisfactory,

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

- 8.11 Where the Agency accepts an Additional Scheme into the Approved Bid pursuant to Condition 8.10 (*Firm Scheme substitutions and additions*) it shall confirm such acceptance to the Grant Recipient through IMS.

- 8.12 With effect from the Additional Scheme Acceptance Date:

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

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

9 Acquisition Obligations

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

- 9.1.1 carry out the acquisition of the Properties ensuring that:
 - (a) the Firm Scheme is (subject to Condition 7.1 (*Time extensions*)) delivered in accordance with the Firm Scheme Completion Timetable;
 - (b) when delivered, the Firm Scheme fully complies with the Firm Scheme Details and each Property meets the Submitted Standards; and
 - (c) any applicable requirements of Procurement Law and of the Consents are satisfied.

- 9.1.2 promptly notify the Agency in writing of any failure or likely failure to comply with Condition 9.1.1(a) (*Acquisition Obligations*); and
- 9.1.3 ensure that all Affordable Home Ownership Dwellings comprised in the Firm Scheme meet the standards and requirements of a buildings standards indemnity scheme currently approved by UK Finance and ensure that such dwellings (if any) which have been developed from former commercial buildings will qualify for mortgages.

10 **Special Conditions**

The Grant Recipient must comply with the Special Conditions.

11 **Operational Obligations**

- 11.1 In delivering the Firm Scheme and in operating and administering the Firm Scheme after the Acceptance Date, the Grant Recipient must observe and comply (and secure compliance by the Landlord) with Legislation, the applicable terms of the Capital Funding Guide, the URB Recovery Determination and the Consents.
- 11.2 The Grant Recipient must notify the Agency in writing (save in respect of Condition 11.2.1 (*Operational obligations*)), where notification is required to be given through IMS):
 - 11.2.1 immediately once the Grant Recipient has entered into a binding contract with the owner of the freehold interest in the Properties to purchase the Properties comprising the Firm Scheme;
 - 11.2.2 immediately, in the event of the receipt by it of any other Public Sector Subsidy 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 Subsidy notified to the Agency by the Grant Recipient pursuant to Condition 5.1 (*Firm Schemes*), Condition 8.2 (*Firm Scheme substitution and additions*) or Condition 8.9 (*Firm Scheme substitution and additions*);
 - 11.2.3 immediately upon becoming aware of any event or circumstance which may have a Material Adverse Effect; and
 - 11.2.4 of any other event or circumstance in relation the Firm Scheme as the Agency may reasonably require from time to time and within such timeframes as the Agency may reasonably require.
- 11.3 The Grant Recipient must in operating and administering the Firm Scheme after the Firm Scheme Completion Date:
 - 11.3.1 subject to Condition 18.1 (*Repayment of Grant*) not use or permit the use of the Affordable Home Ownership Dwellings for any purpose other than the Agreed Purposes without the Agency's prior written consent;
 - 11.3.2 observe and comply and secure compliance with the requirements of the Capital Funding Guide in relation to:

- (a) any Disposal of the Affordable Home 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 Help to Buy: Shared Ownership Lease granted by or to be granted by the Grant Recipient in relation to an Affordable Home Ownership Dwelling; and
 - (c) the nature of the housing and/or housing product (as described in the Capital Funding Guide) being funded pursuant to this Agreement;
- 11.3.3 comply at its own cost with the Agency's requirements in relation to Compliance Audit;
- 11.3.4 in relation to Affordable Home Ownership Dwellings, 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);
- 11.3.5 not seek possession of any Affordable Home Ownership Dwelling on the basis of Ground 8 of Schedule 2 Housing Act 1988;
- 11.3.6 on any Disposal by the Grant Recipient of the reversionary interest in any Affordable Home Ownership Dwelling or on a Disposal to the Landlord, ensure that the instrument of transfer or grant includes a provision restricting the purchaser or Landlord (as applicable), or any subsequent purchaser, of such interest from seeking possession of such Affordable Home Ownership Dwelling on the basis of Ground 8 of Schedule 2 Housing Act 1988; and
- 11.3.7 promptly supply the Agency with evidence of its compliance with Condition 11.3.6 (*Operational obligations*) on receipt of a demand for the same.
- 11.4 The Grant Recipient shall ensure that the Agency's requirements from time to time in relation to public relations and publicity for capital projects (including signage) as notified to the Grant Recipient from time to time or otherwise as included in the Capital Funding Guide are observed and implemented in respect of each Firm Scheme.
- 11.5 In discharging its obligations under this Agreement, the Grant Recipient must act at all times with the utmost good faith, with the intent to deliver the Approved Bid and with proper regard to the need for efficiency in the use of public funds.
- 11.6 The Grant Recipient must:
 - 11.6.1 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**);
 - 11.6.2 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;

- 11.6.3 comply with the Agency's ethical, anti-bribery and anti-corruption policies, a copy of which is available here: <http://www.homesandcommunities.co.uk/ethical-policies>, in each case as the Agency or the relevant industry body may update from time to time (**Relevant Policies**);
- 11.6.4 have and maintain in place throughout the duration of this Agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Requirements, the Relevant Policies and Condition 11.6.2 (*Operational Obligations*), and will enforce them where appropriate;
- 11.6.5 if required by the Agency, produce a written certificate to it signed by an officer of the Grant Recipient, confirming compliance with this Condition 11.6 (*Operational Obligations*) by the Grant Recipient and all persons associated with it under 11.6.6 (*Operational Obligations*). The Grant Recipient shall provide such supporting evidence of compliance as the Agency may reasonably request;
- 11.6.6 ensure that the Landlord and any person associated with the Grant Recipient who is performing services or providing goods in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Grant Recipient in this Condition 11.6 (*Operational Obligations*) (**Relevant Terms**). The Grant Recipient shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Agency for any breach by such persons of any of the Relevant Terms;
- 11.6.7 immediately report to the Agency's Head of Risk and Assurance Services from time to time (or any person holding a successor post) any request or demand for any undue financial or other advantage of any kind received by the Grant Recipient in connection with the performance of this Agreement

and for the purpose of this Condition 11.6 (*Operational Obligations*), 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.

- 11.7 The Grant Recipient must use all reasonable endeavours to ensure that the following restriction has been properly registered at the HM Land Registry against the Proprietorship Register of the Grant Recipient's title to each Property:

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate is to be registered without a certificate signed by a conveyancer that the provisions of Conditions 11.8 and 11.10 of a Grant Agreement dated [] and made between (1) the Homes and Communities Agency and (2) HH NO.2 LIMITED have been complied with or that they do not apply to the disposition."

- 11.8 Subject to Condition 11.9, the Grant Recipient must not, without the prior written consent of the Agency, Dispose of the whole or any part of the Properties. The Agency agrees that it will not unreasonably withhold or delay the giving of its consent to a Disposal provided

that in considering what is reasonable the Agency shall be entitled to have regard to its internal policies, the applicable requirements of the Capital Funding Guide and the principles of the SOAHP 2016/21.

11.9 Subject always to compliance with the provisions of Condition 11.3.6 and Condition 11.7, Condition 11.8 does not apply where the Disposal is a Permitted Disposal.

11.10 The Grant Recipient must:

11.10.1 unless otherwise agreed by the Agency, procure on a Disposal (other than a Permitted Disposal) that the disponent enters into a deed of covenant with the Agency (in such form as the Agency shall reasonably require) in order to:

- (a) obtain (save where the Grant Recipient has repaid or recycled the Firm Scheme Grant attributable to the relevant Affordable Home Ownership Dwelling(s) or land comprised in the Disposal in accordance with the requirements of the URB Recovery Determination) written confirmation from the disponent that the amount of the Firm Scheme Grant allocated to the property comprised in the Disposal pursuant to this Agreement is social housing assistance received by it for the purposes of Section 33(7) of the HRA Act 2008;
- (b) ensure that the provisions of this Agreement (and in circumstances where the disponent would not be bound by the terms of any Recovery Determination provisions with equivalent contractual effect to those within the applicable Recovery Determination) are replicated and are binding on the disponent;
- (c) require the disponent to apply to the HM Land Registry and procure that a restriction in the terms set out in Condition 11.7 (*Operational Obligations*) (mutatis mutandis) is registered (or continues to be registered) against the Proprietorship Register of the disponent's title(s) to the property comprised in the Disposal; and
- (d) to impose conditions on any future disposals of the property by the disponent in the same terms as those contained in Condition 11.3.6 and this Condition 11.10 (*Operational Obligations*),

and the Agency hereby covenants to enter into such deed of covenant as soon as is reasonably practicable upon request from the Grant Recipient provided that nothing shall compel the Agency to enter into a deed of covenant which is not in such form as it shall reasonably require (and in determining what is reasonably practicable the Agency shall be entitled to have regard to its internal policies and procedures);

11.10.2 provide written notification to the Agency of any Disposal within ten (10) Business Days of such Disposal taking place; and

11.10.3 provide the Agency with such information (and within such timescales) as the Agency may reasonably require to enable the Agency to monitor compliance by the Grant Recipient with its obligations under this Condition 11 (*Operational Obligations*).

11.11 The Grant Recipient shall procure that an application is made to HM Land Registry to register the Restriction against the Proprietorship Register of the Grant Recipient's title to the Properties within fifteen (15) Business Days of its application for payment of the Firm Scheme Grant under Condition 14 (*Grant Claim Procedures*).

11.12 Notwithstanding any other provision of this Agreement the Grant Recipient shall remain liable and responsible for the performance of its obligations under this Agreement in relation to each Affordable Home Ownership Dwelling until such time as:

11.12.1 the Agency agrees otherwise; or

11.12.2 the entirety of the Grant Recipient or Landlord's interest (as applicable) is transferred in accordance with the terms of a Help to Buy: Shared Ownership Lease to the occupier of an Affordable Home Ownership Dwelling following final staircasing; or

11.12.3 the Grant Recipient makes a Disposal of the Affordable Home Ownership Dwelling(s) and it has procured a deed of covenant in relation to such Affordable Home Ownership Dwelling(s) in accordance with Condition 11.10 (*Operational Obligations*),

and the parties agree that notwithstanding a disposal by the Grant Recipient pursuant to Condition 11.12.2 (*Operational obligations*) above, the Grant Recipient shall remain liable and responsible for the performance of its obligations under the URB Recovery Determination, the Capital Funding Guide and any other obligation in this Agreement (other than an obligation in this Agreement relating solely to the Affordable Home Ownership Dwelling that is the subject of the disposal).

11.13 The Grant Recipient must, forthwith on demand, pay to the Agency the amount of all costs and expenses (including legal fees and irrecoverable VAT relating thereto) incurred by it:

11.13.1 in connection with its entry into the deed of covenant referred to in Condition 11.10 (*Operational Obligations*); and/or

11.13.2 in procuring the giving of any certificate referred to in Condition 11.7 (*Operational Obligations*)

and shall if required by the Agency procure that its solicitors provide an undertaking for such costs to the Agency prior to the Agency being required to consider any such application by the Grant Recipient or to take any action under these Conditions 11.7 to 11.13 (*Operational Obligations*).

11.14 Where the Grant Recipient is aware that it is in breach of an obligation under this Condition 11 (*Operational Obligations*) it must promptly notify the Agency of the fact and take all such steps as are appropriate in the circumstances to remedy the breach.

11.15 Nothing in Condition 11.10 (*Operational Obligations*) shall absolve the Grant Recipient from any obligation to repay such amount of Capital Grant Recoverable as is due under the URB Recovery Determination or this Agreement.

12 **Review, Monitoring and Reporting**

12.1 The Grant Recipient shall comply fully with the contract management and reporting obligations set out in this Condition 12 (*Review, Monitoring and Reporting*).

12.2 The Grant Recipient acknowledges the high importance to the Agency of it being promptly advised when any circumstance occurs which may:

12.2.1 impact on the Grant Recipient's ability to deliver any Firm Scheme in accordance with the terms of this Agreement;

12.2.2 change any assumptions in relation to the Approved Bid or any Firm Scheme which would provide an opportunity for the Grant Recipient to deliver more Affordable Home Ownership Dwellings with the Allocated Grant or with the Firm Scheme Grant (as applicable);

12.2.3 indicate that the Agency is making available more grant than is required to deliver the Approved Bid or a Firm Scheme;

12.2.4 represent any Change in Control or material and adverse change in the Grant Recipient's or the Landlord's financial or commercial including any change to the information in that regard supplied to the Agency as part of the Grant Recipient's application for Investment Partner status;

12.2.5 constitute a breach of Condition 10 (*Operational Obligations*); or

12.2.6 constitute a Default Event;

(collectively the **Contract Monitoring Outputs**).

12.3 Where the Agency becomes aware either via the Contract Monitoring Outputs or through other monitoring, that the Approved Bid has not been complied with or is unlikely to be complied with, the Agency may in order to address such compliance failure issue an Allocation Change Notice requiring:

12.3.1 a reduction, increase or other change to the number of Affordable Home Ownership Dwellings to be delivered; and/or

12.3.2 a reduction or other adjustment to the Allocated Grant or to any Firm Scheme Grant; and/or

12.3.3 any other change to the Approved Bid the Agency deems reasonably necessary;

and such Allocation Change Notice shall be discussed as soon as reasonably practicable by the parties and in any event within 15 Business Days of the date of issue of the Allocation Change Notice.

12.4 Nothing in Condition 12.3 (*Review, Monitoring and Reporting*) shall preclude the parties from agreeing an alternative means of dealing with the failure to comply with the Approved Bid 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 the Agency in the Allocation Change Notice shall take effect on the next

following 1 April and the Agency 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 Grant Recipient shall with effect from and including the first Quarter Date after the date of this Agreement submit a signed and dated Officer's Certificate to the Agency within five (5) Business Days of each Quarter Date together with such other information in relation to a Firm Scheme or this Agreement as may have been requested on reasonable notice by the Agency.
- 12.6 The Officer's Certificate shall be signed by the Grant Recipient's Representative or, where agreed in advance by the Agency, another specified member of the Grant Recipient's executive management team.
- 12.7 Within ten (10) Business Days of receipt of the Officer's Certificate and the information required pursuant to Condition 12.5 (*Review, Monitoring and Reporting*) and Condition 12.12 (*Review, Monitoring and Reporting*) (or within such longer period as the Agency may at its absolute discretion agree) but only if the Agency requests, the Agency and the Grant Recipient shall meet during the Term to discuss or review (without limitation):
- 12.7.1 the Grant Recipient's performance in delivering the Approved Bid;
 - 12.7.2 progress in relation to each Firm Scheme including delivery forecasts, lettings and sales forecasts and progress against previous such forecasts;
 - 12.7.3 the Contract Monitoring Outputs;
 - 12.7.4 any Project Changes made during the immediately preceding Quarter or anticipated by the Grant Recipient to be requested during the current Quarter; and
 - 12.7.5 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.
- 12.8 The Agency or the Grant Recipient may also call a Review Meeting at any time outside of the quarterly cycle provided that the party requesting the meeting:
- 12.8.1 gives reasonable prior written notice to the other of such meeting; and
 - 12.8.2 includes with that notice an agenda for such meeting.
- 12.9 At the Annual Review Meeting in addition to the matters to be addressed at each Review Meeting (as specified in Condition 12.7 (*Review, Monitoring and Reporting*)), the parties shall also review:
- 12.9.1 all changes made to any Firm Scheme or to the Approved Bid in the previous Financial Year; and
 - 12.9.2 the capacity of the Grant Recipient to bring forward additional housing supply under SOAHP 2016/21.

- 12.10 The Agency's Representative and the Grant Recipient's Representative (or, where agreed with the Agency in advance, such other member of the Grant Recipient's executive management team) shall attend all Review Meetings.
- 12.11 Save as otherwise agreed between the parties, any meeting under this Condition 12 (*Review, Monitoring and Reporting*) shall be minuted by the Grant Recipient and such minutes shall be distributed within ten (10) Business Days following the meeting to the Agency and any other attendee.
- 12.12 The Grant Recipient shall:
- 12.12.1 provide the Agency with such information as the Agency shall reasonably require to support or facilitate the discussions and monitoring referred to in this Condition 12 (*Review, Monitoring and Reporting*); and
 - 12.12.2 take all reasonable steps to ensure that any information provided to the Agency pursuant to this Condition 12 (*Review, Monitoring and Reporting*) is accurate in all material aspects.
- 12.13 The Grant Recipient shall, as and when requested by the Agency (as required in connection with this Agreement, the Approved Bid or any Firm Scheme) promptly provide to the Agency hard and/or electronic copies of:
- 12.13.1 any and all data, materials, documents and accounts of any nature created, acquired or brought into existence in any manner whatsoever by or on behalf of the Grant Recipient (including where the source was created by and/or is held by a Grant Recipient Party (or its consultants)) for the purposes of or in connection with this Agreement; and
 - 12.13.2 the elemental breakdown of the acquisition costs and costs ancillary to such acquisitions in relation to each Firm Scheme.
- 12.14 On the expiry of this Agreement or (if earlier) upon its termination, the Grant Recipient shall if requested to do so deliver up to the Agency or procure the delivery to the Agency of all the data, materials, documents and accounts referred to in this Condition 12 (*Review, Monitoring and Reporting*).
- 12.15 The Grant Recipient must for a period of ten (10) years from the date upon which it receives the Firm Scheme Grant retain all of the data, documents, materials and accounts referred to in this Condition 12 (*Review, Monitoring and Reporting*) and the Grant Recipient may retain such data, documents, materials and accounts in electronic form only.
- 12.16 The Grant Recipient agrees that the Agency's auditors (including the Comptroller and Auditor General) shall have unrestricted rights of access to any and all information to which the Agency is entitled under this Agreement or to which the Agency's auditors are entitled pursuant to the National Audit Act 1983 and the Government Resources and Accounts Act 2000 or otherwise.
- 12.17 The Grant Recipient shall promptly and fully co-operate with any request for information or evidence from time to time from:

- 12.17.1 any auditor (whether internal or external) of the Agency; and/or
 - 12.17.2 the Agency, to the extent such request relates to this Agreement (or any matter associated with it), or to SGEI Information and which the Agency is required to provide to any third party pursuant to Legislation or by any Competent Authority.
- 12.18 The Grant Recipient shall ensure that for each Firm Scheme it and (where there has been a Permitted Disposal Trigger Event) the Landlord keeps on an Open Book Basis (in accordance with generally accepted accounting practice) separate books of account for items relating to the Affordable Home Ownership Dwellings which identify items of Decision Revenue, the Firm Scheme Grant and Decision Allowable Costs and such other items required under this Condition 12 (*Review, Monitoring and Reporting*).
- 12.19 The Grant Recipient shall upon the Agency's written request:
- 12.19.1 make available upon reasonable notice for the Agency's inspection (and that of any person referred to in this Condition 12 (*Review, Monitoring and Reporting*) or in Condition 20 (*Information and Confidentiality*) or any person appointed pursuant to Condition 24 (*Dispute Resolution*)) the books of account referred to in Condition 12.18 (*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 the Agency as and when requested to do so; and
 - 12.19.2 procure that a representative of the Agency (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 Condition 12 (*Review, Monitoring and Reporting*) are held or maintained and examine such records or information.
- 12.20 The Grant Recipient shall ensure that it and (where there has been a Permitted Disposal Trigger Event) the Landlord (at its or their cost) co-operates with the Agency during an SGEI Review and it shall if requested promptly provide the Agency with SGEI Information and such other information, evidence and/or explanation as the Agency may reasonably require.
- 12.21 The Grant Recipient shall provide the Agency with details of any Unlet Affordable Home Ownership Dwelling every three months from the Firm Scheme Completion Date and in any event, shall notify the Agency in writing as soon as practicable following the grant of the Help to Buy: Shared Ownership Lease in respect of the final Unlet Affordable Home Ownership Dwelling in a Firm Scheme.
- 13 Transparency Obligations**
- 13.1 The Grant Recipient acknowledges that:
- 13.1.1 where the Allocated Grant (itself or if aggregated with other SOAHP 2016/21 Funds or funds made available under any subsequent Agency capital funding programme) exceeds £3,000,000, the Grant Recipient 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, the Grant Recipient hereby consents for the Agency to publish such information as it considers appropriate in relation to the SOAHP 2016/21, including, but not limited to, details of the Approved Bid, Acquisition Costs, other costs and funding for Firm Schemes, including from time to time agreed changes to this information.

13.2 The Agency 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:

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

13.2.2 without consulting the Grant Recipient.

13.3 The Grant Recipient shall assist and cooperate with the Agency to enable the Agency to publish the information referred to in Condition 13.1.2 (*Transparency Obligations*).

14 **Grant Claim Procedures**

14.1 Subject to:

14.1.1 a Firm Scheme having reached the Firm Scheme Completion Date; and

14.1.2 receipt by the Agency of a Solicitor's Undertaking from the Grant Recipient's solicitors,

the Grant Recipient may apply to the Agency for the Firm Scheme Grant payable in respect of that Firm Scheme to be paid to it. The Grant Recipient must make its application through IMS and in accordance with the requirements of IMS from time to time and in compliance with the applicable procedures relating to grant claims and payments set out in the Capital Funding Guide.

14.2 In submitting an application pursuant to Condition 14.1 (*Grant Claim Procedures*) the Grant Recipient is deemed to represent and warrant to the Agency that:

14.2.1 the Firm Scheme has been delivered in accordance with the requirements of this Agreement;

14.2.2 the Firm Scheme meets the Submitted Standards;

14.2.3 all confirmations and certifications made or to be made by the Grant Recipient in IMS in relation to the Firm Scheme have been are or will be correct in all material respects;

14.2.4 the Grant Recipient retains its status as an Investment Partner;

14.2.5 it has obtained all Consents necessary for the lawful development of the Firm Scheme in accordance with the Firm Scheme Details and to the Submitted Standards as are then required or to the extent that they are not obtained that the Grant Recipient has taken all necessary steps to obtain them, is waiting

only for the Relevant Authority to issue them and is not aware (having made all reasonable enquiries) of any reason why such Consents will not be given or issued;

- 14.2.6 it possesses a Secure Legal Interest in the Property;
- 14.2.7 each Property is covered by the terms of a current Help to Buy Agency Agreement;
- 14.2.8 no Withholding Event or Default Event has occurred or arisen;
- 14.2.9 each Affordable Home Ownership Dwelling will be or will continue be used as an Affordable Home Ownership Dwelling;
- 14.2.10 other than a Permitted Disposal, nothing:
 - (a) has been registered against the Grant Recipient's HM Land Registry title to the Property;
 - (b) will be applied for prior to submission of the application referred to in Condition 11.11 against the Grant Recipient's HM Land Registry title to the Property; or
 - (c) is pending against the Grant Recipient's HM Land Registry title to the Property,

that would:

 - (a) adversely affect the Grant Recipient's ability to perform its obligations under this Agreement; and/or
 - (b) prejudice the operation of this Agreement; and
- 14.2.11 the Landlord retains its status as Registered Provider.

15 **Payment of Grant**

15.1 Subject to:

- 15.1.1 the Agency (acting reasonably) being satisfied with the Grant Recipient's application for payment including the information warranted pursuant to Conditions 14.2 (*Grant Claim Procedures*); and
- 15.1.2 Condition 6.4 (*Changes to Firm Schemes*), Condition 15.3 (*Payment of Grant*) and Condition 17 (*Withholding of Grant*),

the Agency shall (resources permitting) pay the Firm Scheme Grant to the Grant Recipient within fifteen (15) Business Days of receipt of a relevant satisfactory application.

- 15.2 If the Agency is not satisfied with the Grant Recipient's application for payment, it must notify the Grant Recipient in writing as soon as reasonably practicable and in any event within ten (10) Business Days of receipt of the application for payment identifying the reason for its dissatisfaction. The Agency must allow the Grant Recipient a period of up to

ten (10) Business Days to address the issues identified in the notification and to resubmit or amend its application accordingly in which case the provisions of Condition 14 (*Grant Claim Procedures*) and this Condition 15 (*Payment of Grant*) (as applicable) will be reapplied to the Grant Recipient's resubmitted or amended application for payment.

15.3 The Agency shall not be obliged to pay the Grant Recipient the Firm Scheme Grant:

15.3.1 before the Firm Scheme Completion Date (as confirmed by the Agency through IMS) has occurred;

15.3.2 if the Firm Scheme has not been accepted by the Agency through IMS.

15.3.3 In respect of any Firm Scheme which has not reached the Firm Scheme Completion Date by 31 March 2022 (subject to any extension to such date pursuant to Condition 7.3 (*Time extensions*)):

15.4 Where the Agency pays Firm Scheme Grant to the Grant Recipient, the Allocated Grant shall be reduced by a commensurate amount.

15.5 The payment of Firm Scheme Grant or any part thereof hereunder by the Agency to the Grant Recipient shall be regarded as inclusive of any VAT chargeable thereon.

16 **Change in Control**

16.1 During the period prior to and including the date upon which the Firm Scheme Grant is paid the Grant Recipient will not without the prior written consent of the Agency allow any Change in Control of either or both of:

16.1.1 the Grant Recipient;

16.1.2 the Landlord; or

16.1.3 the holding company of the Grant Recipient (if any).

16.2 The consent of the Agency under Condition 16.1 (*Change in Control*) will not be unreasonably withheld or delayed **provided that** the Agency is notified about any proposed Change in Control and receives all the information required under Condition 16.4 (*Change in Control*) at least twenty-five (25) Business Days prior to the Change in Control being effected and the Agency hereby records its intention (but without fettering its rights hereunder) to look favourably on applications for consent to Change in Control which are either received from a company whose shares are listed on a recognised investment exchange as such expression is defined in the Financial Services and Markets Act 2000 or which will not adversely affect the delivery of any Scheme or Schemes.

16.3 Without prejudice to the generality of Condition 16.2 (*Change in Control*), it shall be reasonable for the Agency to withhold its consent either at the date when application for consent to Change in Control is made to the Agency or after that date but before the Agency's consent is given if the proposed Controller does not have sufficient:

16.3.1 financial standing;

16.3.2 organisational standing and capacity; or

16.3.3 reputation;

for it to be reasonable for the Agency to assume that it will ensure that the Grant Recipient complies with this Agreement or (where there has been a Permitted Disposal Trigger Event) the Landlord complies with the Lease.

16.4 The application for consent to Change in Control must be accompanied by:

16.4.1 full written details setting out all the terms and conditions of the Change in Control reasonably necessary for the Agency to assess whether the delivery of the Schemes might be affected and/or whether the proposed Controller has sufficient financial standing, organisational standing and capacity and reputation for it to be reasonable for the Agency to assume the proposed Controller will be able to comply with this Agreement;

16.4.2 where the proposed Controller is an incorporated body certified copies of the proposed Controller's audited accounts for each of the two (2) financial years immediately preceding the date of the application for consent to the Change in Control, the latest audited accounts being to a date not more than ten (10) months before the date of the application insofar as available for recently incorporated bodies;

16.4.3 references from the proposed Controller's bankers confirming that the proposed Controller is considered good for the obligations of the Grant Recipient under this Agreement;

16.4.4 an undertaking from the Grant Recipient's solicitors requesting consent to Change in Control or for the proposed Controller to pay the reasonable costs disbursements and any VAT on them which may properly be incurred by the Agency in:

- (a) considering the application (whether or not consent is granted); and
- (b) granting consent (if it is granted).

16.5 If at any time before the proposed Change in Control has been effected any of the reasons for withholding consent specified in Condition 16.3 (*Change in Control*) apply the Agency may revoke its consent to such proposed Change in Control by written notice to the Grant Recipient.

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, the Agency:

- (a) shall be entitled to suspend any payment due to the Grant Recipient under this Agreement;
- (b) shall, as soon as reasonably practicable, notify the Grant Recipient of such suspension and the period within which it (acting reasonably) requires the failure or breach giving rise to the GW1 Event (the **GW1 Failure**) to be remedied;

- (c) shall, if it is satisfied (acting reasonably) that the GW1 Failure has been remedied, notify the Grant Recipient to that effect and shall (subject to Condition 17.3 (*Withholding of Grant*)) make such payment of Firm Scheme Grant as may then be due to the Grant Recipient (assuming no other General Withholding Event subsists). Such payment to be made within ten (10) Business Days of the date of Agency's notification under this Condition 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 Condition 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 Conditions 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, the Agency:

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

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

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

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

- (a) shall be entitled to trigger a procedure equivalent to that described in Condition 18.3.3(a), 18.3.3(c) and 18.3.3(d) (*Repayment of grant*) (*mutatis mutandis*);
- (b) shall not be obliged to make any payment to the Grant Recipient in relation to the relevant Firm Scheme pending the outcome of the procedure described in Condition (a) (*Withholding of Grant*); and;

- (c) shall be entitled to exercise rights equivalent to those described in Condition 18.3.3(d) (*Repayment of grant*) in the event that parties are unable to agree a revised figure for the Firm Scheme Grant;
- (d) shall require the Grant Recipient to amend the relevant information on IMS to reflect any agreement reached between the parties as to a revised figure for the Firm Scheme Grant as a result of the procedure contemplated in Condition 17.1.4(a) (*Withholding of grant*);
- (e) shall be entitled to reallocate or redirect the Excess Sum to such other person or for such purpose as the Agency in its discretion considers appropriate.

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

- (a) shall be entitled to suspend any payment of Firm Scheme Grant due to the Grant Recipient in relation to the relevant Firm Scheme;
- (b) shall, as soon as reasonably practicable, notify the Grant Recipient of such suspension and the period within which it (acting reasonably) requires the failure or breach giving rise to the SW2 Event (the **SW2 Failure**) to be remedied;
- (c) shall, if it is satisfied (acting reasonably) that the SW2 Failure has been remedied, notify the Grant Recipient to that effect and shall (subject to Condition 17.3 (*Withholding of Grant*)) make such payment of Firm Scheme Grant as may then be due to the Grant Recipient (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 Agency's notification under this Condition 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 Condition 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 rights equivalent to those set out in Conditions 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, the Agency:

- (a) shall not be obliged to make any payment of Firm Scheme Grant to the Grant Recipient in relation to the relevant Firm Scheme;
- (b) shall (on giving the Grant Recipient not less than ten (10) Business Days written notice) be entitled to permanently cancel any Firm Scheme Grant to the Grant Recipient in relation to the relevant Firm Scheme; and
- (c) shall be entitled to reallocate or redirect such part of the Firm Scheme Grant allocated to the relevant Firm Scheme to such other person or for such purpose as the Agency in its discretion considers appropriate.

- 17.2 The Agency shall incur no liability of any description to the Grant Recipient in or as a result of exercising its rights under this Condition 17 (*Withholding of Grant*).
- 17.3 The Agency shall not be obliged to make any payment of Firm Scheme Grant to the Grant Recipient where the due date for such payment falls after 31 March 2022 unless the Agency has in its absolute discretion permitted an extension to that date pursuant to Condition 7.3 (*Time extensions*).
- 18 **Repayment of grant**
- 18.1 The parties acknowledge and agree that:
- 18.1.1 the URB 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 URB 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 (whether triggered by the acts or omissions of the Grant Recipient or the Landlord) the Grant Recipient must repay the Capital Grant Recoverable in each case in accordance with the terms of the URB Recovery Determination.
- 18.2 Without prejudice to any other term of this Agreement, the Agency reserves the right whether following termination of this Agreement or otherwise (which right the Grant Recipient expressly acknowledges and agrees) at its discretion to recover from the Grant Recipient the Firm Scheme Grant or such part or aggregation thereof as is determined in accordance with Condition 18.3 (*Repayment of Grant*) (the **Recoverable Amount**) in circumstances where:
- 18.2.1 a Prohibited Act has occurred and the Grant Recipient has not satisfied the Waiver Condition in respect of such Prohibited Act;
- 18.2.2 the Firm Scheme Grant has been paid to the Grant Recipient on the basis of a misrepresentation made by or on behalf of the Grant Recipient other than in the circumstances specified in Condition 18.2.5 (*Repayment of Grant*);
- 18.2.3 the Agency has made an overpayment in relation to a Firm Scheme or has made a payment in error to the Grant Recipient;
- 18.2.4 a Balancing Sum has arisen;
- 18.2.5 the Firm Scheme Grant has been paid to the Grant Recipient but the Agency becomes aware (whether following the completion of a Compliance Audit or otherwise) that the Grant Recipient has failed to deliver the relevant Firm Scheme in accordance with the agreed Firm Scheme Details;
- 18.2.6 the Grant Recipient has breached its obligations under any of Conditions 9 (*Acquisition Obligations*), Condition 10 (*Special Conditions*), Condition 11 (*Operational Obligations*) or Condition 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 the Agency has exercised its rights under:
 - (a) Condition 17.1.1 (*Withholding of Grant*) (and the GW1 Failure has not been remedied within the period prescribed in Condition 17.1.1(b) (*Withholding of Grant*)); or
 - (b) Condition 17.1.2 (*Withholding of Grant*);
 - 18.2.10 the Agency has exercised its rights under or Condition 17.1.3 (*Withholding of Grant*);
- 18.3 In the circumstances set out in:
- 18.3.1 Conditions 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 for any affected Firm Scheme;
 - 18.3.2 Conditions 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 Condition 18.2.5 (*Repayment of Grant*), subject always to Condition 18.4 (*Repayment of Grant*) the Recoverable Amount shall be determined in accordance with the following procedure:
 - (a) the parties (acting in good faith) shall seek to agree within fifteen (15) Business Days of the Non Compliance Notification Date a revised figure for the 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 Condition 15.1 (*Payment of Grant*) in respect of the relevant Firm Scheme; and
- RFSG is the revised Firm Scheme Grant figure agreed pursuant to Condition 18.3.3(a) (*Repayment of Grant*);

- (c) the Grant Recipient shall immediately amend the relevant information on IMS to reflect any agreement reached made pursuant to Condition 18.3.3(a) (*Repayment of Grant*);
- (d) where the parties are unable to agree a revised Firm Scheme Grant figure in accordance with Condition 18.3.3(a) (*Repayment of Grant*) the Agency shall be entitled to terminate this Agreement in accordance with Condition 19.1 (*Default Events and Termination*) and the Recoverable Amount shall be an amount equal to the Firm Scheme Grant paid pursuant to Condition 15.1 (*Payment of Grant*) in respect of the relevant Firm Scheme.

Under no circumstances will the Agency be required to make any payment to the Grant Recipient if the application of the calculation in Condition 18.3.3(b) (*Repayment of Grant*) results in RA being a negative figure.

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

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

18.3.5 Condition 18.2.9 (*Repayment of Grant*) the Recoverable Amount shall be a sum equal to the Fundamental Termination Amount unless there is in fact only one Firm Scheme which is the subject of this Agreement, in which case the Recoverable Amount shall be equal to the Firm Scheme Grant already paid by the Agency to the Grant Recipient under this Agreement; or

18.3.6 Condition 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 the Agency to the Grant Recipient under this Agreement;

18.4 Where the Agency (acting reasonably) considers that the Grant Recipient acted fraudulently or dishonestly in claiming the Firm Scheme Grant for the relevant Firm Scheme, such claim shall be deemed to be a Prohibited Act and the Agency will not be bound by the terms of Condition 18.3.3 (*Repayment of Grant*).

18.5 The Grant Recipient must pay the Recoverable Amount to the Agency 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 Grant Recipient until the date upon which the Agency receives the repayment required from the Grant Recipient under this Condition 18 (*Repayment of Grant*).

- 18.6 The Grant Recipient acknowledges and agrees that the Disposal or letting of a Affordable Home Ownership Dwelling to any person for any purpose other than one specifically contemplated in this Agreement constitutes a failure to comply with a condition attached to the making of Capital Grant for the purposes of paragraph 6(e) of the URB Recovery Determination.
- 18.7 The parties acknowledge that the Late Payment of Commercial Debts (Interest) Act 1998 does not apply to this Agreement.
- 18.8 Notwithstanding any other term of this Condition 18 (*Repayment of Grant*), where a payment has been made following an administrative error by the Agency, the Grant Recipient shall not be liable for interest on the amount repayable under Condition 18.5 (*Repayment of Grant*).
- 18.9 If the Agreement Funding gives rise to an SGEI Decision Overpayment or otherwise constitutes Unlawful State Aid then the Agency shall be entitled to recover from the Grant Recipient the amount of such SGEI Decision Overpayment and/or Unlawful State Aid together with such interest as it is required by Law to recover and the Grant Recipient must pay such amount(s) within ten (10) Business Days of the Agency requesting repayment.
- 19 **Default Events and Termination**
- 19.1 On the occurrence of a Scheme Default, the Agency shall (subject to Condition 19.2 (*Default Events and Termination*)) be entitled (without any liability to the Grant Recipient) 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 payment of Firm Scheme Grant due to the Grant Recipient 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 Grant Recipient to such other person or for such purpose as the Agency 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", the Agency:
- 19.2.1 must notify the Grant Recipient of the Scheme Default and of the period within which it (acting reasonably) requires the Scheme Default to be remedied;
- 19.2.2 shall be entitled, if the Scheme Default has not been remedied within the period prescribed pursuant to Condition 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 Condition 19.1 (*Default Events and Termination*).
- 19.3 On the occurrence of a Specified Default, the Agency shall (subject to Condition 19.4 (*Default Events and Termination*)) be entitled and without any liability to the Grant Recipient to:

- 19.3.1 terminate this Agreement in its entirety;
 - 19.3.2 withhold and cancel any further payment of Allocated Grant due to the Grant Recipient under this Agreement; and
 - 19.3.3 reallocate or redirect such part of the Allocated Grant (which has not yet been paid to the Grant Recipient) to such other person or for such purpose as the Agency in its discretion considers appropriate.
- 19.4 The Agency's entitlement to exercise the rights set out in Condition 19.3 (*Default Events and Termination*) shall be suspended pending completion of the following procedure within the timescales prescribed below:
- 19.4.1 The Agency must serve written notice on the Grant Recipient requiring the Grant Recipient to remedy 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; or
 - (b) where so permitted by the Agency, the Grant Recipient has not given an undertaking to remedy the Specified Default on terms satisfactory to the Agency; or
 - (c) it becomes apparent that the Specified Default is incapable of remedy either within such period or at all;

the Agency shall be entitled immediately and without any liability to the Grant Recipient to exercise its rights under Condition 19.3 (*Default Events and Termination*).
- 19.5 On the occurrence of a Bid Default, the Agency shall (subject to Condition 19.6 (*Default Events and Termination*)) be entitled and without any liability to the Grant Recipient to:
- 19.5.1 terminate this Agreement in its entirety;
 - 19.5.2 withhold and cancel any further payment of Allocated Grant due to the Grant Recipient under this Agreement; and
 - 19.5.3 reallocate or redirect such part of the Allocated Grant (which has not yet been paid to the Grant Recipient) to such other person or for such purpose as the Agency in its discretion considers appropriate.
- 19.6 The Agency's entitlement to exercise the rights set out in Condition 19.5 (*Default Events and Termination*) shall be suspended pending completion of the following procedure within the timescales prescribed below:
- 19.6.1 the Agency must notify the Grant Recipient in writing of its intention to call a Bid Default and to exercise its rights under Condition 19.5 (*Default Events and Termination*);
 - 19.6.2 the parties (acting in good faith) shall meet within ten (10) Business Days of the date of the notice referred to in Condition 19.6.1 (*Default Events and*

Termination) to seek to agree adjustments to the Approved Bid and/or the Allocated Grant to reflect any demonstrable underperformance by the Grant Recipient against its delivery projections as set out in the Approved Bid;

19.6.3 where adjustments are agreed, the Grant Recipient shall promptly (and in any event within fifteen (15) Business Days of the date of the above meeting) make all such amendments to the information contained in IMS in respect of the Approved Bid as are necessary to reflect the agreement made pursuant to Condition 19.6.2 (*Default Events and Termination*) and in that case the Agency's rights under Condition 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 Condition 19.6 (*Default Events and Termination*);

19.6.4 if the parties are unable to agree adjustments to the Approved Bid pursuant to Condition 19.6.2 (*Default Events and Termination*) within fifteen (15) Business Days of the date of the meeting or the Grant Recipient fails correctly to amend the information contained in IMS in accordance with Condition 19.6.3 (*Default Events and Termination*), the Agency shall be entitled immediately and without any liability to the Grant Recipient to exercise its rights under Condition 19.5 (*Default Events and Termination*).

19.7 On the occurrence of a Fundamental Default, the Agency shall on the service of written notice be entitled forthwith and without any liability to the Grant Recipient to:

19.7.1 terminate this Agreement in its entirety;

19.7.2 withhold and cancel any further payment of Allocated Grant due to the Grant Recipient under this Agreement; and

19.7.3 reallocate or redirect such part of the Allocated Grant (which has not yet been paid to the Grant Recipient) to such other person or for such purpose as the Agency in its discretion considers appropriate.

20 **Information and Confidentiality**

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

20.2 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 the Agency 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.

20.3 The obligations of confidence referred to in this Condition 20 (*Information and Confidentiality*) shall not apply to any Confidential Information which:

20.3.1 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;

- 20.3.2 is obtained from a third party without that third party being under an obligation (express or implied) to keep the information confidential;
 - 20.3.3 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
 - 20.3.4 is independently developed without access to the Confidential Information of the other party; or
 - 20.3.5 (where there has been a Permitted Disposal Trigger Event) is shared with the Landlord.
- 20.4 Each party will be permitted to disclose Confidential Information to the extent that it is required to do so:
- 20.4.1 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;
 - 20.4.2 by any applicable Law or by a court, arbitral or administrative tribunal in the course of proceedings before it including without limitation any requirement for disclosure under FOIA, EIR or the Code of Practice on Access to Government Information and the Grant Recipient acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and the Agency may nevertheless be obliged to disclose such Confidential Information;
 - 20.4.3 by any Regulatory Body (including any investment exchange) acting in the course of proceedings before it or acting in the course of its duties; or
 - 20.4.4 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.
- 20.5 The Grant Recipient shall ensure that all Confidential Information obtained from the Agency under or in connection with this Agreement:
- 20.5.1 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;
 - 20.5.2 is treated as confidential and not disclosed (without the Agency's prior written approval) or used by any such staff or professional advisors or consultants otherwise than for the purposes of this Agreement;
 - 20.5.3 where it is considered necessary in the opinion of the Agency the Grant Recipient shall ensure that such staff, professional advisors or consultants sign a confidentiality undertaking before commencing work in connection with this Agreement.
- 20.6 Nothing in this Condition 20 (*Information and Confidentiality*) shall prevent the Agency:

20.6.1 disclosing any Confidential Information for the purpose of:

- (a) the examination and certification of the Agency's accounts;
- (b) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Agency has used its resources;

20.6.2 disclosing any Confidential Information obtained from the Grant Recipient:

- (a) to any other department, office or agency of the Crown; or
- (b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- (c) 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;
- (d) to any person engaged in providing any services to the Agency 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 Conditions 20.6.2(a) (*Information and Confidentiality*) to Condition 20.6.2(d) (*Information and Confidentiality*) inclusive the Agency 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.

20.7 Nothing in this Condition 20 (*Information and Confidentiality*) shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

20.8 The Grant Recipient acknowledges that the Agency is subject to legal duties which may require the release of information under FOIA and/or EIR and that the Agency may be under an obligation to provide Information subject to a Request for Information.

20.9 The Agency shall be responsible for determining in its absolute discretion whether:

20.9.1 any Information is Exempted Information or remains Exempted Information; or

20.9.2 any Information is to be disclosed in response to a Request for Information;

and in no event shall the Grant Recipient respond directly to a Request for Information to which the Agency 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 Agency unless otherwise expressly authorised to do so by the Agency.

20.10 Subject to Condition 20.11 (*Information and Confidentiality*) below, the Grant Recipient acknowledges that the Agency may be obliged under FOIA or EIR to disclose Information:

- 20.10.1 without consulting the Grant Recipient; or
- 20.10.2 following consultation with the Grant Recipient and having taken (or not taken, as the case may be) its views into account.
- 20.11 Without in any way limiting Condition 20.9 (*Information and Confidentiality*) or Condition 20.10 (*Information and Confidentiality*), in the event that the Agency receives a Request for Information, the Agency will, where appropriate, as soon as reasonably practicable notify the Grant Recipient.
- 20.12 The Grant Recipient will assist and co-operate with the Agency as requested by the Agency to enable the Agency 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:
 - 20.12.1 transfer any Request for Information received by the Grant Recipient to the Agency as soon as practicable after receipt and in any event within two (2) Business Days of receiving a Request for Information;
 - 20.12.2 provide all such assistance as may be required from time to time by the Agency and supply such data or information as may be requested by the Agency;
 - 20.12.3 provide the Agency with any data or information in its possession or power in the form that the Agency requires within five (5) Business Days (or such other period as the Agency may specify) of the Agency requesting that Information;
 - 20.12.4 permit the Agency to inspect such as requested from time to time.
- 20.13 Nothing in this Agreement will prevent the Agency 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.
- 20.14 The obligations in this Condition 20 (*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.
- 20.15 The Grant Recipient must regularly review its security arrangements in relation to its access to and operation of IMS and in particular the Grant Recipient must:
 - 20.15.1 notify the Agency immediately if there is any change in the identity of the individual discharging the role of the security administrator on behalf of the Grant Recipient or if such person leaves the Grant Recipient's employment or relinquishes that role;
 - 20.15.2 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;
 - 20.15.3 ensure that IMS passwords are kept confidential and not shared by or with its employees or consultants; and

- 20.15.4 ensure that systems are in place to prevent any person accessing IMS under a 'User ID' other than his own.

21 Data Protection

- 21.1 The Grant Recipient warrants and represents that it has obtained all necessary registrations, notifications and consents required by the DPA to Process Personal Data for the purposes of performing its obligations under this Agreement.
- 21.2 The Grant Recipient undertakes that to the extent that the Grant Recipient and/or any of its employees receives, has access to and/or is required to Process Personal Data on behalf of the Agency (the **Agency's Personal Data**) for the purpose of performing its obligations under this Agreement it will at all times act as if it were a Data Controller and comply with the provisions of the DPA for the time being in force, including without limitation the Data Protection Principles set out in Schedule 1 of the DPA. In particular, the Grant Recipient agrees to comply with the requirements and obligations imposed on the Data Controller in the Seventh Data Protection Principle set out in the DPA namely:
- 21.2.1 the Grant Recipient shall at all material times have in place and maintain appropriate technical and organisational security measures designed to safeguard against accidental or unlawful destruction, accidental loss, alteration, unauthorised or unlawful disclosure of or access to the Agency's Personal Data and any person it authorises to have access to any the Agency's Personal Data will respect and maintain the confidentiality and security of the Agency's Personal Data. This includes the obligation to comply with any records management, operational and/or information security policies operated by the Agency, when performing its obligations under this Agreement on the Agency's premises and/or accessing their manual and/or automated information systems. These measures shall be appropriate to the harm which might result from any unauthorised Processing, accidental loss, destruction or damage to the Personal Data which is to be protected;
- 21.2.2 the Grant Recipient shall only Process Personal Data for and on behalf of the Agency for the purpose of performing its obligations under this Agreement in accordance with this Agreement, or as is required by Law or any Regulatory Body, and where necessary only on written instructions from the Agency to ensure compliance with the DPA;
- 21.2.3 the Grant Recipient shall allow the Agency to audit the Grant Recipient's compliance with the requirements of this Condition 21 (*Data Protection*) on reasonable notice and/or, at the Agency's request, provide the Agency with evidence of the Grant Recipient's compliance with the obligations within this Condition 21 (*Data Protection*).
- 21.3 The Grant Recipient undertakes not to disclose or transfer any of the Agency's Personal Data to any third party without the prior written consent of the Agency save that without prejudice to Condition 21.2 (*Data Protection*) the Grant Recipient shall be entitled to disclose the Agency's Personal Data to employees to whom such disclosure is reasonably necessary in order for the Grant Recipient to perform its obligations under this Agreement, or to the extent required under a court order.
- 21.4 The Grant Recipient shall:

- 21.4.1 take reasonable steps to ensure the reliability of any Grant Recipient Party who has access to the Personal Data;
 - 21.4.2 ensure that any Grant Recipient Party required to access the Personal Data is informed of the confidential nature of the Personal Data and comply with the obligations set out in this Condition 21 (*Data Protection*);
 - 21.4.3 ensure that no Grant Recipient Party publishes, discloses or divulges any of the Personal Data to any third party unless directed in writing to do so by the Agency;
 - 21.4.4 provide a written description of the technical and organisational methods employed by the Grant Recipient for processing Personal Data (within the timescales required by the Agency); and
 - 21.4.5 not Process Personal Data outside the European Economic Area without the prior written consent of the Agency and, where the Agency consents to a transfer, to comply with:
 - (a) the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the DPA by providing an adequate level of protection to any Personal Data that is transferred; and
 - (b) any reasonable instructions notified to it by the Agency.
- 21.5 The Grant Recipient agrees to use all reasonable efforts to assist the Agency to comply with such obligations as are imposed on the Agency by the DPA. For the avoidance of doubt, this includes the obligation to:
- 21.5.1 provide to the Agency such access as may be reasonably required from time to time to all Personal Data stored or processed in performing its obligations under this Agreement in order to enable the Agency to meet its obligations to respond to access requests from Data Subjects under the DPA;
 - 21.5.2 provide the Agency with reasonable assistance in complying with any Request for Information served on the Agency under Section 7 of the DPA;
 - 21.5.3 notify the Agency (within five (5) Business Days) about the receipt of any such request received by the Grant Recipient under Section 7 of the DPA (a **Section 7 DPA**) or complaint or request relating to the Agency's obligations under the DPA and not disclose or release any information (including the Agency's Personal Data) in response to a Section 7 DPA request or complaint without first consulting with the Agency, where the information sought relates to the Agency, its employees, agents and/or its business operations;
 - 21.5.4 provide the Agency with full co-operation and assistance in relation to any complaint or request made, including by:
 - (a) providing the Agency with full details of the complaint or request;
 - (b) complying with a data access request within the relevant timescales set out in the DPA and in accordance with the Agency's instructions;

- (c) providing the Agency with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Agency); and
- (d) providing the Agency with any information requested by the Agency.

- 21.6 The Grant Recipient shall comply at all times with the DPA and shall not perform its obligations under this Agreement in such a way as to cause the Agency to breach any of its applicable obligations under the DPA.
- 21.7 The Grant Recipient shall indemnify the Agency against all claims and proceedings and all liability, losses, costs and expenses incurred in connection therewith by the Agency as a result of the Grant Recipient's destruction of and/or damage to any of the Agency's Personal Data processed by the Grant Recipient, its employees, agents, or any breach of or other failure to comply with the obligations in the DPA and/or this Condition 21 (*Data Protection*) by the Grant Recipient, its employees, agents or sub-contractors.
- 21.8 The Grant Recipient shall appoint and identify an individual within its organisation authorised to respond to enquiries from the Agency concerning the Grant Recipient's Processing of the Agency's Personal Data and will deal with all enquiries from the Agency relating to such Personal Data promptly, including those from the Information Commissioner and will to the extent reasonably necessary co-operate with and assist in ensuring compliance with any Data Subject rights of data access, correction, blocking, suppression or deletion relating to the Agency's Personal Data and in the defence or management of any enforcement action or assessment by the Information Commissioner or any other Competent Authority in relation thereto.
- 21.9 The Grant Recipient undertakes to include obligations no less onerous than those set out in this Condition 21 (*Data Protection*), in all contractual arrangements with agents engaged by the Grant Recipient in performing its obligations under this Agreement to the Agency.

22 Intellectual Property

- 22.1 Subject to Condition 22.5 (*Intellectual Property*) the Grant Recipient shall, to the extent that it is able to do so without incurring material cost, grant to the Agency a perpetual, transferable, non-exclusive, royalty-free licence (carrying the right to grant sub-licences) to copy and use (from computer disk or otherwise) all and any Intellectual Property Rights in any, drawings, reports, specifications, calculations and other documents provided by the Grant Recipient or which are or become owned by the Grant Recipient and which relate to the Firm Schemes, for any purpose relating to this Agreement.
- 22.2 To the extent that any of the data, materials and documents referred to in Condition 22.1 (*Intellectual Property*) are generated by or maintained on a computer or in any other machine readable format, the Grant Recipient shall if requested by the Agency use its reasonable endeavours (without having to incur material cost) procure for the benefit of the Agency for the duration of this Agreement at the cost of the Grant Recipient the grant of a licence or sub-licence and supply any relevant software and/or database to enable the Agency making such request to access and otherwise use such data for the purposes referred to in Condition 22.1 (*Intellectual Property*).
- 22.3 Neither party shall infringe any third party's Intellectual Property Rights in connection with this Agreement.

- 22.4 The Grant Recipient shall fully indemnify the Agency within five (5) Business Days of demand under this Condition 22.4 (*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 Condition 22 (*Intellectual Property*), any breach by the Grant Recipient of this Condition 22 (*Intellectual Property*) and against all costs and damages of any kind which the Agency may incur in connection with any actual or threatened proceedings before any court or adjudication body.
- 22.5 The Grant Recipient shall only be entitled to revoke the licence granted to the Agency under Condition 22.1 (*Intellectual Property*) in the following circumstances and upon the following terms:
- 22.5.1 on the termination of the whole of this Agreement in circumstances where no Allocated Grant has been paid to the Grant Recipient; or
- 22.5.2 on the termination of this Agreement (in whole or in part) in circumstances where some Allocated Grant has been paid to the Grant Recipient **provided that** nothing in this Condition 22.5.2 (*Intellectual Property*) shall entitle the Grant Recipient to revoke such licence insofar as it relates to 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.

23 **Assignment and sub-contracting**

- 23.1 The Agency will be entitled to transfer or assign all or part of this Agreement.
- 23.2 The Grant Recipient will not be entitled to transfer or assign all or part of this Agreement.

24 **Dispute resolution**

- 24.1 All disputes and differences arising out of or in connection with this Agreement (a **Dispute**) shall be resolved pursuant to the terms of this Condition 24 (*Dispute Resolution*).
- 24.1.1 In the event that the Grant Recipient or the Agency consider that a Dispute exists, such party shall serve a notice upon the other party (a **Notice of Dispute**) giving brief details of the Dispute and in the first instance the parties shall use their reasonable endeavours to resolve such Dispute amicably and in good faith and in accordance with this Condition 24 (*Dispute Resolution*).
- 24.1.2 Representatives of the parties shall meet within five (5) Business Days (or such other longer period not exceeding twenty (20) Business Days as the parties may agree) of receipt of a Notice of Dispute.
- 24.1.3 Where either no representatives of both parties are available to meet within the period set out in Condition 24.1.2 (*Dispute Resolution*) or the representatives fail to agree a unanimous resolution of the Dispute at such meeting, the Dispute shall be referred to the chief executives (or nominated deputies) of the Grant Recipient and the Agency (the **Senior Executives**).
- 24.1.4 The Senior Executives shall meet within ten (10) Business Days (or such other longer period not exceeding twenty (20) Business Days as the parties may

agree) of such referral to attempt to resolve the Dispute. Any unanimous resolution of the Senior Executives shall be recorded in writing and signed by them and shall be final and binding unless the parties agree otherwise.

24.1.5 If the Dispute remains unresolved after ten (10) Business Days following referral to the Senior Executives, such Dispute must be dealt with in accordance with Condition 24.2 (*Dispute Resolution*).

24.2 In the circumstances contemplated in Condition 24.1.5 (*Dispute Resolution*), the parties will attempt to settle the Dispute by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed by the parties, the mediator will be nominated by CEDR. The parties agree that:

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

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

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

25 **Further assurance**

At any time upon the written request of the Agency the Grant Recipient:

25.1 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 obtaining for the Agency the full benefit of this Agreement and of the rights and powers herein granted and the Grant Recipient hereby irrevocably appoints the Agency as its attorney solely for that purpose; and

25.2 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.

26 **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 the Agency shall not be fettered, constrained or otherwise unlawfully affected by the terms of this Agreement or any such other deed or document.

27 **No agency**

27.1 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.

- 27.2 The Grant Recipient shall at all times be independent and nothing in this Agreement shall be construed as creating the relationship of employer and employee between the Agency and the Grant Recipient. Neither the Grant Recipient nor any of its employees shall at any time hold itself or themselves out to be an employee of the Agency.

28 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.

29 Entire Agreement

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

- 29.2 The Grant Recipient hereby acknowledges that save as set out or referred to in the Agreement there are and have been no representations made by or on behalf of the Agency of whatsoever nature on the faith of which the Grant Recipient is entering into this Agreement.

30 Severability

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

31 Cumulative rights and enforcement

- 31.1 Any rights and remedies provided for in this Agreement whether in favour of the Agency or the Grant Recipient are cumulative and in addition to any further rights or remedies which may otherwise be available to those parties.

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

32 Waiver

- 32.1 Neither the failure of any party at any one time to enforce any provision of this Agreement nor the payments by the Agency of Firm Scheme Grant under Condition 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.

32.2 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.

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

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

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

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

33 **VAT**

33.1 Except where expressly stated to the contrary in this Agreement:

33.1.1 the amount of any payment or the value of any supply is expressed exclusive of VAT properly chargeable on it;

33.1.2 where any payment or taxable supply falls to be made pursuant to this Agreement VAT properly chargeable on it will be paid in addition by the recipient of the supply for which payment (if any) is consideration on the provision of a valid VAT invoice for it.

34 **Survival of this Agreement**

34.1 Insofar as any of the rights and powers of the Agency 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.

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

34.3 Without limitation the provisions of Conditions 3 (*Acknowledgements, Representations and Warranties*), 5.3 (*Firm Schemes*), 6 (*Changes to Firm Schemes*), 8.7 (*Firm Scheme substitution and additions*), 9 (*Acquisition Obligations*), 10 (*Special Conditions*), 11 (*Operational Obligations*), 13 (*Transparency Obligations*), 14 (*Grant Claim Procedures*), 15 (*Payment of Grant*), 17 (*Withholding of Grant*), 18 (*Repayment of Grant*), 19 (*Default Events and Termination*), 20 (*Information and Confidentiality*), 21 (*Data Protection*), 22 (*Intellectual Property*), 24 (*Dispute resolution*), 32 (*Waiver*), 36 (*Governing Law*) and this Condition 34 (*Survival of this Agreement*) and such other provisions of this Agreement as are necessary to give effect to such Conditions are expressly agreed by the parties to survive the termination or expiry of this Agreement.

35 **Execution**

This Agreement may be executed 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.

36

Governing law

This Agreement shall be governed by and construed in accordance with the laws of England and Wales and subject to the provisions of Condition 24 (*Dispute Resolution*) the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

Schedule 1

S. 43

Schedule 2

Officer's Certificate

To: Homes and Communities Agency (the **Agency**)

In this Officer's Certificate, words and expressions shall have the same meanings as in the Agreement except where otherwise defined.

As an authorised signatory of the Grant Recipient, I hereby certify that as at the date hereof (save as disclosed in the Schedule to this Certificate):

- 1 all data or other information submitted on IMS in respect of the Approved Bid, Substitute Scheme, Additional Scheme and each Firm Scheme is accurate and the Grant Recipient is not aware (having made all reasonable enquiries) of any circumstances which would give rise to that information becoming inaccurate;
- 2 all data or other information supplied to the Agency in connection with, or related to the Approved Bid (including that submitted pursuant to Condition 12 (*Review, Monitoring and Reporting*)) is accurate;
- 3 the Grant Recipient is not in breach of its Transparency Obligations;
- 4 save where expressly agreed by the Agency, no Firm Scheme which is a Section 106 Scheme is being subsidised by Firm Scheme Grant;
- 5 save where expressly agreed by the Agency, all Affordable Home Ownership Dwellings have been let or disposed of (as applicable) in accordance with the terms of the applicable Firm Scheme Details; and
- 6 so far as the Grant Recipient is aware (having made all reasonable enquiries) each Firm Scheme (including, inter alia, the projected Firm Scheme Completion Date) is capable of being delivered without the need for a change to the Firm Scheme Details.

This Certificate is given by virtue of my position as [] and is given on behalf of the Grant Recipient. I am not giving this Certificate in a personal capacity, nor do I accept any private or personal liability for any error or omission in it and the Agency, in relying on the contents of the Certificate, duly acknowledges that if any error or omission is later to be found, such error or omission will be deemed to be a Specified Default for the purposes of providing the Agency a remedy against the Grant Recipient.

Dated []

.....
Authorised signatory

[]

Schedule to Officer's Certificate

Paragraph Number	Disclosure

Schedule 3

Acknowledgements, Representations and Warranties

Part 1

Agreed Principles

- 1 The provisions of this Agreement represent the conditions upon which the Agency makes the Allocated Grant available to the Grant Recipient for the purposes of Sections 19 and 31 HRA 2008;
- 2 The Allocated Grant is being made available by the Agency on the express understanding that it is applied solely for the purposes of funding the Acquisition Costs in respect of the Properties which are to be let or sold to individuals as Affordable Home Ownership Dwellings;
- 3 The Public Sector Subsidy in respect of a Firm Scheme may not exceed an amount equal to the Actual Acquisition Costs incurred by the Grant Recipient in respect of the delivery of that Firm Scheme nor may the Public Sector Subsidy in respect of the Approved Bid exceed an amount equal to the aggregated Actual Acquisition Costs in respect of the delivery of the Approved Bid;
- 4 All Firm Scheme Grant paid under this Agreement is:
 - 4.1 social housing assistance as defined in Section 32(13) of the HRA 2008; and
 - 4.2 subject to the provisions of the HRA 2008 and any applicable determinations made under such provisions.
- 5 The provisions of Condition 18 (*Repayment of Grant*) represent events and principles determined by the Agency for the purposes of Sections 32-34 of the HRA 2008;
- 6 Any failure by the Grant Recipient to comply with the terms of this Agreement or the occurrence of a Default Event or Withholding Event constitutes a failure to comply with a condition attached to the making of Capital Grant for the purposes of paragraph 6(e) of the URB Recovery Determination.
- 7 The terms of the Capital Funding Guide are incorporated within this Agreement (*mutatis mutandis*);
- 8 The Affordable Home Ownership Dwellings shall be made available only as Affordable Home Ownership Dwellings.

Part 2

Representations and Warranties

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 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 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 the property or any other assets of the Grant Recipient has enforced or given notice of its intention to enforce such Security.
- 2.2 It has obtained or will by the date on which it acquires each Property 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 the Agency or its agents or employees in connection with the Grant Recipient's initial application for grant funding or in the course of the subsequent discussions was at the time of submission and as far as it was aware (or ought to have been aware) having made all reasonable and proper enquiries true, complete and accurate in all respects.
- 2.6 It has informed the Agency of any material change that has occurred since:
 - 2.6.1 the date of submission of the Approved Bid prior to the date of this Agreement; and
 - 2.6.2 the Approved 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 Subsidy.
- 2.7 It is not aware of any material fact or circumstance that has not been disclosed to the Agency and which might, if disclosed materially, adversely affect the decision of anyone considering whether or not to contract with it.

3 Application of Approved Bid Capacity

None of the Affordable Home Ownership Dwellings to be provided pursuant to this Agreement have received funding from the Agency under any previous Agency funding programme or are intended to receive funding from the Agency other than SOAHP 2016/21.

4 Authority of Grant Recipient's Representative

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

5 Propriety

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

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

5.1.2 any land or other property to be acquired by the Grant Recipient for the purposes of or in connection with this Agreement.

5.2 No member, employee, agent or consultant of the Grant Recipient or any partner organisation of the Grant Recipient (save the Landlord) 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 acquired pursuant to this Agreement; or

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

Schedule 4**Development Costs****Part 1****Development Costs****Heads of expenditure****1 Acquisition**

- 1.1 Purchase price of Property.
- 1.2 Stamp Duty Land Tax on the purchase price of Property.

2 On costs

- 2.1 Legal fees and disbursements.
- 2.2 Net gains/losses via interest charges on development period loans.
- 2.3 Building society or other valuation and administration fees.
- 2.4 Fees and charges associated with compliance with European Community directives, and the Agency's requirements relating to energy rating of dwellings and Eco-Homes certification.
- 2.5 In-house or external consultants' fees, disbursements and expenses (where the development contract is a design and build contract) (see note below).
- 2.6 Insurance premiums including building warranty and defects/liability insurance.
- 2.7 Borrowing administration charges (including associated legal and valuation fees).
- 2.8 An appropriate proportion of the Grant Recipient's ancillary acquisition and administration costs.
- 2.9 Irrecoverable VAT on the above.

Part 2**Costs which are not Acquisition Costs**

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 Property 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

Special Conditions

- 1 The Grant Recipient must:
 - 1.1 procure that the Affordable Home Ownership Dwelling are used and continue to be used as Affordable Home Ownership dwellings;
 - 1.2 at any time where the Grant Recipient is or becomes the direct landlord of the Affordable Home Ownership Dwellings, ensure that such Affordable Home Ownership Dwellings are:
 - 1.2.1 managed in a manner which complies with the Regulatory Standards pursuant to the Regulatory Framework notwithstanding that the Grant Recipient is not a Registered Provider;
 - 1.2.2 used and continue to be used as such Affordable Home Ownership Dwellings; and
 - 1.2.3 ensure that the restrictions referred to in Condition 11.7 is applied for against its Land Registry title in relation to the Affordable Home Ownership Dwelling,
 - 1.3 impose and enforce such conditions as are necessary in any lease to the Landlord subject to the Affordable Home Ownership Dwellings (**Lease**) to:
 - 1.3.1 ensure that the provisions of paragraph 1.2.1 – 1.2.3 are complied with by the Landlord (mutatis mutandis); and
 - 1.3.2 prohibit any disposal of the Affordable Home Ownership Dwellings or assignment of the Lease by the Landlord apart from a Landlord Permitted Disposal;
 - 1.3.3 ensure that the following restriction is applied for at the HM Land Registry on the Proprietorship Register of the Landlord's new reversionary title to the Affordable Home Ownership Dwellings within 10 Business Days from completion of the Lease:

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate is to be registered without a certificate signed by a conveyancer that the provisions of paragraph 1.3.2 of Schedule 5 of a Grant Agreement dated [] and made between (1) the Homes and Communities Agency and (2) HH NO.2 LIMITED have been complied with or that they do not apply to the disposition."
 - 1.4 ensure that no variation is made to the Lease without the consent of the Agency;
 - 1.5 procure that any requisitions raised by HM Land Registry in relation to the restriction at paragraph 1.3.3 are dealt with promptly; and
 - 1.6 ensure that it or the Landlord actively market any Unlet Affordable Home Ownership Dwelling with a view to ensuring its Disposal to individuals on Help to Buy: Shared Ownership Lease terms.

- 2 Pursuant to the Agency's powers under section 33(6)-(8) of the HRA 2008, the Agency agrees and directs that in the case of a disposal contemplated in limb (a) of the definition of Permitted Disposal, the element of social housing assistance which is to be treated as been given to the Landlord for the purpose of s.33(7) shall be nil.
- 3 In consideration for the direction provided by the Agency in paragraph 2 above, the Grant Recipient acknowledges and agrees that it retains all responsibility for all of the grant provided in respect of any Affordable Home Ownership Dwelling that is:
 - 3.1 subject to a Disposal to the Landlord under the terms of this Agreement (including the repayment obligations and obligations relating to Uplift Amount set out in the URB Recovery Determination) irrespective of the disposal contemplated in limb (a) of the definition of Permitted Disposal; or
 - 3.2 subject to a re-conveyance to the Grant Recipient by the Landlord pursuant to paragraph 1.3.2 above.

•

Annexure 1

Form of Help to Buy: Shared Ownership Lease

[see insert]

[blank page]

DATED

HEYLO HOUSING REGISTERED PROVIDER LIMITED
as Landlord

[[]]
as Leaseholder[s]

Shared Ownership Lease of a House

of []

Important Notice for Leaseholders

A guide to the key terms of this Lease is set out in Appendix 3

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LAND REGISTRY PRESCRIBED CLAUSES

LR1. Date of Lease	
LR2. Title number(s)	LR2.1 Landlord's title number(s)
	[[]]
	LR2.2 Other title numbers
	[[[]]]
LR3. Parties to this Lease	Landlord
	HEYLO HOUSING REGISTERED PROVIDER LIMITED (company no. 06573772) whose registered office at 5th Floor, 1 New Change, London EC4M 9AF and is registered with the Regulator of Social Housing under RP Code 4668
	Tenant[s]
	[[] of []]
LR4. Property	In the case of a conflict between this clause and the remainder of this lease then, for the purposes of registration, this clause shall prevail
	As specified in Schedule 1 (<i>The Premises</i>) and Schedule 6 (<i>Defined Terms</i>) of this Lease and defined in this Lease as "the Premises "
LR5. Prescribed statements etc	LR5.1 <i>Statements prescribed under rules 179 (dispositions in favour of a charity), 180 (dispositions by a charity) or 196 (leases under the Leasehold Reform, Housing and Urban Development Act 1993) of the Land Registration Rules 2003</i>
	None

	LR5.2 This Lease is made under, or by reference to, provisions of:
	Not applicable
LR6. Term for which the Property is leased	The term as specified in this Lease at Clause 2 (<i>The Letting Terms</i>) and as defined in Schedule 6 (<i>Defined Terms</i>)
LR7. Premium	[]
LR8. Prohibitions or restrictions on disposing of this Lease	This Lease contains a provision that prohibits or restricts dispositions
LR9. Rights of acquisition etc	LR9.1 Tenant's contractual rights to renew this Lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land
	As specified in Schedule 5 (<i>Staircasing</i>)
	LR9.2 Tenant's covenant to (or offer to) surrender this Lease
	As specified in clause 5(7) (<i>Frustration clause</i>)
	LR9.3 Landlord's contractual rights to acquire this lease
	Not applicable
LR10. Restrictive covenants given in this lease by the Landlord in respect of land other than the Property	None
LR11. Easements	LR11.1 Easements granted by this lease for the benefit of the Property
	As specified in Schedule 2 (<i>Easements, Rights and Privileges</i>)
	LR11.2 Easements granted or reserved by this lease over the Property for the benefit of other property
	As specified in Schedule 3 (<i>Exceptions and Reservations</i>).

LR12. Estate rent charge burdening the Property	[[[]][as defined in the transfer]][None]
LR13. Application for standard form of restriction	[Not applicable][No disposition of the registered estate (other than a charge) by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by a conveyancer that the provisions of paragraph 3.23.3 of this Lease have been complied with.]
LR14. Declaration of trust where there is more than one person comprising the Tenant	<p>[Not applicable]</p> <p>[The Tenant is more than one person. They are to hold the Property on trust for themselves as joint tenants.</p> <p>The Tenant is more than one person. They are to hold the Property on trust for themselves as tenants in common in equal shares.</p> <p>The Tenant is more than one person. They are to hold the Property on trust [DELETE AS NECESSARY]</p>

PARTICULARS

Commencement Date	
Gross Rent	[] per annum, subject to review in accordance with Schedule 4 (<i>Review</i>).
Initial Market Value	The sum of []
Initial Percentage	[]%
Premium	The sum of []
Review Date	1 April in the calendar year following the Commencement Date (so if for example, the Commencement Date is 1 January, 1 April or 1 October 2018, the first review date is 1 April 2019) and each successive 1 April during the Term and the term the " Relevant Review Date " shall be construed accordingly.
Specified Rent	A sum equal to the Unacquired Percentage of the Gross Rent (the Specified Rent on the date of this Lease being [] per annum) or (if greater) the Minimum Rent.

DATED**PARTIES**

- (1) **HEYLO HOUSING REGISTERED PROVIDER LIMITED** (company no. 06573772) whose registered office at 5th Floor, 1 New Change, London EC4M 9AF and is registered with the Regulator of Social Housing under RP Code 4668 (the "Landlord")
- (2) [[] of [] []] (the "Leaseholder[s]")

OPERATIVE PROVISIONS**1 DEFINITIONS AND INTERPRETATION**

- 1.1 In this Lease the terms defined in the Particulars and in Schedule 6 (*Defined Terms*) shall have the meanings specified.
- 1.2 Any obligation on a party to this Lease to do any act includes an obligation to procure that it is done.
- 1.3 Where the Leaseholder is placed under a restriction in this Lease, the restriction includes the obligation on the Leaseholder not to permit or allow the infringement of the restriction by any person.
- 1.4 References to liability include, where the context allows, claims, demands, proceedings, damages, losses, costs and expenses.
- 1.5 The Clause and paragraph headings in this Lease are for ease of reference only and are not to be taken into account in the interpretation of any provision to which they refer.
- 1.6 The Key Information for Shared Owners set out in Appendix 3 is for information purposes only and is not to be taken into account in the interpretation of any provision of this Lease.
- 1.7 Unless the contrary intention appears, references:
- (a) to defined terms are references to the relevant defined term in the Particulars and Schedule 6 (*Defined Terms*);
 - (b) to numbered Clauses and Schedules are references to the relevant Clause in, or Schedule to, this Lease; and
 - (c) to a numbered paragraph in any Schedule are references to the relevant paragraph in that Schedule.
- 1.8 Words in this Lease denoting the singular include the plural meaning and vice versa.
- 1.9 References in this Lease to any statutes or statutory instruments include any statute or statutory instrument amending, consolidating or replacing them respectively from time to time in force, and references to a statute include statutory instruments and regulations made pursuant to it.

- 1.10 Words in this Lease importing one gender include both genders, and may be used interchangeably, and words denoting natural persons, where the context allows, include corporations and vice versa.
- 1.11 Words and expressions which appear in the first column of the Particulars, shall in this Lease have the meaning shown opposite them in the second column of the Particulars.

2 THE LETTING TERMS

In consideration of the Premium payable to the Housebuilder under the plot sale contract for the Premises entered into between the Housebuilder and the Leaseholder prior to the date hereof (which the Landlord acknowledges has been paid), the Specified Rent and the Leaseholder's covenants in this Lease the Landlord lets the Premises to the Leaseholder:

- (a) together with the rights set out in Schedule 2 (*Easements, Rights and Privileges*); but
- (b) subject to the provisions set out in Schedule 5 (*Staircasing*); and
- (c) subject to the matters contained in the Head Lease and except and reserved to the Landlord the rights set out in Schedule 3 (*Exceptions and Reservations*);
- (d) for the Term,

the Leaseholder paying during the Term the Specified Rent (subject to revision under Schedule 4 (*Review*)) by equal monthly payments in advance on the first day of each month, the first payment to be made on the date of this Lease.

3 LEASEHOLDER'S COVENANTS

The Leaseholder covenants with the Landlord as follows.

3.1 Pay rent

- 3.1.1 To pay the Specified Rent at the times and in the manner mentioned in Clause 2 (*The Letting Terms*) and all other monies due under this Lease without deduction.
- 3.1.2 To pay the Administration Fee in advance within 14 days of demand by the Landlord or such third party as the Landlord has appointed to manage the Premises on its behalf.

3.2 Interest

To pay interest calculated on a day to day basis at an annual rate of 3% above the Base Rate of Barclays Bank PLC for the time being in force on so much of the Specified Rent or any other monies due to the Landlord under this Lease that remain unpaid for a period of 14 days after becoming due for payment.

3.3 Insurance premiums

To refund to the Landlord on demand a fair and proper proportion attributable to the Premises, such proportion to be conclusively determined by the Landlord (who shall act reasonably) of the insurance premiums incurred by the Landlord or the Superior Landlord in connection with the Premises.

3.4 **Outgoings**

3.4.1 To pay Outgoings.

3.4.2 To pay to the Landlord on demand (where Outgoings relate to the whole or part of property which includes the Premises) a fair and proper proportion attributable to the Premises, such proportion to be conclusively determined by the Landlord (who shall act reasonably).

3.4.3 To pay to the Landlord on demand a fair and proper proportion (to be conclusively determined by the Landlord (who shall act reasonably)) of:

- (a) the expense of cleaning, lighting, repairing, renewing, decorating, maintaining and rebuilding any Communal Facilities; and
- (b) the reasonable costs, charges and expenses incurred by the Landlord or the Superior Landlord in connection with the provision, maintenance and management of the Communal Facilities.

3.4.4 For the purposes of Clause 3.4.3, the provisions of sections 18 to 30B (inclusive) of the Landlord and Tenant Act 1985 and of Part V of the Landlord and Tenant Act 1987 shall apply.

3.5 **Repair**

To repair and keep the Premises in good and substantial repair and condition (except in respect of damage by risks insured under Clause 4.2 (*Insure*) unless the insurance money is irrecoverable by reason of any act or default of the Leaseholder).

3.6 **Decoration**

As often as is reasonably necessary and in the last month of the Term in a proper and workmanlike manner (and in the last month of the Term in colours approved by the Landlord) to paint, paper, treat and generally decorate in a style appropriate to property of a like character all the inside and outside of the Premises previously or usually so painted, papered, treated and decorated.

3.7 **Provide floor coverings**

To provide carpets or such other suitable floor coverings to the floors of the Premises.

3.8 **Repair damage to Communal Facilities**

In respect of any damage or disrepair to the Communal Facilities caused or contributed to by any act, neglect or default of the Leaseholder or the Leaseholder's family, servants or licensees or by any other person under the control of the Leaseholder, at the option of the Landlord, the Leaseholder will on demand indemnify the Landlord in respect of all costs, charges and expenses incurred the Landlord or the Superior Landlord in repairing, making good, renewing and/or reinstating such damage or disrepair.

3.9 **Not to alter**

3.9.1 Not to:

- (a) make any alterations or additions to the exterior of the Premises;

- (b) make any structural alterations or structural additions to the Premises;
- (c) erect any new buildings on the Premises; or
- (d) remove any of the Landlord's fixtures from the Premises.

3.9.2 Not to make any alteration or addition of a non-structural nature to the interior of the Premises without the previous written consent of the Landlord (such consent not to be unreasonably withheld).

3.10 Comply with requirements of public authorities

To execute and do at the expense of the Leaseholder all works and things as may at any time during the Term be directed or required by any national or local or other public authority to be executed or done upon or in respect of the Premises or any part of the Premises.

3.11 Provide copies of notices

Promptly to serve on the Landlord a copy of any notice, order or proposal relating to the Premises and served on the Leaseholder by any national, local or other public authority.

3.12 Expenses of the Landlord

To pay all costs, charges and expenses (including solicitors' costs and surveyors' fees) reasonably incurred by the Landlord:

- (a) for the purpose of or incidental to the preparation and service of a notice under section 146 or section 147 of the Law of Property Act 1925 even if forfeiture is avoided otherwise than by relief by the court; or
- (b) otherwise incurred by the Landlord in respect of any breach of covenant by the Leaseholder under this Lease.

3.13 Obtain consents

To obtain all licences, permissions and consents and do all works and things and pay all expenses required or imposed by any existing or future legislation in respect of any works carried out by the Leaseholder on the Premises or any part of the Premises or in respect of any use of the Premises during the Term.

3.14 Landlord's right of inspection and right of repair

3.14.1 To permit the Landlord and its employees or agents at reasonable times to enter the Premises and examine their condition and also to take a schedule of fixtures and fittings in the Premises.

3.14.2 If any breach of covenant, defects, disrepair, removal of fixtures and fittings or unauthorised alterations or additions are found on inspection for which the Leaseholder is liable, then, on notice from the Landlord, to execute to the reasonable satisfaction of the Landlord or the Landlord's surveyor all repairs, works, replacements or removals required within three months (or sooner if necessary) after receipt of notice.

3.14.3 If the Leaseholder fails to comply with a notice under Clause 3.14.2, the Landlord may itself or by its workpeople or agents enter the Premises and execute the repairs, works, replacements or removals.

3.14.4 To pay to the Landlord on demand all expenses incurred under Clause 3.14.3.

3.15 Permit entry

At all reasonable times during the Term on notice to permit the Landlord and the lessees of other adjoining or neighbouring premises with workpeople and others to enter the Premises for the purpose of repairing any adjoining or neighbouring premises and for the purpose of repairing, maintaining and replacing all Service Media or other conveniences belonging to or serving the same, the party so entering making good any damage caused to the Premises.

3.16 Yield up

At the expiry or earlier termination of this Lease to quietly yield up the Premises repaired, maintained, cleaned, decorated and kept in accordance with the covenants in this Lease (except in respect of damage by risks insured under Clause 4.2 (*Insure*) unless the insurance money is irrecoverable by reason of any act or default of the Leaseholder).

3.17 Use

Not to use the Premises for anything other than as a private residence in single occupation.

3.18 Restrictions on use

Not to do any act or thing which may:

- (a) render void or voidable any policy of insurance on the Premises or may cause an increased premium to be payable in respect of the Premises;
- (b) cause or permit to be caused nuisance, annoyance or disturbance to the owners lessees or occupiers of premises in the neighbourhood or visitors to such premises;
- (c) result in any form of harassment or intimidation of any other person, including the Landlord's staff, contractors and agents; or
- (d) result in the use of the Premises for any unlawful or immoral purpose.

3.19 Alienation

3.19.1 Not to assign, underlet, charge, mortgage or part with possession of part only of the Premises.

3.19.2 Not to underlet or part with possession of the whole of the Premises.

3.19.3 Not without the prior written consent of the Landlord (such consent not to be unreasonably withheld) to assign the whole of the Premises.

- 3.20 **Disposals of the Premises when the Acquired Percentage is less than 100%**
- 3.20.1 Subject to Clause 3.20.3 and Clause 3.20.4, the Leaseholder shall pay to the Landlord on demand a sum equal to the Unacquired Percentage of the Market Value if:
- (a) this Lease is assigned when the Acquired Percentage is less than 100%; and
 - (b) within two months after receipt of notice of the assignment pursuant to Clause 3.21 (*Register disposals*) the Landlord serves notice on the Leaseholder requiring such payment.
- 3.20.2 Within 14 days of the date of the Landlord's notice pursuant to Clause 3.20.1(b) the Landlord shall apply to the Valuer to determine the Market Value as at the date of service of the Leaseholder's notice of assignment served pursuant to Clause 3.21 (*Register disposals*) and shall notify the Leaseholder of the amount of the Valuer's determination in writing within 7 days of receipt of such determination.
- 3.20.3 The provisions of Clause 3.20.1 shall not apply when the Lease is assigned by way of either:
- (a) a disposal under a will or intestacy;
 - (b) a disposal under section 24 of the Matrimonial Causes Act 1973 or section 2 of the Inheritance (Provision for Family and Dependants) Act 1975;
 - (c) a grant of a sub-tenancy in respect of which a notice has been given under section 52(1)(b) of the Housing Act 1980 (notice that a tenancy is to be a protected shorthold tenancy) or of a kind mentioned in any of Cases 11 to 18 or 20 in Schedule 15 to the Rent Act 1977;
 - (d) a grant of a sub-tenancy of part of the house, if any other part of the house remains in the possession of the tenant; or
 - (e) a grant of a mortgage.
- 3.20.4 The circumstances in which the Landlord may not require payment under the provisions of Clause 3.20.1 are either:
- (a) when the Lease is assigned both:
 - (i) to a person nominated by the Landlord within a period of eight weeks from the receipt by the Landlord of notice from the Leaseholder to the effect that the Leaseholder wishes to assign his interest in the Premises ("the **Nomination Period**"); and
 - (ii) at a price no greater than the Acquired Percentage of the Market Value of the Premises (calculated excluding paragraph (c) and paragraph (d) of the definition of Market Value) as at a date no more than eight weeks prior to the date of exchange of contracts for the assignment which shall be confirmed by a Valuer's Certificate which the Leaseholder shall serve on the Landlord together with the notice of assignment served pursuant to Clause 3.21 (*Register disposals*); or
 - (b) if the Landlord fails within the Nomination Period to make any nomination or the Landlord's nominee (without any fault or obstruction on the part of

the Leaseholder) fails to enter into a binding contract for purchase from the Leaseholder within twelve weeks from the receipt of a draft contract by the solicitors or other persons acting for the Landlord's nominee (which draft contract shall be supplied by the solicitor or other persons acting for the Leaseholder and shall contain reasonable terms based on the Standard Conditions of Sale).

3.21 **Register disposals**

Within one month of any assignment, underletting, mortgage, charge or other dealing with the Leaseholder's interest in the Premises to give notice of it together with a certified copy of the document effecting the assignment, mortgage, charge, or devolution to the Landlord and to pay a reasonable fee to the Landlord for the registration of the notice.

3.22 **Prevent loss of easements**

To do such acts and things as may reasonably be required by the Landlord to prevent any easement or right belonging to or used with the Premises from being obstructed or lost and not knowingly to allow any encroachment to be made on or easement acquired over the Premises and in particular not to allow the right of access of light from or over the Premises to any neighbouring property to be acquired.

3.23 **[Management Company]**

3.23.1 The Leaseholder shall comply with the obligations on the part of the Transferee detailed in the Transfer as far as they relate to the Management Company and payment of the [] as defined in the Transfer and in the manner set out in the Transfer.

3.23.2 The Leaseholder shall on the date hereof enter into a direct deed of covenant with the Management Company in the form prescribed in the Transfer.

3.23.3 The Leaseholder shall procure that on any disposal of this Lease the disponee shall enter into a direct deed of covenant with the Management Company in the form prescribed in the Transfer.]

4 **LANDLORD'S COVENANTS**

The Landlord covenants with the Leaseholder as follows.

4.1 **Quiet enjoyment**

That the Leaseholder paying the rents reserved by this Lease and performing and observing the covenants contained in this Lease may peaceably enjoy the Premises during the Term without any lawful interruption by the Landlord or any person rightfully claiming under or in trust for it.

4.2 **Insure**

At all times during the Term (unless such insurance shall be cancelled, invalidated or revoked by any act or default of the Leaseholder) to keep the Premises insured against loss or damage by fire and such other risks as the Landlord may from time to time reasonably determine or the Leaseholder or the Leaseholder's mortgagee may reasonably require in some insurance office of repute to its full reinstatement value (including all professional fees in connection with any reinstatement and two years' loss of rent) and whenever required will produce to the Leaseholder the

insurance policy and the receipt for the last premium and will in the event of the Premises being damaged or destroyed by fire or other risks covered by such insurance as soon as reasonably practicable make a claim against the insurers and lay out the insurance monies in the repair, rebuilding or reinstatement of the Premises.

4.3 **Compliance with Head Lease Covenants**

Subject to the Leaseholder paying the rents reserved by this Lease and observing the covenants contained herein, the Landlord shall pay the rents reserved by the Head Lease.

4.4 **Enforcement of Head Lease Covenants**

At the request and cost of the Leaseholder on a full indemnity basis the Landlord shall use reasonable endeavours to procure that the Superior Landlord complies with the Superior Landlord's covenants contained in the Head Lease during such period as the Head Lease subsists [and, if reasonable, the Landlord may require from the Tenant reasonable security to be paid in advance for anticipated costs.]

5 **PROVISOS**

The parties agree the following provisos.

5.1 **Proviso for re-entry**

5.1.1 This Clause 5.1 (*Proviso for re-entry*) shall apply where:

- (a) the Specified Rent shall be unpaid for 21 days after becoming payable (whether formally demanded or not); or
- (b) if any covenant on the part of the Leaseholder shall not be performed or observed.

5.1.2 Subject to the Landlord obtaining any court order required the Landlord may at any time re-enter the Premises or any part of them and terminate this Lease.

5.1.3 Clause 5.1.2 does not affect any right of action or remedy of the Landlord in respect of any earlier breach of any of the Leaseholder's covenants or the conditions contained in this Lease provided that (without prejudice to the Landlord's rights under this Lease):

- (a) the Landlord shall give notice to the Mortgagee or any mortgagee of the Leaseholder of whom the Landlord has received notice pursuant to Clause 3.21 (*Register disposals*) (as the case may be) before commencing any proceedings for forfeiture of this Lease or proceedings for possession of the Premises; and
- (b) if within a period of 28 days (or within such other period specified in the Landlord's notice as the notice period, if longer) the Mortgagee or such mortgagee of the leaseholder of whom the Landlord has received notice (as the case may be) indicates in writing to the Landlord that it wishes to remedy such breach, and/or is going to take such action as may be necessary to resolve the problem complained of by the Landlord, the Landlord shall allow 28 days (or such longer time as may be reasonable in view of the nature and extent of the breach) to remedy such breach and take the action necessary to resolve such problem.

5.2 **Limitation of Landlord's Liability**

The Landlord shall not be liable for any damage suffered by the Leaseholder or any member of the Leaseholder's family or any employee, servant or licensee of the Leaseholder through any defect in any fixture, tank, Service Media, staircase, machinery, apparatus or thing in the Premises or through the neglect, default or misconduct of any servant employed by the Landlord acting outside the Landlord's instruction in connection with the Premises or for any damage to the Premises due to the bursting or overflowing of any tank, boiler or Service Media in the Premises except insofar as any such liability may be covered by insurance effected by the Landlord.

5.3 **Landlord's power to deal with other Property**

Notwithstanding anything contained in this Lease the Landlord shall have power without obtaining any consent from or making any compensation to the Leaseholder to deal as the Landlord may think fit with any other land, buildings or premises adjoining or near to the Premises and to erect, rebuild or heighten on such other land or premises any buildings whether such buildings shall or shall not affect or diminish the light or air which may now or at any time during the Term be enjoyed by the Leaseholder or other tenants or occupiers of the Premises.

5.4 **Power to alter Communal Facilities**

The Landlord shall have power at its discretion to alter the arrangement of the Communal Facilities provided that after such alteration the access to and amenities of the Premises are not substantially less convenient than before.

5.5 **Party walls**

Every internal wall separating the Premises from any other building shall be a party wall severed medially.

5.6 **Suspension of rent in case of insured damage**

If the whole or any part of the Premises are destroyed or damaged by fire or any other risks covered by the Landlord's insurance so as to be rendered unfit for use then (unless the insurance money is irrecoverable by reason of any act or default of the Leaseholder) the Specified Rent or a fair proportion of it shall be suspended until the Premises are again fit for use.

5.7 **Frustration clause**

5.7.1 Subject to Clause 5.7.2, in the event of the repair, rebuilding or reinstatement of the Premises being frustrated by any reason beyond the control of the Landlord the Leaseholder will surrender to the Landlord this Lease in consideration of the Landlord paying to the Leaseholder a sum equal to the Acquired Percentage of any insurance monies received by the Landlord in respect of the Premises.

5.7.2 If at the time of such frustration (i) there is any Loan outstanding to a Mortgagee of the Premises and (ii) the Unacquired Percentage is greater than nil then the consideration for such surrender shall be the amount referred to in Clause 5.7.1 plus the Mortgage Protection Claim (calculated on the basis that paragraph (h) in the definition of "Loss" in Schedule 6 (*Defined Terms*) is the amount referred to in Clause 5.7.1).

5.7.3 Any overpayment of insurance monies shall be a debt due from the Leaseholder to the Landlord and shall be payable on demand.

5.8 Expert determination

5.8.1 In this Lease, where any issue is required to be dealt with by, or submitted for the determination of, an independent expert, the following provisions of this Clause 5.8 (*Expert determination*) are to apply but, in case of conflict with other provisions specifically relating to expert determination elsewhere in this Lease, those other provisions are to prevail to the extent of the conflict.

5.8.2 The expert is to be appointed by the parties jointly, or if they cannot or do not agree on the appointment, appointed by whichever of the following is appropriate:

- (a) the president from time to time of the Royal Institution of Chartered Surveyors; or
- (b) the president from time to time of the Institute of Chartered Accountants in England and Wales,

or in either case the duly appointed deputy of the president, or other person authorised by him to make appointments on his behalf.

5.8.3 The person so appointed is to:

- (a) act as an expert, and not as an arbitrator; and
- (b) must afford the parties the opportunity within such a reasonable time limit as he may stipulate to make representations to him (accompanied by professional valuations, reports or other appropriate evidence in the relevant circumstances) and permit each party to make submissions on the representations of the other.

5.8.4 Neither the Landlord nor the Leaseholder may without the consent of the other disclose to the expert correspondence or other evidence to which the privilege of non-production ("without prejudice") properly attaches.

5.8.5 The fees and expenses of the expert, including the cost of his nomination, are to be borne as the expert may direct (but in the absence of such a direction, by the parties in equal shares), but (unless they otherwise agree) the parties shall bear their own costs with respect to the determination of the issue by the expert.

5.8.6 One party may pay the costs required to be borne by another party if they remain unpaid for more than 21 days after they become due and then recover these and any incidental expenses incurred from the other party on demand.

5.8.7 If the expert refuses to act, becomes incapable of acting or dies, the Landlord or the Leaseholder may request the appointment of another expert in his stead under Clause 5.8.2.

5.8.8 The determination of the independent expert, except in case of manifest error, is to be binding on the Landlord and the Leaseholder.

5.9 Cesser of Liability in respect of covenants

A party who was formerly the Landlord is to cease to be liable to perform and observe the covenants and conditions on the part of the Landlord contained in this Lease at and from the date of an assignment of the immediate reversion to this Lease.

6 MORTGAGE PROTECTION

6.1 If a Mortgagee enforces its security in respect of the Loan then (subject to the other provisions of this Clause 6 (*Mortgage Protection*)) the Mortgagee is entitled to deduct the amount of the Mortgagee Protection Claim from monies that would otherwise be paid to the Landlord as the price for the Final Staircasing. There is no obligation on a Mortgagee to accomplish Final Staircasing.

6.2 The deduction under Clause 6.1 is conditional upon the Mortgagee agreeing simultaneously with the deduction under Clause 6.1 that upon such deduction or, if later, promptly upon the Mortgagee recovering the whole of its Loss, the Mortgagee shall assign to the Landlord any guarantees, insurance policies and any other collateral security given to the Mortgagee or secured by the Mortgagee in respect of the Loan together with all other rights to enforce the same and all sums payable under them.

6.3 A claim may only be made to the extent:

- (a) the Mortgagee has made a Loss; and
- (b) the Mortgagee has obtained the Landlord's consent to the terms of each and every Loan; and
- (c) the disposal of the Leaseholder's interest in the Premises was made on an arm's length basis at the best price reasonably obtainable in the market at the time of sale. For the purpose of this Clause 6.3(c) the onus of proof is on the Landlord to show the sale was at an undervalue; and
- (d) the Leaseholder has not, prior to any default occurring under the Loan, accomplished Final Staircasing.

6.4 When applying for the Landlord's consent under Clause 6.3(b) the Mortgagee must provide full details of the terms of the proposed Loan. The Landlord must respond promptly to any request for consent and give its decision within 28 days. If such consent is given it must be given in writing, and must be retained by the Mortgagee. In addition such consent shall be deemed to be given in the event that the Landlord receives any amounts advanced by the Mortgagee which are applied in protecting, preserving or enforcing its security over this Lease (including any amounts advanced by the Mortgagee and applied in discharging any arrears of rent and/or other sums payable under this Lease).

6.5 If the Landlord makes a payment to the Mortgagee or a deduction is made by the Mortgagee the Landlord shall be entitled to claim against the Leaseholder for any such amount together with interest on such sum calculated in accordance with the provisions of Clause 3.2 (*Interest*).

6.6 The Leaseholder hereby authorises:

- (a) the Landlord to disclose to any Mortgagee of the Leaseholder from time to time personal information relating to the Leaseholder or to the provisions of

this Lease (including details of any arrears of rent or other sums payable under this Lease); and

- (b) any Mortgagee from time to time of the Leaseholder to disclose to the Landlord such information as the Landlord may request regarding the Leaseholder and the Loan (including details of any arrears).

7 NOTICES

For the purposes of Section 48 of the Landlord and Tenant Act 1987 the address at which any notices (including notices in any proceedings) may be served on the Landlord by the Leaseholder is (until the Leaseholder is notified to the contrary) as follows. A notice to be served under this Lease shall be served in writing and shall be properly served if served upon the Landlord at its registered office and/or upon the Leaseholder at the Premises and shall be deemed to have been made or delivered if left at such address or two days after being posted postage prepaid and by first class recorded delivery in an envelope addressed to them at such address.

8 LANDLORD AND TENANT (COVENANTS) ACT 1995 DECLARATION

For the purposes of the Landlord and Tenant (Covenants) Act 1995 the covenants on the part of the Landlord and on the part of the Leaseholder under this Lease are not personal covenants.

9 VALUE ADDED TAX

Sums payable under this Lease for the supply of goods and services are exclusive of value added tax which is to be payable, if applicable, in respect of and at the same time as each sum falls due for payment.

10 LEASEHOLD REFORM ACT 1967 DECLARATION

Pursuant to paragraph 3(2)(g) of Schedule 4A to the Leasehold Reform Act 1967 the Landlord declares that in its opinion this Lease is excluded from the operation of Part 1 such Act.

Delivered as a deed on the date of this document.

Schedule 1
The Premises

All that premises demised to the Landlord by the Head Lease

Schedule 2
Easements, Rights and Privileges

All rights granted to the Landlord in the Head Lease

**Schedule 3
Exceptions and Reservations**

All reservations and other matters reserved by the Head Lease.

Schedule 4 Review

1 Definitions

In this Schedule 4 (*Review*):

"**A**" means the monthly figure shown in the Index published for the September before the immediately preceding Relevant Review Date or (if none) before the Commencement Date.

"**Administration Fee**" means [] plus VAT

"**B**" means the monthly figure shown in the edition of the Index for the September before the Relevant Review Date.

"**Index**" means the all items retail prices index published by the Office for National Statistics.

2 Gross Rent and Administration Fee review

(a) With effect from each Review Date the Gross Rent for the purposes of this Lease shall be the reviewed Gross Rent (as agreed or determined in accordance with this Schedule 4 (*Review*)).

(b) With effect from each Review Date the Administration Fee for the purposes of this Lease shall be the reviewed Administration Fee (as agreed or determined in accordance with this Schedule 4 (*Review*)).

3 Upwards only rent review

(a) The reviewed Gross Rent is to be the greater of:

- (i) the Gross Rent under this Lease immediately preceding the Relevant Review Date x 1.005; and
- (ii) the Gross Rent under this Lease immediately preceding the Relevant Review Date x $\left(\frac{B}{A}\right) + 0.005$.

(b) The reviewed Administration Fee is to be the greater of:

- (i) the Administration Fee under this Lease immediately preceding the Relevant Review Date; and
- (ii) the Administration Fee under this Lease immediately preceding the Relevant Review Date x $\left(\frac{B}{A}\right)$.

(c) If the Index is re-based after A is published, but before B is published, then an appropriate adjustment shall be made in the calculation to ensure that both B and A are calculated on the same basis.

(d) If the Index ceases to be published then there shall be substituted in the calculation in paragraphs 3(a)(ii) or 3(b)(ii) such other index as the Landlord shall (acting reasonably) determine as being a generally respected measure of the general increase in retail prices.

- (e) If, because of any change after the date of this Lease in the method used to compile the Index or for any other reason it becomes impossible or impracticable to calculate fairly the fraction referred to in paragraphs 3(a)(ii) or 3(b)(ii) by reference to the Index, or if any dispute or question arises between the parties to this Lease with respect to any such calculation pursuant to paragraphs 3(a)(ii) or 3(b)(ii) or with respect to the construction or effect of this provision, then such dispute or question shall (if it is not resolved within 3 months of the Relevant Review Date) be referred to an independent expert pursuant to Clause 5.8 (*Expert determination*).

4 Specified Rent Review

With effect from each Review Date the Specified Rent reserved under this Lease shall be reviewed to an amount equal to the Unacquired Percentage of the Gross Rent as at that Review Date as agreed or determined in accordance with the terms of this Schedule.

5 Time

Whilst the parties are encouraged to act promptly and reasonably in order to resolve disputes as soon as possible, in agreeing or determining the reviewed Gross Rent, the reviewed Specified Rent, the reviewed Administration Fee or in appointing an expert, no rights or obligations are extinguished by the passage of time.

6 Rental and Administration Fee Adjustments

- (a) If the reviewed Specified Rent or Administration Fee payable from a Review Date is not agreed or determined in accordance with the provisions of this Schedule 4 (*Review*) before the Relevant Review Date, then until the reviewed Specified Rent or Administration Fee as appropriate has been so agreed or determined, the Leaseholder will continue to pay on account Specified Rent or Administration Fee as appropriate at the rate payable immediately before the Relevant Review Date.
- (b) Within 14 days after the time that the reviewed Specified Rent or Administration Fee as appropriate has been agreed or determined the Leaseholder will pay to the Landlord all arrears of the reviewed Specified Rent or Administration Fee as appropriate which have accrued in the meantime, with interest equal to the base rate of Barclays Bank PLC on each of the instalments of the arrears from the time that it would have become due if the reviewed rent had then been agreed or determined until payment becomes due from the Leaseholder to the Landlord under this paragraph 6(b).

7 Notice of Review

Immediately following each Review Date the Landlord shall serve written notice on the Leaseholder, substantially in the form set out in Appendix 2 specifying the amount of the reviewed Gross Rent, the amount of the Specified Rent and the amount of the Administration Fee then payable.

Schedule 5
Staircasing
Part 1
Staircasing Provisions

1

- (a) At any time or times during the Term the Leaseholder may serve notice in writing on the Landlord stating the Portioned Percentage he proposes to acquire. The provisions of this Schedule 5 (*Staircasing*) shall also be exercisable by any mortgagee of the Leaseholder of whom the Landlord has received proper notice pursuant to Clause 3.21 (*Register disposals*).
- (b) The Landlord shall apply to the Valuer to determine the Market Value as at the date of service of the Leaseholder's notice served pursuant to paragraph 1(a) (upon which the price of acquisition will be based) within 14 days of receipt of the Leaseholder's notice (or, if later, within 14 days of the Valuer's appointment) and shall notify the Leaseholder of the amount of the Valuer's determination in writing within 7 days of receipt of the said determination.
- (c) At any time within 3 months of the Valuer's determination the Leaseholder may pay for a Portioned Percentage in accordance with the provisions of paragraph 1(d).
- (d) The Leaseholder may pay for a Portioned Percentage by paying to the Landlord a sum equal to that Portioned Percentage of Market Value (as agreed or determined under this Schedule 5 (*Staircasing*)) plus any unpaid sums under paragraph 1(e) and as from the date of such payment (a) the Portioned Percentage so acquired shall form part of the Acquired Percentage and (b) the Specified Rent payable under this Lease shall be a sum equal to the Unacquired Percentage of the Gross Rent.
- (e) On completion of the payment for a Portioned Percentage in addition to the sum or the price payable for the Portioned Percentage the Leaseholder shall pay any arrears of rent and any other sums due to the Landlord under this Lease including any unpaid costs under paragraph 2. The Landlord and the Leaseholder shall, save as provided in paragraph 2 pay their own costs and expenses in connection with such payment or purchase.
- (f) Whenever the Leaseholder completes the payment for a Portioned Percentage the Landlord and the Leaseholder shall forthwith execute and deliver to the other (to be attached to the original and counterpart of this Lease) a memorandum substantially in the form set out in Appendix 1 specifying the Portioned Percentage paid for and the Specified Rent then payable.
- (g) If the provisions of this Schedule 5 (*Staircasing*) are exercised by any mortgagee under paragraph 1(a) then provided that the Premises are being sold by the mortgagee on an arm's length basis at the best price reasonably obtainable at the time of sale:
 - (i) the Market Value shall be deemed to be the price at which the Premises are being sold by the mortgagee on the assumption that the Unacquired Percentage is nil;
 - (ii) the relevant Portioned Percentage shall be calculated on the basis of that deemed Market Value; and

- (iii) if so requested by the mortgagee, the Landlord shall co-operate with the mortgagee to ensure that there occurs simultaneously (A) the payment to the Landlord of the relevant Portioned Percentage under paragraph 1(d), (B) delivery by the Landlord to the mortgagee of the memorandum under paragraph 1(f), and (C) completion of the sale of the Premises by the mortgagee.

2

- (a) At any time the Leaseholder shall have the right on giving notice to the Landlord to acquire the Landlord's leasehold interest of the Premises for no charge and otherwise by a transfer/conveyance in the form set out in Schedule 5, Part 2 (*Draft Transfer/Conveyance*) provided that such notice shall not take effect (i) before the Acquired Percentage has become 100% and (ii) until all sums payable to the Landlord pursuant to paragraph 1 have been paid.
- (b) The Landlord's leasehold of the Premises shall be transferred by the Landlord to the Leaseholder as soon as practicable following the date of the Leaseholder's notice served pursuant to paragraph 2(a). For the purposes of the transfer to the Leaseholder the Landlord shall supply to the Leaseholder copies of the subsisting entries in the register of its title and of the title plan and of any document referred to, but not set out, in the registers of title.
- 3 The costs of any determination by the Valuer pursuant to the provisions of this Schedule 5 (*Staircasing*) shall be paid by the Leaseholder to the Landlord on demand.
- 4 The parties agree that the decision of the Valuer shall be final and binding on the parties to this Lease.

Draft Transfer/Conveyance

[Annex here the form of transfer – to be included manually]

Defined Terms

In this Lease:

"Acquired Percentage" means the percentage figure equal to the aggregate of the Initial Percentage and any Portioned Percentage or Portioned Percentages paid for pursuant to Schedule 5 (*Staircasing*).

"Administration Fee" has the meaning given to it in Schedule 4 (*Review*).

"Communal Facilities" means party walls, fences, gutters, drains, roadways, pavements, entrance ways, staircases, lavatories, accessways, passages, lifts, escalators, turntables, courtyards, external pavements, car parks and service or loading areas, service roads and other such amenities which are or may be used or enjoyed by an occupier of the Premises in common with any other person or persons.

"Default" means:

- (a) the existence of arrears of at least 3 months' payments in respect of the Loan; or
- (b) any other breach by the Leaseholder of the terms applicable to the Loan.

"Housebuilder" means []

"Enforcement Date" means the date on which the Mortgagee commences its enforcement of any of the security for the Loan by reason of a Default.

"Final Staircasing" means the purchase by the Leaseholder from the Landlord of such Portioned Percentage that reduces the Unacquired Percentage to nil.

"Head Lease" means the lease of the Premises made on [or about hereof][[]] between (1) [HH No.2 Limited][[]] and (2) Heylo Housing Registered Provider Limited.

"Landlord" includes all persons from time to time entitled to the immediate reversion to this Lease.

"Lease" includes any documents supplemental to this lease.

"Leaseholder" includes the Leaseholder's successors in title and assigns in whom this Lease may for the time being be vested.

"Loan" means the loans made by the Mortgagee to the Leaseholder (after first obtaining the Landlord's written consent to each and all such loans) and which loans are secured by a valid and binding first ranking mortgage over the Premises. For the purposes of this definition repayments of capital shall not reduce the Loan.

"Loss" means the amount by which the aggregate of:

- (a) a sum representing the Loan advanced for the purchase of the Initial Percentage share in the Premises;
- (b) the Loan made (if any) to accomplish Final Staircasing in the Premises as part of the enforcement process or as a result of further Loan being made;
- (c) Loans for other sums in relation to the Premises or any other purpose;

- (d) interest accruing at the rate applicable to the Loan;
- (e) costs incurred in relation to the enforcement of the Loan or any security for it (including advances to cover arrears of rent and/or other sums payable under this Lease) provided that costs of actual disposal shall not exceed 3% of Market Value at the time;
- (f) costs incurred in relation to the protection or preservation of the Loan or any security for it; and
- (g) any other sums due to the Mortgagee in respect of the Loan made to the Leaseholder,

(less any repayments which have been made), exceeds the aggregate of:

- (h) the gross sale proceeds to be received from a disposal (including a surrender) of the Leaseholders interest in the Premises; and
- (i) all amounts (if any) received by the Mortgagee as a result of the enforcement by the Mortgagee of all (if any) security which the Mortgagee may have including, without limitation, all security, guarantees and insurance policies given to the Mortgagee.

["**Manager/Management Company**"] means []

"**Market Value**" shall at the date of this Lease mean the Initial Market Value and shall at any subsequent date mean the price which the interest of the Leaseholder would then fetch if sold on the open market by a willing seller and on the assumption that the Unacquired Percentage is nil and disregarding the following matters:

- (a) any mortgage of the Leaseholder's interest;
- (b) any interest in or right over the Premises created by the Leaseholder;
- (c) any improvement made by the Leaseholder or any predecessor in title of his; and
- (d) any failure by the Leaseholder or any predecessor in title to carry out the obligations contained in Clause 3.5 (*Repair*) and Clause 3.6 (*Decoration*).

"**Minimum Rent**" means One peppercorn per month (if demanded).

"**Mortgagee**" means a lender who shall have made available to the Leaseholder a Loan (which expression includes its successors and assigns and also any persons for whom the Mortgagee is acting as agent or trustee).

"**Mortgagee Protection Claim**" means the Loss capped at a maximum of the aggregate of:

- (a) an amount equivalent to interest on the Loan for a period of 18 months from the Enforcement Date at the interest rate applicable to the Loan immediately before the Enforcement Date;
- (b) the Loan;
- (c) any amounts advanced by the Mortgagee and applied in discharging any arrears of rent and/or other sums payable under this Lease; and

- (d) any costs and fees incurred in enforcing the Mortgagee's security for the Loan (capped at 3% of Market Value at the time of such enforcement).

"Outgoings" means (in relation to the Premises) all existing and future rates, taxes, charges, assessments, impositions and outgoings whatsoever (whether parliamentary or local) which are now or may at any time be payable, charged or assessed on property, or the owner or occupier of property.

"Particulars" means the Particulars set out in this Lease.

"Portioned Percentage" means at any relevant time (including for the avoidance of doubt on the Final Staircasing) the percentage interest in the Premises which the Leaseholder proposes to acquire (or has already acquired) under the provisions of Schedule 5 (*Staircasing*), being a portion of the then Market Value of the Premises up to a maximum of 100%, each Portioned Percentage being at least 10%, and so that the Portioned Percentage which accomplishes Final Staircasing shall be at least 10%.

"Premises" means the premises described in Schedule 1 (*The Premises*).

"Service Media" means drains, sewers, conduits, flues, gutters, gullies, channels, ducts, shafts, watercourses, pipes, cables, wires, mains, electrical risers, aerials and any other conducting media.

"Standard Conditions of Sale" means the Standard Conditions of Sale (Fourth Edition).

"Superior Landlord" means [HH No.2 Limited][] or its successor in title as landlord in the Head Lease.

"Term" means the term of 125 years from and including the Commencement Date.

["Transfer" means the transfer of the Premises made on or about the date hereof between (1) [] and (2) the Head Landlord (amongst others).]

"Unacquired Percentage" shall mean the percentage figure equal to 100% less the Acquired Percentage.

"Valuer" means an independent expert who is an associate or fellow of the Royal Institution of Chartered Surveyors agreed between the Landlord and the Leaseholder or in default of agreement appointed on the application of either Landlord or Leaseholder by or on behalf of the president of the Royal Institution of Chartered Surveyors.

"Valuer's Certificate" means a written certificate from an associate or fellow of the Royal Institution of Chartered Surveyors confirming the amount of the Market Value for the purposes of clause 3.20.4.

EXECUTION PAGE

This Lease has today been duly **EXECUTED AND DELIVERED AS A DEED**

Signed as a deed by HEYLO HOUSING REGISTERED PROVIDER LIMITED acting by a director/its attorney In the presence of Signature Name
Witness signature: Name (in BLOCK CAPITALS): Address:	

[

Signed as a deed by [] In the presence of Signature Name
Witness signature: Name (in BLOCK CAPITALS): Address:	

]

Appendix 1
Memorandum of Staircasing
(Number [●])

Premises :
Date of Lease :
Leaseholder :
Landlord :

THIS IS TO RECORD THE FOLLOWING:

On the day of 20 on the payment of £[●] (the "**Premium**") being [●] % of the Market Value of the Premises as assessed by the Valuer on the 20 the Leaseholder purchased a Portioned Percentage of [●] %.

The total share in the Premises now owned by the Leaseholder is [●] %

The Specified Rent (the rent payable) as from the day of 20 (date of payment of the Premium) is £[●] per annum (subject to review).

Signed by the Leaseholder/for and on behalf of the Landlord.

Appendix 2

Example of Notice of Rent and Administration Fee Increase

To: Leaseholder

[insert details of the Premises] ("the Premises")

The next Review Date under your shared ownership lease of the Premises is [●] [20]. The rent which you currently pay is [●] per month. The administration fee which you currently pay is [●] per annum.

The rent which you must pay on and after [●] [20] is [●] per month.

The new figure of [●] per month is calculated as follows:

- RPI Index for [●] [20] was [●] (this was the Index on which the rent review in [●] [20] was based);
- The Gross Rent fixed at the rent review in [●] [20] was [●] per month;
- RPI Index for [●] [20] is [●] (this is the Index on which the rent review in [●] [20] is being based);
- The reviewed Gross Rent as at [●] [20] is therefore [●] per month being: $\pounds[●] \times \left(\frac{[●]}{[●]} \right) + 0.005$

But because your share of the Premises is currently [●%] and our share is [●%], the rent which you must actually pay is only [●%] of [£●], which is the sum of [£●] per month.

The administration fee which you must pay on and after [●] [20] is [●] per annum.

The new figure of [●] per annum is calculated as follows:

- RPI Index for [●] [20] was [●] (this was the Index on which the rent review in [●] [20] was based);
- The Administration Fee fixed at the review in [●] [20] was [●] per annum;
- RPI Index for [●] [20] is [●] (this is the Index on which the review in [●] [20] is being based);
- The reviewed Administration Fee as at [●] [20] is therefore [●] per annum being: $\pounds[●] \times \left(\frac{[●]}{[●]} \right)$

WORKED EXAMPLE: Assumptions

The notice set out below would have been given in relation to a rent review in April 2013 in the following circumstances:

- The Lease had Rent Review Dates on 1 April 2011 and 2012;
- As at April 2013, the Leaseholder's share in the Premises was 45%;
- The Gross Rent in April 2012 had been £100 per month (based on the RPI in September 2011), and so the actual rent payable would have been £55 per month (being 55% of £100).
- The RPI was 237.9 in September 2011, and 244.2 in September 2012.

Worked Example Notice

The next Rent Review Date under your shared ownership lease of the Premises is [1 April 2013]. The rent which you currently pay is [£55.00] per month.

The rent which you must pay on and after [1 April 2013] is [£56.73] per month.

The new figure of [£56.73] per month is calculated as follows:

- *RPI Index for [September 2011] was [237.9] (this was the Index on which the rent review in [April 2012] was based);*
- *The Gross Rent fixed at the rent review in April 2012 was [£100.00] per month;*
- *RPI Index for [September 2012] is [244.2] (this is the Index on which the rent review in [April 2013] is being based);*
- *The reviewed Gross Rent as at [1 April 2013] is therefore [£103.39] per month*
being: $(£100 \times ((\frac{244.2}{237.9}) + 0.005))$

But because your share of the Premises is currently [45%] and our share is [55%], the rent which you must actually pay is only [55%] of [£103.15], which is the sum of [£56.73] per month.

Appendix 3

Key Information for Shared Owners

This note is intended as a brief guide for Leaseholders (i.e., shared owners) of the key provisions of the Shared Ownership Lease.

All Leaseholders should carefully consider the terms of this note and the attached lease and discuss any issues that arise with his or her solicitor before entering into the lease.

1 HOW DOES SHARED OWNERSHIP WORK?

Under a shared ownership lease, the Leaseholder buys a 'share' of the property and pays rent on the remaining share of the property (which remains in the ownership of the Landlord).

The Leaseholder can buy further shares in the property at the market value of those shares at the time of purchase. Buying further shares is referred to as 'staircasing'. When the Leaseholder owns 100%, he or she can acquire the Landlord's interest in the property for no charge.

As the Leaseholder buys further shares, the rent will be reduced proportionately to reflect the fact that the Landlord's interest in the property has reduced.

2 STANDARD LEASE OBLIGATIONS

Although initially the property is not owned outright, the Leaseholder does have the normal responsibilities of a full owner. This means, for example, that the Leaseholder will be obliged to pay 100% of the outgoings relating to the property and to keep the property in good and substantial repair and condition.

The lease also contains other 'standard' obligations on the Leaseholder. For example, the Leaseholder will:

- if applicable, need to contribute towards the costs incurred by the Landlord in providing services;
- need to seek the Landlord's consent before making certain alterations; and
- if applicable, comply with regulations relating to the management of the estate of which the property forms part.

3 RENT REVIEW

The rent will be reviewed periodically at the times set out in the lease. Typically, the rent will be reviewed every year. The reviewed rent will be increased in line with any proportionate increases in the retail prices index (RPI).

The rent will be reviewed on an 'upwards only' basis. This means that the level of rent will not go down when it is reviewed. However, any increase in the rent will be capped at a figure representing the RPI increase plus 0.5%. This means that where the RPI is zero or negative the most the rent can increase by is 0.5%.

A worked example demonstrating how the rent is recalculated at review is set out in Appendix 2 of the lease.

4 **DISPOSALS OF OR DEALINGS WITH THE LEASE**

Assignment or Transfer

If the Leaseholder assigns or transfers the lease before he or she staircases to 100% ownership of the property, the Landlord can require the Leaseholder's purchaser to buy (at market value) all remaining shares in the property. This is often referred to as 'back to back' staircasing.

However, back to back staircasing will not be required by the Landlord:

- if the lease is transferred or assigned as a result of the divorce or death of the Leaseholder;
- if the Leaseholder gives the Landlord notice that he or she wishes to sell its interest in the lease and either the lease is assigned to a person nominated by the Landlord, or, the Leaseholder surrenders (or returns) the Lease to the Landlord (in both cases for a price that is no more than the market value of the Leaseholder's share of the property);
- if the Landlord fails to nominate a purchaser, the nominated purchaser fails to purchase the Leaseholder's share or completion of the surrender of the Lease does not take place.

Subletting

The Leaseholder is not permitted to sub-let or part with possession of the property in any other way until the Leaseholder staircases to 100% ownership of the property.

5 **MORTGAGEE PROTECTION PROVISIONS**

Loans from banks and building societies to Leaseholders would often require Leaseholders to take out mortgage indemnity insurance or other forms of additional security which would increase the expense to the Leaseholder of acquiring a shared ownership interest in the property. So with the aim of cutting down or avoiding such expense arising (so that mortgage indemnity insurance is not required and encouraging banks and building societies to lend to shared owners), the Landlord agrees that if the Leaseholder defaults the Landlord will compensate the Lender for some part of any loss incurred if the proceeds from the sale of the Leaseholder's share of the property are insufficient. For this reason the Leaseholder's lender will need to obtain the consent of the Landlord to the terms of the Leaseholder's mortgage.

If the Landlord has to cover some of the mortgage debt in this way the Leaseholder will become liable to pay the Landlord back. In such cases the Landlord will be able to pursue the Leaseholder to recover its loss and may also enforce any other security guarantees or insurance that were originally granted to the Lender.

To assist the Landlord and the Lender in operating these compensation provisions, by signing the lease the Leaseholder authorises the Landlord and the Lender to exchange personal information relating to the Leaseholder in relation to various matters, including the terms of the lease, details of any arrears and any loan secured against the property.

6 **IMPORTANT NOTICE REGARDING PAYMENT OF THE RENT AND LEASE OBLIGATIONS**

You need to be aware that if the Leaseholder fails to pay the rent reserved by the Lease and/or fails to observe and perform his or her obligations in the Lease the Landlord may be entitled to terminate the lease (subject to the Landlord obtaining any necessary court order. If the lease is terminated the Leaseholder will lose (and will not be entitled to any compensation for), any shares in the property which he or she had acquired.

7 **VARIATIONS TO THE STANDARD FORM LEASE**

Paragraphs 1 to 7 above summarise the key terms of the standard form Shared Ownership Lease issued by the Homes and Communities Agency.

The Landlord summarises below the terms of the lease that materially depart from the standard form:

- The addition of an administration fee which is increased annually by reference to RPI.
- Changes to reflect the lease is an underlease.
- [● The addition of a requirement that the leaseholder makes financial contributions toward the estate, enters into a direct deed of covenant and the inclusion of a restriction protecting this requirement.]

This guidance note does not form part of the Lease and is not to be taken into account in the interpretation of any provision in the Lease. It is important that the Leaseholder gets legal advice before entering into the Lease.

Annexure 2

Solicitor's Undertaking Letter

[see insert]

[blank page]

[TO BE TYPED ONTO HEADED NOTEPAPER OF GRANT RECIPIENT'S SOLICITOR]

To: **Homes and Communities Agency**, of One Friargate, Coventry, CV1 2GN (including any statutory successor) (the **Agency**)

From: *[insert details of Grant Recipient's solicitors]*

Date:

Dear Sirs

Grant Agreement dated [] between (1) the Agency and (2) HH No. 2 Limited (HH2) (the Agreement) in relation to *[insert property details]* (Property)

We refer to Condition 14.1.2 of the Agreement.

- 1 We undertake that within 15 working days from submission by HH2 of an application for payment of Firm Scheme Grant (as defined in the Agreement) pursuant to Condition 14 of the Agreement in respect of the Property we shall:-
 - 1.1 lodge an application at the Land Registry (including, but not limited to, an application in form RX1) and all necessary documents (with a payment in respect of fees, if any) for the registration of the Restriction over the Property in the Title Registers of the Property; and
 - 1.2 deal promptly (which, for the avoidance of doubt, means within 10 working days of receipt of notification of such by the Land Registry) with any requisitions on title raised by the Land Registry relating to the application to register the Restriction over the Property

Signed

Date

2020

Annexure 3

HH No. 2 Limited - Registered Provider Long Lease

[see insert]

[blank page]

DATED _____

(1) HH NO.2 LIMITED

(2) HEYLO HOUSING REGISTERED PROVIDER LIMITED

LONG LEASE OF HOUSE AT

[REDACTED]



Pinsent Masons

OFFICIAL

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LR1. Date of the lease	
LR2. Title Number(s)	LR2.1 Landlord's title number(s)
	[title numbers out of which this lease is granted. Leave blank if not registered]
	LR2.2 Other title numbers
	[existing title number[s] against which entries of matters referred to in LR9, LR10, LR11 and LR13 are to be made]
LR3. Parties to this lease	Landlord
	HH. NO.2 LIMITED (company no. 11159014) whose registered office is at 5th Floor, 1 New Change, London EC4M 9AF
	Tenant
	HOUSING REGISTERED PROVIDER LIMITED (company no. 06573772) whose registered office at 5th Floor, 1 New Change, London EC4M 9AF and is registered with the Regulator of Social Housing under RP Code 4668
	Other parties
	None
LR4. Property	In the case of a conflict between this clause and the remainder of this lease then, for the purposes of registration, this clause shall prevail.
	The " Property " as defined in this lease at Clause 1
LR5. Prescribed statements etc	LR5.1 Statements prescribed under rules 179 (dispositions in favour of a charity), 180 (dispositions by a charity) or 196 (leases under the Leasehold Reform, Housing and Urban Development Act 1993) of the Land Registration Rules 2003
	None
	LR5.2 This lease is made under, or by reference to, provisions of:
	Not applicable
LR6. Term for which the Property is leased	The " Term " as defined in this lease at Clause 1
LR7. Premium	£1
LR8. Prohibitions or restrictions on disposing of this lease	This lease contains a provision that prohibits or restricts dispositions
LR9. Rights of acquisition etc	LR9.1 Tenant's contractual rights to renew this lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land

	As described in Clause 13.8
	LR9.2 Tenant's covenant to (or offer to) surrender this lease
	As described in Clause 13.5
	LR9.3 Landlord's contractual rights to acquire this lease
	As described in Clause 13.5
LR10. Restrictive covenants given in this lease by the Landlord in respect of land other than the Property	None
LR11. Easements	LR11.1 Easements granted by this lease for the benefit of the Property
	As described in Clause 4
	LR11.2 Easements granted or reserved by this lease over the Property for the benefit of other property
	As described in Clause 5
LR12. Estate rentcharge burdening the Property	[insert details]
LR13. Application for standard form of restriction	<p>[13.1 The parties to this lease apply to enter the following standard form of restriction against the title of the Property:</p> <p>Form N (Disposition by registered proprietor of registered estate or proprietor of charge - consent required)</p> <p>No disposition (other than the grant of a Shared Ownership Lease) of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a written consent signed by Prudential Trustee Company Limited of Laurence Pountney Hill, London EC4R 0HH]</p>
	<p>13.2 The parties to this lease apply to enter the following standard form of restriction against the title of the Property:</p> <p>Form N (Disposition by registered proprietor of registered estate or proprietor of charge - consent required)</p> <p>No disposition of the registered estate (other than a charge) by the proprietor of the registered estate is to be registered without a certificate signed by a conveyancer that the provisions of paragraph 1.3.2 of] Schedule 5 of a Grant Agreement dated] and made between (1) the Homes and Communities Agency and (2) HH NO. 2 LIMITED have been complied with or that they do not apply to the disposition.</p>
LR14. Declaration of trust where there is more than one person comprising the Tenant	Not applicable

**DATE
BETWEEN:**

- (1) **HH NO.2 LIMITED** (company no. 11159014) whose registered office is at 5th Floor, 1 New Change, London EC4M 9AF (the "**Landlord**")
- (2) **HEYLO HOUSING REGISTERED PROVIDER LIMITED** (company no. 06573772) whose registered office at 5th Floor, 1 New Change, London EC4M 9AF and is registered with the Regulator of Social Housing under RP Code 4668 (the "**Tenant**")

1. DEFINITIONS

"Administration Fee"	has the meaning given to it in the Shared Ownership Lease
"Affordable Home Ownership Dwelling"	means a Property permanently let out or intended to be permanently let out on Affordable Home Ownership terms
"Affordable Home Ownership"	means low cost home ownership on Shared Ownership Lease terms
"Communal Facilities"	party walls, fences, gutters, drains, roadways, pavements, entrance ways, staircases, lavatories, accessways, passages, lifts, escalators, turntables, courtyards, external pavements, car parks and service or loading areas, service roads and other such amenities which are or may be used or enjoyed by an occupier of the Property in common with any other person or persons
"Interest"	Interest at the rate of 3% over base rate of Barclays Bank PLC (or other recognised London clearing bank nominated by the Landlord)
"Leaseholder"	has the meaning given to it in the Shared Ownership Lease
"Leaseholder Acquisition"	the acquisition by the Leaseholder of the whole of the Tenant's interest in this lease pursuant to its rights in the Shared Ownership Lease
"Outgoings"	means (in relation to the Property) all existing and future rates, taxes, charges, assessments, impositions and outgoings whatsoever (whether parliamentary or local) which are now or may at any time be payable, charged or assessed on property, or the owner or occupier of property
"Premium"	£1
"Property"	The land and buildings known as [insert address] [edged [insert reference] on the plan attached][registered at the Land Registry with title number [] including: <ul style="list-style-type: none"> (a) all buildings, erections and structures on the Property from time to time; (b) the Service Media within and exclusively serving the Property; and (c) appurtenances, fixtures, fittings and rights granted by this lease,

and improvements and additions made to, and fixtures, fittings and appurtenances in, the Property

"Regulator"	means the Regulator of Social Housing (including any statutory successor) carrying on substantially the same regulatory or supervisory functions
"Regulatory Framework"	means the Regulatory Framework for Social Housing in England as amended or replaced from time to time
"Regulatory Standard"	means the Regulatory Standards set by the Regulator pursuant to its powers under Section 194 HRA 2008
"Rent"	prior to a Leaseholder Acquisition, the sum equivalent to the Specified Rent received by the Tenant from the Leaseholder under the Shared Ownership Lease and on and following a Leaseholder Acquisition £1 per annum (if demanded)
"RPI"	the all items retail prices index published by the Office for National Statistics or such other index as may be consistent with the HCA model form of shared ownership lease from time to time
"Service Media"	conduits and equipment used for the reception, generation, passage and/or storage of Utilities
"Shared Ownership Lease"	means an underlease of the Property to a Leaseholder approved by the Landlord and in a form approved by the Landlord both in its absolute discretion which is substantively in the form of the HCA model form of shared ownership lease from time to time and which as a minimum obliges the Leaseholder to pay rent and an administration fee, has an initial rent and provides for rent reviews annually, upwards only, above RPI
"Specified Rent"	has the meaning given to it in the Shared Ownership Lease
"Staircasing Proceeds"	any sums payable to the Tenant by the Leaseholder by virtue of the staircasing provisions of the Shared Ownership Lease
"Term"	a term of [999] years starting on the date of this lease and ending on [insert date]
"Transfer"	[means the transfer of the freehold of the Property made [on or about the date hereof] between the (1) [] and (2) the Landlord [and (3)] if applicable][to be amended to refer to the relevant lease where HH NO.2 LIMITED title is leasehold and any other relevant title documents]
"Utilities"	electricity, gas, water, foul water and surface drainage, heating, ventilation and air conditioning, smoke and fumes, signals, electronic communications and all other utilities serving or consumed at the Property
"VAT"	value added tax chargeable under the Value Added Tax Act 1994 or any similar replacement or additional tax

2. INTERPRETATION

In this lease

- 2.1 the words 'include', 'includes' and 'including' are deemed to be followed by the words 'without limitation';
- 2.2 general words introduced by the word "other" do not have a restrictive meaning even where preceded by words indicating a particular class of acts, things or matters;

- 2.3 the word 'today' refers to the date of this lease;
- 2.4 obligations owed by or to more than one person are owed by or to them jointly and severally (this means, for example, that they will each be liable for all sums due under this lease, not just for a proportionate part);
- 2.5 references to the end of the Term are to its expiry or sooner determination (however it happens)
- 2.6 where the Tenant agrees to indemnify the Landlord against something that means to protect the Landlord from loss arising from any claim in respect of it;
- 2.7 a reference to Landlord's consent or approval means its written consent or approval contained in a formal deed and (where required) the consent or approval of any superior landlord or mortgagee of the Landlord. Where a proviso is implied to that effect by statute, Landlord's consent or approval is not to be unreasonably withheld or delayed;
- 2.8 references to any adjoining property of the Landlord include any property adjoining or near the Property owned, leased or occupied by the Landlord from time to time;
- 2.9 any obligation on a party to this lease to do any act includes an obligation to procure that it is done
- 2.10 where the Tenant is placed under a restriction in this lease, the restriction includes the obligation on the Tenant not to permit or allow the infringement of the restriction by any person;
- 2.11 references to liability include, where the context allows, claims, demands, proceedings, damages, losses, costs and expenses;
- 2.12 the clause and paragraph headings in this lease are for ease of reference only and are not to be taken into account in the interpretation of any provision to which they refer;
- 2.13 unless the contrary intention appears, references:
- (a) to defined terms are references to the relevant defined term in Clause 1;
 - (b) to numbered Clauses and Schedules are references to the relevant Clause in, or Schedule to, this lease; and
 - (c) to a numbered paragraph in any Schedule are references to the relevant paragraph in that Schedule;
- 2.14 words in this lease denoting the singular include the plural meaning and vice versa;
- 2.15 references in this lease to any statutes or statutory instruments include any statute or statutory instrument amending, consolidating or replacing them respectively from time to time in force, and references to a statute include statutory instruments and regulations made pursuant to it; and
- 2.16 words in this lease importing one gender include both genders, and may be used interchangeably, and words denoting natural persons, where the context allows, include corporations and vice versa.
- 3. LEASE OF PROPERTY**
- 3.1 In consideration for the Premium, the Rent and the Tenant's covenants in this lease, the Landlord lets the Property to the Tenant for the Term.
- 3.2 The Tenant may hold and use the Property during the Term without any interruption (except as authorised by this lease) by the Landlord or by any person lawfully claiming through, under or in trust for the Landlord.

4. RIGHTS GRANTED AND SUBJECTIONS

- 4.1 This lease is granted to the Tenant with the benefit of all rights granted to the Landlord in and subject to all matters contained in the Transfer or otherwise in the registered title of the Landlord's interest in the Property.
- 4.2 The rights granted by Clause 4.1:
- 4.2.1 are granted only to the extent that the Landlord has power to grant them;
 - 4.2.2 unless otherwise specified, are to be used in common with the Landlord, any superior landlord and other persons authorised by them; and
 - 4.2.3 may be interrupted or varied for the purposes of any works of maintenance, repair, alteration or the replacement of any land, building, or Service Media in connection with which the rights are exercised.
- 4.3 Nothing contained or referred to in this lease will give the Tenant any right, easement or privilege other than those set out in Clause 4.1 and section 62 of the Law of Property Act 1925 does not apply to this lease.

5. RIGHTS EXCEPTED AND RESERVED

- 5.1 The Landlord excepts and reserves from this lease the right to enter the Property to exercise any right excepted and reserved by this lease, or for any other reasonable purpose connected with this lease or with the Landlord's interest in the Property or any adjoining property of the Landlord.
- 5.2 The rights excepted and reserved by this lease are excepted and reserved to the Landlord and any superior landlord or mortgagee, and may be exercised by anyone authorised by the Landlord or a superior landlord or mortgagee.

6. TENANT'S PAYMENTS TO THE LANDLORD

- 6.1 Subject to Clause 6.5, the Tenant must pay to the Landlord without deduction:
- (a) the Rent within 14 days of receipt of the Specified Rent (or part of it) from the Leaseholder pursuant to the Shared Ownership Lease;
 - (b) any part of the Administration Fee as has been received from the Leaseholder pursuant to the Shared Ownership Lease within 14 days of receipt;
 - (c) in respect of any Shared Ownership Lease granted after the date of this lease, any initial premium paid by the Leaseholder for the grant of the Shared Ownership Lease within 14 days of receipt from the Leaseholder pursuant to the Shared Ownership Lease;
 - (d) any Staircasing Proceeds within 14 days of receipt from the Leaseholder pursuant to the Shared Ownership Lease;
 - (e) where reasonable, a fair and proper proportion attributable to the Property, such proportion to be conclusively determined by the Landlord (who shall act reasonably), of the insurance premiums incurred by the Landlord in connection with the Property; and
 - (f) where reasonable, any other amount demanded by the Landlord in accordance with Clause 7.
- 6.2 The Tenant must maintain adequate records of the sums demanded of and received from the Leaseholder throughout the Term and make the records available for inspection at all reasonable

times by an employee or accountant (duly authorised in writing by the Landlord to make such inspection) of the Landlord.

- 6.3 The Landlord may at its discretion cause an audit of the records relating to the sums demanded of and received from the Leaseholder to be made by a professionally qualified accountant appointed by the Landlord and if it is established by such audit that the Tenant has been in material breach of its obligation to make payments to the Landlord, then the cost of the audit must be borne by the Tenant and is payable upon demand by the Landlord.
- 6.4 If it appears from any inspection or audit or from any other circumstance that any further sums are due to the Landlord, the further sums are payable by the Tenant on demand.
- 6.5 Except in relation to payments arising prior to the date of the Leaseholder Acquisition which shall continue to be due in terms of Clauses 6.1-6.4, from and including the date of any Leaseholder Acquisition, Clauses 6.1- 6.4 shall cease to apply and the Tenant must pay to the Landlord without deduction:
- (a) the Rent within 14 days of demand;
 - (b) a fair and proper proportion attributable to the Property, such proportion to be conclusively determined by the Landlord (who shall act reasonably) of the insurance premiums incurred by the Landlord in connection with the Property; and
 - (c) any other amount demanded by the Landlord in accordance with Clause 7.
- 6.6 All payments due pursuant to this Clause or otherwise under this lease must be made in cleared funds by the due date and, if required by the Landlord, the Tenant must pay them by banker's standing order, direct debit or credit transfer to a bank account in the United Kingdom which the Landlord has notified in writing to the Tenant.

7. TENANT'S RESPONSIBILITY FOR OUTGOINGS

- 7.1 The Tenant must pay the Outgoings (or prior to a Leaseholder Acquisition, procure that the Leaseholder pays the Outgoings).
- 7.2 The Tenant must within 14 days of demand (or prior to a Leaseholder Acquisition, within 14 days of receipt from the Leaseholder in terms of the Shared Ownership Lease) pay to the Landlord (where Outgoings relate to the whole or part of property which includes the Property) a fair and proper proportion attributable to the Property, such proportion to be conclusively determined by the Landlord (who shall act reasonably).
- 7.3 The Tenant must pay to the Landlord within 14 days of demand (or prior to a Leaseholder Acquisition, within 14 days of receipt from the Leaseholder in terms of the Shared Ownership Lease) a fair and proper proportion (to be conclusively determined by the Landlord (who shall act reasonably)) of:
- (a) the expense of cleaning, lighting, repairing, renewing, decorating, maintaining and rebuilding any Communal Facilities; and
 - (b) the reasonable costs, charges and expenses incurred by the Landlord in connection with the provision, maintenance and management of the Communal Facilities
- 7.4 For the purposes of Clause 7.3, the provisions of sections 18 to 30B (inclusive) of the Landlord and Tenant Act 1985 and of Part V of the Landlord and Tenant Act 1987 shall apply.

8. VAT

- 8.1 Where the Tenant is to pay the Landlord for any supply made to the Tenant by the Landlord under this lease, the Tenant must also pay any VAT due in connection with that supply.

- 8.2 Where the Tenant is to reimburse the Landlord for any payment made by the Landlord under or in connection with this lease, the Tenant must also reimburse any VAT payable on it, except to the extent that the Landlord is able to obtain an input credit for the VAT from HM Revenue & Customs.

9. **INTEREST**

If the Rent or any other sum payable under this lease is not paid to the Landlord within fourteen days after the due date for payment, (or prior to a Leaseholder Acquisition in the case of the payments due under Clauses 6.1(e), 7.2, 7.3, 10.4, 15 or 18.2 within fourteen days of receipt by the Tenant of the funds required to pay such sum from the Leaseholder pursuant to the Shared Ownership Lease where applicable) or if the Landlord refuses to accept Rent or other sum when the Tenant is, or may be, in breach of any of its obligations in this lease, the Tenant must pay Interest to the Landlord for the period starting on the due date until payment (both before and after any judgment) or until payment is accepted by the Landlord.

10. **REPAIR AND DECORATION**

- 10.1 The Tenant must repair and keep the Property in good and substantial repair and condition (except in respect of damage by risks insured under Clause 16.2 unless the insurance money is irrecoverable by reason of any act or default of the Tenant).
- 10.2 The Tenant must, as often as is reasonably necessary and in the last month of the Term in a proper and workmanlike manner (and in the last month of the Term in colours approved by the Landlord) paint, paper, treat and generally decorate in a style appropriate to property of a like character all the inside and outside of the Property previously or usually so painted, papered, treated and decorated.
- 10.3 The Tenant must provide carpets or such other suitable floor coverings to the floors of the Property.
- 10.4 In respect of any damage or disrepair to the Communal Facilities caused or contributed to by any act, neglect or default of the Tenant or the Tenant's employees, servants or licensees or by any other person under the control of the Tenant, at the option of the Landlord, the Tenant will on demand indemnify the Landlord in respect of all costs, charges and expenses incurred by the Landlord in repairing, making good, renewing and/or reinstating such damage or disrepair.
- 10.5 At the expiry or earlier termination of this lease the Tenant must quietly yield up the Property repaired, maintained, cleaned, decorated and kept in accordance with the covenants in this lease (except in respect of damage by risks insured under Clause 16 unless the insurance money is irrecoverable by reason of any act or default of the Tenant).

11. **ALTERATIONS**

The Tenant must not prior to a Leaseholder Acquisition:

- (a) make any alterations or additions to the exterior of the Property;
- (b) make any structural alterations or structural additions to the Property;
- (c) erect any new buildings on the Property;
- (d) remove any of the Landlord's fixtures from the Property; or
- (e) make any alteration or addition of a non-structural nature to the interior of the Property without the previous written consent of the Landlord (such consent not to be unreasonably withheld).

12. **RESTRICTIONS ON USE**

- 12.1 The Tenant must not use the Property for anything other than as a private residence in single occupation granted on Shared Ownership Lease terms.

- 12.2 The Tenant must ensure that at all times prior to a Leaseholder Acquisition the Property is:
- (a) managed in a manner which complies with the Regulatory Standards pursuant to the Regulatory Framework; and
 - (b) used and continues to be used as an Affordable Home Ownership Dwelling.

- 12.3 The Tenant must not do any act or thing which may:
- (a) render void or voidable any policy of insurance on the Property or may cause an increased premium to be payable in respect of the Property;
 - (b) cause or permit to be caused nuisance, annoyance or disturbance to the owners lessees or occupiers of premises in the neighbourhood or visitors to such premises;
 - (c) result in any form of harassment or intimidation of any other person, including the Landlord's staff, contractors and agents; or
 - (d) result in the use of the Property for any unlawful or immoral purpose.

13. **DEALINGS**

- 13.1 Except as permitted by Clause 13.3, prior to a Leaseholder Acquisition, the Tenant may not assign, underlet, charge or otherwise part with or share possession of its interest in the whole or part of the Property or hold this lease on trust for any person without the prior written approval of the Landlord and its mortgagee, such approval to be at the absolute discretion respectively of the Landlord and its mortgagee.
- 13.2 [The Tenant shall forthwith apply for registration of the Land Registry Restriction detailed in LR.13 against its leasehold title to the Property; the Landlord shall procure the removal of the restriction simultaneous with the earlier of Leaseholder Acquisition and discharge of the charge in favour of Prudential Trustee Company Limited.]
- 13.3 The Tenant shall within ten business days following the date of this Lease apply for registration of the Land Registry Restriction detailed in LR13.2 against its leasehold title to the Property and shall procure that any requisitions raised by HM Land Registry in relation to the restriction are dealt with promptly; the Landlord shall procure the removal of the restriction on completion of a Leaseholder Acquisition.
- 13.4 The Tenant may without the consent of the Landlord:
- (a) underlet the whole of the Property by way of a Shared Ownership Lease; and
 - (b) assign its interest in the Property to a Leaseholder where required to do so pursuant to the Shared Ownership Lease provided that the Tenant must not complete any such assignment unless all payments due to the Landlord, whether in relation to Staircasing Proceeds or otherwise, have been paid.
- 13.5 The Tenant must use all reasonable endeavours to procure that at all times a Shared Ownership Lease is in place.
- 13.6 If there is no Shared Ownership Lease in place for a continuous period of 6 months or more, the Tenant must offer to surrender all its estate, interest and rights in the Property to the Landlord, in consideration of £1 payable by the Landlord to the Tenant and the Landlord shall have absolute discretion as to whether it accepts a surrender. In the event that the Landlord accepts the Tenant's offer to surrender (which the Landlord shall be entitled to do at any time before another Shared Ownership Lease is put in place by the Tenant), the surrender shall proceed on the following terms:

- (a) this lease shall remain in full force and effect until completion of the Deed of Surrender (being the deed by which the Tenant shall surrender all its estate, interest and rights in the Property to the Landlord which Deed of Surrender shall reflect the terms of this Clause 13.5 and containing such other terms as may be reasonably required by the Landlord, legislation or regulatory requirements at the time);
- (b) completion of the Deed of Surrender shall take place 14 days after the Landlord issues an engrossment Deed of Surrender to the Tenant for execution;
- (c) the Property shall be surrendered subject to and where applicable with the benefit of the following matters (so far as they affect the Property and are subsisting or capable of taking effect):-
 - (i) the rights, covenants, easements and other matters contained or referred to in the Property Register and Charges Register of the Tenant's registered title other than any financial charges;
 - (ii) the matters contained or referred to in this lease;
 - (iii) the matters contained or referred to in the Deed of Surrender;
 - (iv) unregistered interests which override registered dispositions under Schedule 3 of the Land Registration Act 2002; all local land charges whether or not registered before the date of this lease; and all matters capable of registration as local land charges whether or not actually registered;
 - (v) all notices served and orders, demands, proposals or requirements made by any local or any public authority after the date of this lease; and
 - (vi) all actual or proposed orders, directions, notices, charges, restrictions, conditions, agreements and other matters arising under any statute affecting the Property;
- (d) upon completion of the Deed of Surrender, the Tenant shall:
 - (i) deliver up vacant possession of the Property to the Landlord subject to any matters to which the Property is to be surrendered expressly set out in this Clause;
 - (ii) release the Landlord from all its obligations contained in and liabilities under this lease whether past, present or future and all actions, proceedings, costs, claims, demands, damages and expenses arising from such obligations and liabilities;
 - (iii) procure that the Tenant's solicitors deliver to the Landlord's solicitors the engrossment of the Deed of Surrender duly executed by the Tenant;
 - (iv) deliver to the Landlord's Solicitors:- any EPC (as defined in the Energy Performance of Buildings (England and Wales) Regulations 2012 as amended from time to time relating to the Property); this lease; duly executed discharges of any charges registered against the Tenant's registered title; certificates of non-crystallisation of all floating charges affecting this lease such certificates to be dated the same date as the Deed of Surrender and to be in a form approved by the Landlord; any other documents in the Tenant's possession or under its control which may be required by the Land Registry in connection with an application

by the Landlord to close the Tenant's registered title and cancel notice of this lease registered against the Landlord's title; and duly completed Land Registry identity forms in respect of each unrepresented party; and

- (v) surrender and yield to the Landlord with full title guarantee all its estate, interest and rights in the Property;
- (e) upon completion of the Deed of Surrender, the Landlord shall:
 - (i) accept the surrender so that the residue of the term of years granted by this lease shall merge and be extinguished in the reversion immediately expectant on the term granted by this lease;
 - (ii) procure that the Landlord's solicitors shall deliver to the Tenant's solicitors the engrossment of the duplicate Deed of Surrender duly executed by the Landlord; and
 - (iii) release and discharge the Tenant from all its liability and obligations arising under this lease and from all actions, proceedings, costs, claims, demands, damages and expenses arising from such obligations and liabilities, but without prejudice to any such obligations and liabilities that have accrued before completion of the Deed of Surrender.

13.7 At any time when a Shared Ownership Lease (or following a Leaseholder Acquisition, any other underlease) is in place, the Tenant covenants with the Landlord:

- 13.7.1 to perform the covenants of the landlord in the Shared Ownership Lease (or landlord in the underlease as applicable)
- 13.7.2 to enforce the covenants of the Leaseholder in the Shared Ownership Lease (or undertenant in the underlease as applicable) and not release any of them nor expressly or by implication waive any breach of them and on any breach of them to take such action permitted by the Shared Ownership Lease or other underlease (as applicable) in relation to the breach of such covenants as the Landlord may from time to time reasonably require;
- 13.7.3 not to allow the Leaseholder or undertenant into possession or occupation of the whole or any part of the Property until completion of the Shared Ownership Lease or other underlease as applicable;
- 13.7.4 not to vary the terms of the Shared Ownership Lease or other underlease as applicable without the prior written approval of the Landlord, such approval to be at the Landlord's absolute discretion; and
- 13.7.5 not to accept a surrender of any interest in part of the Property and to notify the Landlord in writing if the Tenant accepts a surrender of any interest in the whole of the Property.

13.8 Following a Leaseholder Acquisition, Clauses 13.1, 13.2, 13.3, 13.4 and 13.5 shall cease to apply and:

- 13.8.1 the Tenant may not assign, underlet, charge or otherwise part with possession of its interest in part only of the Property or this lease or hold part of this lease or of the Property on trust for any person;
- 13.8.2 the Tenant may assign, underlet, charge or otherwise part with possession of the whole of the Property or this lease (or hold this lease on trust for any person) without the Landlord's consent, save in respect of an assignment to a limited company, which shall require the Landlord's prior consent (such consent not to be unreasonably withheld);

13.9 On or following a Leaseholder Acquisition, if the Leaseholder (having become or due to become the Tenant) properly serves a valid notice on the Landlord to acquire the Landlord's interest in the Property, the Landlord shall surrender this lease and transfer the Landlord's interest in the Property in accordance with the relevant provisions of the Shared Ownership Lease (and the Landlord hereby agrees to lawfully comply with the relevant provisions of the Shared Ownership Lease as if it were landlord under that lease).

13.10 Within one month of any assignment, underletting, mortgage, charge or other dealing with the Tenant's, the Leaseholder's or any other undertenant's interest in the Property the Tenant must give notice of it together with a certified copy of the document effecting the assignment, mortgage, charge, or devolution to the Landlord and pay a reasonable fee to the Landlord for the registration of the notice.

14. LEGAL REQUIREMENTS AND REGULATIONS

14.1 The Tenant must execute and do at the expense of the Tenant all works and things as may at any time during the Term be directed or required by any national or local or other public authority to be executed or done upon or in respect of the Property or any part of the Property.

14.2 The Tenant must obtain all licences, permissions and consents and do all works and things and pay all expenses required or imposed by any existing or future legislation in respect of any works carried out by the Tenant on the Property or any part of the Property or in respect of any use of the Property during the Term.

15. LANDLORD'S RIGHT OF INSPECTION AND RIGHT OF REPAIR

15.1 The Tenant must permit the Landlord and its employees or agents (as the Tenant's agents for the purposes of the Shared Ownership Lease) at reasonable times to enter the Property and examine its condition and also to take a schedule of fixtures and fittings in the Property.

15.2 If any breach of covenant, defects, disrepair, removal of fixtures and fittings or unauthorised alterations or additions are found on inspection for which the Tenant is liable, then, on notice from the Landlord, the Tenant must execute to the reasonable satisfaction of the Landlord or the Landlord's surveyor all repairs, works, replacements or removals required within three months (or sooner if necessary) after receipt of notice.

15.3 If the Tenant fails to comply with a notice under Clause 15.2, the Landlord may itself or by its workpeople or agents (as the Tenant's agents for the purposes of the Shared Ownership Lease) enter the Property and execute the repairs, works, replacements or removals.

15.4 The Tenant must pay to the Landlord as a debt due from the Tenant and payable, on demand all expenses incurred under Clause 15.3.

15.5 The Tenant must, at all reasonable times during the Term on notice permit the Landlord, its agents and contractors (as the Tenant's agents for the purposes of the Shared Ownership Lease) and the lessees of other adjoining or neighbouring premises with workpeople and others to enter the Property for the purpose of repairing any adjoining or neighbouring premises and for the purpose of repairing, maintaining and replacing all Service Media or other conveniences belonging to or serving the same, the party so entering making good any damage caused to the Property.

16. LANDLORD'S OBLIGATIONS

16.1 The Landlord covenants with the Tenant so long as the Tenant pays the rents reserved by this lease and complies with the obligations under this lease the Tenant shall have quiet enjoyment of the Property without any interruption by the Landlord or any person claiming under the Landlord except as otherwise permitted under this lease.

16.2 At all times during the Term (unless such insurance shall be cancelled, invalidated or revoked by any act or default of the Tenant, the Leaseholder or any other undertenant) the Landlord must keep the Property or procure that the Property is kept insured against loss or damage by fire and such other

risks as the Landlord may from time to time reasonably determine or the Tenant, the Leaseholder, other undertenant or their mortgagee may reasonably require in some insurance office of repute to its full reinstatement value (including all professional fees in connection with any reinstatement and two years' loss of rent) and whenever required will produce to the Tenant the insurance policy and the receipt for the last premium and will in the event of the Property being damaged or destroyed by fire or other risks covered by such insurance as soon as reasonably practicable make a claim against the insurers and lay out the insurance monies in the repair, rebuilding or reinstatement of the Property.

17. **FORFEITURE**

17.1 The Landlord is entitled to re-enter the Property and forfeit this lease after taking any court proceedings which may be required by law if:

17.1.1 the Rent or any other payments is/are more than 21 days overdue (provided that prior to a Leaseholder Acquisition, the payments referred to in Clauses 6.1(e), 7.2, 7.3, 10.4, 15 and 18.2 shall not be considered to be overdue if the Tenant has not received the required payment from the Leaseholder); or

17.1.2 the Tenant is in breach of any of its obligations in this lease.

17.2 Following a Leaseholder Acquisition, the Landlord's rights in Clause 17.1 are subject to:

17.2.1 the Landlord giving notice to any mortgagee of the Tenant of whom the Landlord has received notice before commencing any proceedings for forfeiture of this lease or proceedings for possession of the Property; and

17.2.2 if within a period of 28 days (or within such other period specified in the Landlord's notice as the notice period, if longer) the mortgagee of the Tenant of whom the Landlord has received notice indicates in writing to the Landlord that it wishes to remedy such breach and is going to take such action as may be necessary to resolve the problem complained of by the Landlord, the Landlord shall allow 28 days (or such longer time as may be reasonable in view of the nature and extent of the breach) to remedy such breach and take the action necessary to resolve such problem.

18. **MISCELLANEOUS**

18.1 The Tenant must do such acts and things as may reasonably be required by the Landlord to prevent any easement or right belonging to or used with the Property from being obstructed or lost and not knowingly allow any encroachment to be made on or easement acquired over the Property and in particular not allow the right of access of light from or over the Property to any neighbouring property to be acquired.

18.2 If the Tenant fails to comply with any of its obligations in this lease, the Landlord may give the Tenant written notice of that failure, and the Tenant must remedy it within a reasonable time specified by the Landlord. If the Tenant fails to do this the Landlord may enter the Property and carry out any works or do anything else which may be needed to remedy the Tenant's failure to comply with its obligations under this lease, and any costs properly incurred by the Landlord will be a debt due from the Tenant and payable on demand.

18.3 The Tenant must:

18.3.1 give the Landlord any information or documents which the Landlord reasonably requests to show that the Tenant is complying with its obligations in this lease and shall give the Landlord written notice of any matter in connection with the Property which may make the Landlord liable to any third party; and

18.3.2 send to the Landlord a copy of any notice or communication affecting the Property and so far as it relates to the Property take all steps necessary to comply with the notice or

communication and take any action in connection with it as reasonably required by the Landlord.

- 18.4 The Tenant acknowledges that it has not entered into this lease in reliance on any representation made by or on behalf of the Landlord except any statements or representations expressly made by this lease and any written replies to enquiries given before the grant of it by the Landlord's solicitors.
- 18.5 The Landlord shall not be liable for any damage suffered by the Tenant or any employee, servant or licensee of the Tenant or by any other person under the control of the Tenant through any defect in any fixture, tank, Service Media, staircase, machinery, apparatus or thing in the Property or through the neglect, default or misconduct of any servant employed by the Landlord acting outside the Landlord's instruction in connection with the Property or for any damage to the Property due to the bursting or overflowing of any tank, boiler or Service Media in the Property except insofar as any such liability may be covered by insurance effected by the Landlord.
- 18.6 Notwithstanding anything contained in this lease the Landlord shall have power without obtaining any consent from or making any compensation to the Tenant to deal as the Landlord may think fit with any other land, buildings or premises adjoining or near to the Property and to erect, rebuild or heighten on such other land or premises any buildings whether such buildings shall or shall not affect or diminish the light or air which may now or at any time during the Term be enjoyed by the Tenant or other tenants or occupiers of the Property.
- 18.7 The Landlord shall have power at its discretion to alter the arrangement of the Communal Facilities provided that after such alteration the access to and amenities of the Property are not substantially less convenient than before.
- 18.8 Every internal wall separating the Property from any other building shall be a party wall severed medially.
- 18.9 A party who was formerly the Landlord is to cease to be liable to perform and observe the covenants and conditions on the part of the Landlord contained in this lease at and from the date of an assignment of the immediate reversion to this lease.
- 18.10 The Tenant must pay to the Landlord, on demand, and on an indemnity basis, the fees, costs and expenses properly charged, incurred or payable by the Landlord in connection with:
- 18.10.1 any steps taken in contemplation of, or in relation to, any proceedings under section 146 or 147 of the Law of Property Act 1925 or the Leasehold Property (Repairs) Act 1938, including the preparation and service of all notices, and even if forfeiture is avoided (unless it is avoided by relief granted by the court);
 - 18.10.2 the preparation and service of schedules of dilapidations at any time during the Term (or within 12 months after the end of the Term in respect of dilapidations arising during the Term), and supervising any works undertaken to remedy those dilapidations;
 - 18.10.3 the enforcement of tenant covenants under this lease;
 - 18.10.4 the recovery or attempted recovery of any arrears of Rent or other sums due to the Landlord under this lease; and
 - 18.10.5 any application for a consent or approval of the Landlord (including the preparation of any documents) required under this lease (whether or not consent or approval is granted and whether or not the application is withdrawn).

19. **EXPERT DETERMINATION**

- 19.1 In this lease, where any issue is required to be dealt with by, or submitted for the determination of, an independent expert, the following provisions of this Clause are to apply but, in case of conflict with other provisions specifically relating to expert determination elsewhere in this lease, those other provisions are to prevail to the extent of the conflict.

19.2 The expert is to be appointed by the parties jointly, or if they cannot or do not agree on the appointment, appointed by whichever of the following is appropriate:

- (a) the president from time to time of the Royal Institution of Chartered Surveyors; or
- (b) the president from time to time of the Institute of Chartered Accountants in England and Wales,

or in either case the duly appointed deputy of the president, or other person authorised by him to make appointments on his behalf.

19.3 The person so appointed is to:

- (a) act as an expert, and not as an arbitrator; and
- (b) must afford the parties the opportunity within such a reasonable time limit as he may stipulate to make representations to him (accompanied by professional valuations, reports or other appropriate evidence in the relevant circumstances) and permit each party to make submissions on the representations of the other.

19.4 Neither the Landlord nor the Tenant may without the consent of the other disclose to the expert correspondence or other evidence to which the privilege of non-production ("without prejudice") properly attaches.

19.5 The fees and expenses of the expert, including the cost of his nomination, are to be borne as the expert may direct (but in the absence of such a direction, by the parties in equal shares), but (unless they otherwise agree) the parties shall bear their own costs with respect to the determination of the issue by the expert.

19.6 One party may pay the costs required to be borne by another party if they remain unpaid for more than 21 days after they become due and then recover these and any incidental expenses incurred from the other party on demand.

19.7 If the expert refuses to act, becomes incapable of acting or dies, the Landlord or the Tenant may request the appointment of another expert in his stead under Clause 19.2.

19.8 The determination of the independent expert, except in case of manifest error, is to be binding on the Landlord and the Tenant.

20. **NOTICES**

For the purposes of Section 48 of the Landlord and Tenant Act 1987 the address at which any notices (including notices in any proceedings) may be served on the Landlord by the Tenant is (until the Tenant is notified to the contrary) as follows. A notice to be served under this lease shall be served in writing and shall be properly served if served upon the Landlord at its registered office and/or upon the Tenant at its registered office and shall be deemed to have been made or delivered if left at such address or two days after being posted postage prepaid and by first class recorded delivery in an envelope addressed to them at such address.

21. **LANDLORD AND TENANT (COVENANTS) ACT 1995 DECLARATION**

For the purposes of the Landlord and Tenant (Covenants) Act 1995 the covenants on the part of the Landlord and on the part of the Tenant under this lease are not personal covenants.

22. **VALUE ADDED TAX**

Sums payable under this lease for the supply of goods and services are exclusive of value added tax which is to be payable, if applicable, in respect of and at the same time as each sum falls due for payment.

23. **LEASEHOLD REFORM ACT 1967 DECLARATION**

Pursuant to paragraph 3(2)(g) of Schedule 4A to the Leasehold Reform Act 1967 the Landlord declares that in its opinion this lease is excluded from the operation of Part 1 such Act.

24. **ENTIRE AGREEMENT**

This lease constitutes the whole agreement between the parties and supersedes all previous correspondence, negotiations and agreements between them relating to their subject matter.

25. **JURISDICTION**

The laws of England and Wales apply to and govern this lease.

26. **THIRD PARTIES**

Unless expressly stated nothing in this lease will create any rights in favour of any person under the Contracts (Rights of Third Parties) Act 1999.

This lease has today been duly **EXECUTED AND DELIVERED AS A DEED**

<p>Signed as a deed by HH NO.2 LIM. ED acting by a director</p> <p>s. 40(2)</p> <p>In the presence of</p>	
<p>Witness signature:</p> <p>Name (in BLOCK CAPITALS):</p> <p>Address:</p>	
<p>Signed as a deed by HEYLO HOUSING REGISTERED PROVIDER LIMITED acting by a director</p> <p>s. 40(2)</p> <p>In the presence of</p>	<p>s. 40(2)</p>
<p>Witness signature:</p> <p>s. 40(2)</p> <p>Name (in BLOCK CAPITALS): s. 40(2)</p> <p>Address: s. 40(2)</p>	

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

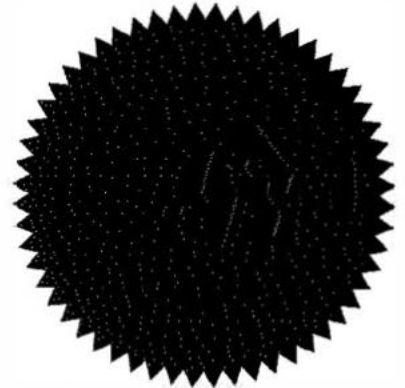
THE COMMON SEAL of
HOMES AND COMMUNITIES AGENCY
was hereunto affixed in the presence of:

)
) 226991
)

s. 40(2)

Head of Housing Programme
Partner Contracts & Assurance

s. 40(2)



Authorised signatory

Signed as a deed by HEYLO HOUSING SECURED
BOND PLC acting by a director

s. 40(2)

s. 40(2)

In the presence of

Witness signature:

s. 40(2)

Name (in BLOCK CAPITALS):

s. 40(2)

Address:

s. 40(2)

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

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

Authorised signatory

Signed as a deed by HEYLO HOUSING SECURED BOND PLC acting by a director	
In the presence of	
Witness signature:	
Name (in BLOCK CAPITALS):	
Address:	