



dated

2018

Greater London Authority

and

[Grant Recipient]

Negotiated Contract Grant Agreement (URB)

in relation to the Affordable Homes Programme 2016-2021

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Grant Agreement

dated

Parties

- (1) **Greater London Authority** of City Hall, The Queen's Walk, More, London SE1 2AA (the **GLA**); and
- (2) [] [(a [a company] ([registered number]) whose registered office is at [] (the **Grant Recipient**).

Introduction

- (A) The Localism Act 2011 devolved the housing and regeneration functions of Homes England (the trading name of Homes and Communities Agency) in London to the GLA.
- (B) The Grant Recipient has submitted a bid to the GLA for grant funding to assist the Grant Recipient in the construction of affordable housing.
- (C) The GLA has agreed to advance grant funding to the Grant Recipient pursuant to the GLA's Affordable Homes Programme 2016-2021 to facilitate the delivery of certain affordable housing projects subject to and in accordance with the terms of this Agreement.
- (D) Grant funding paid by the GLA 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) This Agreement, together with any other relevant GLA decisions places a public service obligation on the Grant Recipient to provide affordable homes for such persons who are failed by the housing market and require accommodation suited for their needs.
- (F) This Agreement constitutes an entrustment (within the meaning of the SGEI Decision) from the GLA to the Grant Recipient to provide suitable accommodation for families and residents in London who are failed by the housing market.
- (G) 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).

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:

AAH Dwelling means an AHP Dwelling disposed of or to be disposed of as Approved Affordable Housing;

Actual Development Costs means in respect of each Named Project the amount of Development Costs actually incurred by the Grant Recipient in acquiring, developing

and/or Rehabilitating that Named Project as such amount is warranted and certified by the Grant Recipient pursuant to Condition 13.2.3;

Additional Project means a project for the delivery of AHP Housing proposed by the Grant Recipient under Condition 8 in addition to those projects comprised within the Original Approved Bid;

Additional Project Acceptance Date means the date upon which the GLA confirms acceptance of an Additional Project pursuant to Condition 8.3;

Affordable Housing has the meaning given to it under the heading "Policy 3.10 Definition of Affordable Housing" of The London Plan (as the same may be amended, updated or replaced from time to time);

Affordable Housing Capital Funding Guide means the guide of that name published on www.london.gov.uk/CFG or any successor guide so published subject to such amendments variations or updates to the same as may be published from time to time;

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

Agreed Purposes means the tenures for which each of the AHP Dwellings is to be used as such tenures are described in the Named Project Details;

Agreement means this grant agreement (including its Schedules and Annexures);

Agreement Funding means the Named Project Grant paid to Grant Recipient under or in connection with this Agreement;

AHP 2016/21 means the programme described in the publication entitled "Homes for Londoners: Affordable Homes Programme 2016-21 Funding Guidance" issued by the GLA in November 2016 (as the same may be amended or updated from time to time);

AHP Dwelling means:

- (a) a house, flat or maisonette which was developed with the benefit of grant funding payable under this Agreement and in relation to each relevant Named Project as more particularly described in the relevant Named Project Details; and
- (b) a Nil Grant Unit.

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

- (a) permanently on Shared Ownership Lease terms; or
- (b) permanently as Approved Affordable Housing;

in accordance with the terms of this Agreement.

Allocated Grant means [], being the maximum amount of grant payable by the GLA 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);

Approved Affordable Housing means Affordable Housing (excluding SO Dwellings) of the type described in Section 4.1 of the Affordable Housing Capital Funding Guide which the GLA has (through OPS) expressly agreed to fund pursuant to this Agreement and which is more particularly described in the Named Project Details;

Approved Bid means the aggregate of the Named Projects accepted by the GLA in OPS as at the date of this Agreement (as the same may be amended, added to, supplemented, substituted or varied in accordance with the terms of this Agreement);

Building Contract means a contract entered into between the Grant Recipient and a Building Contractor relating to the construction and development and/or Rehabilitation of a Named Project;

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

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

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

Capital Grant Recoverable means such amount of Capital Grant and any Uplift Amount (and interest thereon) as the GLA is entitled to Recover under the Recovery Determination;

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

CEDR means the Centre for Effective Dispute Resolution;

Change in Control means a 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 community benefit 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;

Compliance Audit means the procedure (in a form advised by the GLA from time to time) by which an auditor independent of the Grant Recipient certifies (at the Grant Recipient's cost) whether the Named Projects developed or Rehabilitated pursuant to this Agreement satisfy the GLA's procedural compliance requirements (as described in the Affordable Housing Capital Funding Guide);

Confidential Information means in respect of the GLA all information relating to the GLA's business and affairs, its employees, suppliers including OPS 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 GLA or any of its advisers or from any third party if the information was obtained by that third party directly or indirectly from the GLA 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 GLA 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;

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

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

Council means a principal council (as defined in Section 270 of the Local Government Act 1972) or anybody of government in England established as a successor to principal councils exercising the functions of a local housing authority;

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

Data Protection Legislation means the DPA, and (from 25 May 2018) the GDPR and any relevant national laws relating to the implementation or derogation from the GDPR, and any formal guidance or Codes of Conduct issued by the Information Commissioner (or other competent authority) in each case as amended, superseded or replaced from time to time;

Decision Allowable Costs means those costs incurred by the Grant Recipient in providing the AHP Housing as specified in OPS (calculated using generally acceptable accounting principles) as follows:

- (a) the Development Costs;
- (b) all other direct costs of providing the AHP Housing;
- (c) a proper proportion of costs (including for common infrastructure) if these are shared between AHP Housing and other construction on Sites where the AHP Housing is situated; and/or
- (d) other costs permitted under the SGEI Decision of operating the AHP Housing 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 Agreement Funding) which the Grant Recipient or a Grant Recipient Affiliate receives for the purposes of or earns from the AHP Housing;

Development Costs means the costs relating to Site acquisition and Works in relation to a Named Project incurred or to be incurred by the Grant Recipient in relation to the heads of expenditure set out in Part 1 to Schedule 2 or such other heads of expenditure as the GLA may in its absolute discretion agree in respect of any Named Project **provided that** any costs falling within the heads of expenditure set out in Part 2 to Schedule 2 shall not be capable of being treated as Development Costs;

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

DPA means the Data Protection Act 1998;

Eligible Persons means people who are failed by the market in housing accommodation and are likely to benefit from occupation of an AHP Dwelling;

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;

Estate Regeneration means the physical regeneration of social housing estates through demolition, rebuilding or both as defined in the Good Practice Guide to Estate Regeneration;

EU Competent Authority means:

- (a) the Commission of the European Union;
- (b) the Secretary of State;
- (c) a United Kingdom government department if it has competence and is responding to a request from the Commission of the European Union; or
- (d) a court of England and Wales or the Court of Justice of the European Union.

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

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;

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;

GDPR means the General Data Protection Regulation ((EU) 2016/679) as amended or updated from time to time;

General Default has the meaning given to it in Condition 19.1;

General Termination Event means an event pursuant to which this Agreement is terminated pursuant to Condition 19.5;

GLA Group means the Greater London Authority, any Functional Body of the Greater London Authority as defined by the Greater London Authority Act 1999 (as amended from time to time) and subsidiaries thereof;

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

Good Practice Guide to Estate Regeneration means the guidance of the same name to be published by the GLA;

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

Grant Recipient Party means:

- (a) the Grant Recipient, the Building Contractor, any member of the Professional Team, agent, employee or Subcontractor of the Grant Recipient and the Grant Recipient's Representative;
- (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 GLA to act as the Grant Recipient's representative from time to time for the purposes of this Agreement;

Homes England means the body corporate established under Section 1 of the HRA 2008 (and any successor body or agency carrying out the same or similar functions in whole or in part);

HRA 2008 means the Housing and Regeneration Act 2008;

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

Information has the meaning in relation to:

- (a) the FOIA, given under Section 84 of the FOIA and which is held by the GLA 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 GLA 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:

- (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 GLA (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 GLA, 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;
 - vi 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 Named Project.

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;

Interest means interest at a rate per annum equal to two per centum (2%) above the base rate from time to time of the Royal Bank of Scotland plc;

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

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;

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 Named Project is situated.

London means the administrative area of the Greater London Authority from time to time;

London Living Wage means the basic hourly wage of £10.20 (before tax, other deductions and any increase for overtime) as may be updated from time to time by the Resolution Foundation, overseen by the Living Wage Commission, or any successor body carrying out the relevant calculation;

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 Named Project (as the context requires) on the basis agreed under this Agreement and/or within the time limits (if any) for doing so;

Milestone means the Start on Site and/or the Practical Completion stages of a Named Project as agreed by the parties and set out in OPS;

Milestone Date means the date agreed by the GLA through OPS by which the relevant Milestone must have been achieved (as the same may be extended by the GLA pursuant to Condition 7.1);

Milestone Extension Event means any of the following:

- (a) exceptionally adverse weather conditions;
- (b) delay in receipt of any necessary permission or approval of any statutory body or other person which the Grant Recipient has taken all practicable steps to avoid or reduce;
- (c) the exercise after the date of this Agreement by the United Kingdom Government of any statutory power which directly affects the execution of the Works necessary to the delivery of the Named Project by restricting the availability or use of labour which is essential to the proper carrying out of such Works or preventing the Grant Recipient from, or delaying in, securing such goods or materials or such fuel or energy as are essential to the proper carrying out of such Works;

- (d) the use or threat of terrorism and/or the activity of the relevant authorities in dealing with such use or threat;
- (e) fire, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation, earthquakes, riot and civil commotion;
- (f) failure by any statutory undertaker, utility company or other like body to carry out works or provide services;
- (g) any accidental loss or damage to the development or any roads servicing it;
- (h) any failure or shortage of power, fuel or transport;
- (i) any blockade or embargo;
- (j) any:
 - i official or unofficial strike;
 - ii lockout;
 - iii go-slow; or
 - iv other dispute

generally affecting the house building industry or a significant sector of it;
- (k) the appointment of the Building Contractor under the Building Contract has been terminated or the Building Contract has been terminated;
- (l) any material failure by the Building Contractor under the terms of the Building Contract which has the direct result of delaying the Grant Recipient's compliance with a Milestone Date and which did not result from the Grant Recipient's failure effectively to manage the Building Contract; or
- (m) any impediment, prevention or default, whether by act or omission by the GLA except to the extent caused or contributed to by any default, whether by act or omission, of the Grant Recipient

unless:

- A any of the events arise (directly or indirectly) as a result of any wilful or negligent default or wilful or negligent act of the Grant Recipient or, save in respect of the event referred to in (k) above, any of its Subcontractors of any tier; or
- B in respect of the event referred to in (f) above, such event arises as a result of any failure by the Grant Recipient (whether wilful or otherwise) to notify the relevant statutory undertaker or utility company of the

requirement for works or services to be completed by the date required to enable the Grant Recipient to complete the Named Project by the Named Project Completion Date.

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

Named Project means each project for the development of AHP Dwellings as has been fully detailed in OPS and accepted by the GLA through OPS as a Named Project as at the date hereof or in accordance with any of Conditions 5.1 or 8.4;

Named Project Completion Date means the date set out in the Named Project Delivery Timetable by which the Site acquisition (if applicable) and Practical Completion must have been achieved;

Named Project Delivery Timetable means the timetable for the acquisition, construction, development (and/or Rehabilitation) and delivery of each Named Project as agreed by the GLA through OPS;

Named Project Details means the descriptive and other details in respect of each Named Project as accepted by the GLA through OPS (as the same may be varied from time to time in accordance with the terms of this Agreement);

Named Project Grant means the amount of grant payable by the GLA in respect of a Named Project as set out in the relevant Named Project Details;

Named Project Start Date means the date set out in the Named Project Delivery Timetable by which the Named Project must have achieved Start on Site;

NHBC means the National House-Building Council;

Nil Grant Unit means a house, flat or maisonette comprised within a Named Project in respect of which the Grant Recipient did not seek grant funding under the AHP 2016/21;

Non Compliance Notification Date means the date on which the GLA notifies the Grant Recipient that it has become aware that a Named Project in respect of which Named Project Grant has been paid or utilised does not meet the Named Project Details;

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

Open Book Obligations mean the obligations set out in Condition 20;

OPS means the "GLA Open Project System", being the GLA's on-line investment management system from time to time or any successor system;

Original Approved Bid means the aggregate of the Named Projects accepted by the GLA pursuant to Condition 5.1;

Permitted Disposal means any of the following:

- (a) the grant of a Shared Ownership Lease (which, for the avoidance of doubt, does not include the subsequent acquisition by the occupier of an increased share of the equity in the relevant SO Dwelling);
- (b) a disposal to a statutory undertaker for the purposes of the supply or transmission (whether exclusively or otherwise) of statutory services to the Site;
- (c) a disposal pursuant to or required by a planning obligation within the meaning of s106 or s299A of the TCPA in connection with the Named Project;
- (d) a disposal to a highway authority for the purposes of or in connection with the adoption of roads, footpaths or cycleways on the Site;
- (e) the grant of any mortgage or charge; or
- (f) the grant of an easement.

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

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

Practical Completion means that stage in the execution of a Named Project when the Works have been completed in accordance with the terms of the relevant Building Contract and/or the terms of this Agreement such that the AHP Dwellings comprised within the Named Project are fit for beneficial occupation as a residential development in accordance with applicable NHBC or equivalent requirements current at the date of inspection subject only to the existence of minor defects and/or minor omissions at the time of inspection which are capable of being made good or carried out without materially interfering with the beneficial use and enjoyment of the Named Project and which would be reasonable to include in a snagging list, and Practically Complete shall be construed accordingly;

Process has the meaning ascribed to it in the DPA;

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 (including Registered Providers).

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

Prohibited Act means:

- (a) offering, giving or agreeing to give to any servant of the GLA 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 GLA 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 GLA;
- (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;
- (d) defrauding or attempting to defraud or conspiring to defraud the GLA.

Project Default has the meaning given to it in Condition 19.2;

Project Termination Event means an event pursuant to which this Agreement is terminated in relation to a particular Named Project pursuant to Condition 19.6;

Public Sector Subsidy means all funding or subsidy in relation to a Named Project in money or money's worth (including the Agreement Funding) 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 GLA 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 Recovery Determination;

Recovery Determination means the Recovery of Capital Grants from Unregistered Bodies (Greater London) General Determination 2017 and any successor determination or other instrument;

Registered Provider means a body entered on the register (maintained by the Regulator pursuant to Section 111 of the HRA 2008) as a non-profit organisation (as such term is defined in Section 115 of the HRA 2008);

Regulator means Homes England (the trading name of Homes and Communities Agency) acting through the Regulation Committee 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 GLA;

Rehabilitated or Rehabilitation or Rehabilitating shall have the meaning ascribed in sub-section 2.3 of the Affordable Housing Capital Funding Guide entitled "Procurement and Scheme Issues";

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

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

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

RIDDOR means Reporting of Injuries Diseases and Dangerous Occurrences Regulations 1995;

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

RTB Funds means receipts retained by a Council pursuant to the exercise of the Right to Buy;

Section 106 Agreement means an agreement in respect of and affecting any AHP Dwelling (or prospective AHP Dwelling) made pursuant to Section 106 of the TCPA 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 Project means a Named Project where the development of AHP Housing forms or will form part of a larger non AHP Housing project and is required pursuant to a Section 106 Agreement;

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

- (a) freehold title registered with title absolute;
- (b) leasehold title registered with title absolute where the lease has at least 99 years unexpired duration
- (c) either:
 - i freehold title registered with possessory title; or
 - ii leasehold title registered with good leasehold title where the lease has at least 99 years unexpired duration

and, in each case defective title indemnity insurance in favour of the Grant Recipient with a limit of indemnity to at least the Named Project Grant for that Site; or

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 GLA may reasonably request;

SGEI Review means a review by the GLA of the provision or use of Agreement Funding to determine whether an SGEI Decision Overpayment has arisen in relation to any Named Project;

Shared Ownership Lease means a shared ownership lease that meets:

- (a) the conditions (except conditions (d) and (g)) specified in or under Section 5A(2) of the Rent Act 1977; and
- (b) any applicable requirements of the Affordable Housing Capital Funding Guide.

Site means the site identified to the GLA in OPS as being the area of land, buildings or dwelling-houses comprised or to be comprised in a Named Project;

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

Start on Site means the occurrence of all of the following in relation to a Named Project:

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

Start on Site Date means the date identified in OPS on which Start on Site is to have occurred;

Start on Site Works means any work of construction or demolition in relation to any dwelling including:

- (a) the digging of a trench which is to contain the foundations, or part of the foundations, of such dwelling;
- (b) the laying of any underground main or pipe to the foundations, or part of the foundations, of such dwelling or to any such trench as per (a) above;
- (c) any operation in the course of laying out or constructing a road or part of a road; or
- (d) such works of demolition or service diversion as are set out in section 2 of the Affordable Housing Capital Funding Guide.

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.

Subcontractor means any subcontractor including without limitation any Building Contractor appointed by the Grant Recipient to undertake all or part of the Works;

TCPA means the Town and Country Planning Act 1990;

The London Plan means the document entitled "The London Plan – The Spatial Development Strategy for London Consolidated with Alterations Since 2011" published by the GLA in March 2016 (as the same may be amended or updated from time to time);

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.

Uplift Amount means an amount of the type described in the Recovery Determination and calculated for the purposes of Condition 18.1.3 in accordance with the methodology set out from time to time in the Affordable Housing Capital Funding Guide;

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

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

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

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

Withholding Event means an event or circumstance of the type described in Condition 17.1; and

Works means in relation to each Named Project all of the works (including the Start on Site Works, the design, infrastructure works and all other works necessary for obtaining access to the AHP Dwellings) to be undertaken in order to ensure that the AHP Dwellings are constructed, developed and/or Rehabilitated in accordance with the Named Project Details.

1.2 Interpretation

- 1.2.1 Words denoting any gender include all other genders.
- 1.2.2 The singular includes the plural and vice versa.
- 1.2.3 Any reference in this Agreement to any condition, sub-condition, paragraph, schedule, section heading or annexure is, except where it is expressly stated to the contrary, a reference to such condition, sub-condition, paragraph, schedule, section heading or annexure 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, direction, determination, regulation or similar instrument shall (except where expressly stated otherwise) be construed as a reference to the enactment, order, direction, determination, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted.
- 1.2.6 A reference to a person includes firms, partnerships and 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 paragraph in a schedule or annexure shall be construed as reference to a paragraph in that particular schedule.
- 1.2.11 A deliberate act or omission of any person shall exclude acts or omissions which were within the contemplation of the parties or which were otherwise provided for in this Agreement.

- 1.2.12 In any case where the consent or approval of the GLA (or any officer of the GLA) is required or a notice is to be given by the GLA, 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 GLA by notice in writing to the Grant Recipient.
- 1.2.13 An obligation to do anything includes an obligation to procure its being done.
- 1.2.14 Any restriction includes an obligation not to permit infringement of the restriction.
- 1.2.15 When there are two or more persons affected by the obligations under this Agreement such obligations are to bind each such person jointly and severally.
- 1.2.16 The terms "Site" and "Named Project" include each and every part of it.
- 1.2.17 Save where a contrary intention is shown, any reference to the GLA acting reasonably shall be interpreted as requiring the GLA to act in a commercially reasonable manner.
- 1.2.18 If there is any ambiguity or conflict between the implied terms and the express terms of this Agreement then the express terms shall prevail.
- 1.2.19 The Grant Recipient shall in relation to the delivery of its obligations under this Agreement be responsible as against the GLA for the acts or omissions of any Grant Recipient Party as if they were the acts or omissions of the Grant Recipient.
- 1.2.20 Neither the giving of any approval, consent, examination, acknowledgement, knowledge of the terms of any agreement or document nor the review of any document or course of action by or on behalf of the GLA shall, unless otherwise expressly stated in this Agreement or agreed in writing by the GLA, 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 GLA in respect of or in connection with the matter to or in relation to which such approval consent examination acknowledgement was given or review made.

2 Purpose

- 2.1 The GLA has agreed to make the Allocated Grant available to the Grant Recipient to provide the AHP 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 Named Projects.

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 1 to the GLA on the date hereof and on each day during the currency of this Agreement; and
- 3.1.3 acknowledges and agrees that the GLA 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 Public service obligation and State Aid

- 4.1 This Agreement is drafted with the intention that it is lawful and complies with the requirements of the SGEI Decision.
- 4.2 The Grant Recipient is entrusted by the GLA to construct acquire and/or refurbish homes with the purpose that the same shall be AHP Housing which the Grant Recipient shall let or lease (as the case may be) directly to Eligible Persons;
- 4.3 If the Agreement Funding gives rise to an SGEI Decision Overpayment or otherwise constitutes Unlawful State Aid then the GLA 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 Legislation to recover and the Grant Recipient must pay such amount(s) within ten (10) Business Days of the GLA requesting repayment.
- 4.4 The Grant Recipient shall promptly give written notice to the GLA of any Public Sector Subsidy it receives from a third party in relation to any AHP Housing.
- 4.5 If the SGEI Decision ceases to apply in England then the GLA may, by providing written notice to the Grant Recipient, vary this Agreement to the extent necessary to remove those obligations which require compliance with it.

5 Named Projects

- 5.1 The Grant Recipient must upload such details as are required for each proposed Named Project forming part of the Grant Recipient's bid onto the GLA's OPS within five (5) Business Days of the date of this Agreement, including but not limited to the anticipated Development Costs and where the relevant project is accepted by the GLA through OPS, it will become a Named Project for the purposes of this Agreement with effect from the date of its acceptance by the GLA in OPS.
- 5.2 The Grant Recipient represents and warrants to the GLA in relation to each Named Project that:
 - 5.2.1 the Named Project:
 - (a) is in its opinion (acting reasonably) deliverable in accordance with the Named Project Delivery Timetable; and

- (b) comprises no Public Sector Subsidy beyond that identified in the Named Project Details;

5.2.2 the Grant Recipient:

- (a) possesses or will possess a Secure Legal Interest in the Site;
- (b) has obtained all necessary Consents as are then required for the lawful development and/or Rehabilitation of the Named Project and for the delivery of the Named Project in accordance with the Named Project Details; and
- (c) has complied with all applicable requirements of the Affordable Housing Capital Funding Guide in relation to the Named Project.

5.3 Under no circumstances shall the GLA be obliged to accept any Named Project if the GLA (acting reasonably) believes that it does not, will not or is unlikely to have sufficient financial resources available to it (taking account inter alia of its commitments under the AHP 2016/21 or other programme commitments) to provide Named Project Grant in relation to the relevant project.

6 Changes to Named Projects

The parties may from time to time agree changes to the Named Project Details and where such changes are agreed they shall be implemented by the Grant Recipient amending the Named Project Details in OPS and the electronic confirmation of that amendment by the GLA through OPS and in default of agreement the parties will be bound by the Named Project Details as they existed prior to the changes proposed under this Condition 6.

7 Time extensions

7.1 Where a Milestone Failure occurs or is in the opinion of the GLA reasonably likely to occur (having regard to any information provided pursuant to any of Conditions 9.1.4, 10.3 or 11) and:

7.1.1 where such failure is directly caused by a Milestone Extension Event the GLA shall, subject always to Condition 7.3, extend the relevant Milestone Date and associated Named Project 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; or

7.1.2 where such failure is not directly caused by a Milestone Extension Event, the GLA shall notify the Grant Recipient of the Milestone Failure and the parties shall within fifteen (15) Business Days of such notification seek to agree revised Milestone Dates and:

- (a) where revised Milestone Dates are agreed within such period the Grant Recipient shall promptly amend the Milestone Dates on OPS in accordance with 6; or

- (b) where revised Milestone Dates are not agreed within such period the Milestone Failure shall be treated as a Project Default under Condition 19.2.10.

7.2 The GLA 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 GLA's reasonable opinion materially and adversely affect the delivery of the Approved Bid or (when taken individually or together with other extensions allowed in relation to the Grant Recipient or other grant recipients of the AHP 2016/21) materially and adversely affect the GLA's projected expenditure profile in relation to any year of the AHP 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 GLA shall not under any circumstances be required or obliged to extend a Named Project Start Date beyond 31 March 2021 but may at its sole discretion elect to do so.

8 **Additional Named Projects**

8.1 The parties shall be entitled from time to time by agreement to add Additional Projects to those comprised within the Original Approved Bid.

8.2 Where Condition 8.1 applies, the Grant Recipient shall submit to the GLA through OPS such details of the proposed Additional Project as the GLA may require. In submitting such details, the Grant Recipient makes the same representations and warranties in relation to the proposed Additional Project as it makes to the GLA pursuant to Condition 5.2.

8.3 The GLA shall consider the Additional Project and if the GLA (in its absolute discretion) is satisfied (a) with the information provided, (b) the level of grant funding requested, (c) with the Grant Recipient's performance in relation to the Approved Bid to date, (d) that no Default Event subsists and (e) with such other matters as the GLA may from time to time determine, the GLA shall be entitled (but not obliged) to accept the Additional Project into the Approved Bid and shall confirm such acceptance to the Grant Recipient through OPS.

8.4 With effect from the Additional Project Acceptance Date:

8.4.1 the Additional Project shall be deemed to be a Named Project for the purposes of this Agreement and immediately subject to its whole terms and conditions;

8.4.2 the details set out by the Grant Recipient in respect of the Additional Project in OPS and as confirmed by the GLA through OPS shall be deemed to be Named Project Details for the purposes of this Agreement; and

8.4.3 the Grant Recipient must ensure that it complies with all of its obligations under this Agreement as they apply to such new Named Project.

8.5 If the GLA agrees to make available any grant funding in relation to Additional Project, the Allocated Grant will be deemed to be adjusted by the Named Project Grant agreed by the GLA in OPS in relation to the new Named Project.

9 **Delivery Obligations**

9.1 The Grant Recipient must in relation to each Named Project:

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

(a) the Named Project is (subject to Condition 7.1) constructed, delivered and/or Rehabilitated (as applicable) in accordance with the Named Project Delivery Timetable;

(b) when delivered, the Named Project fully complies with the Named Project Details; and

(c) any applicable requirements of Procurement Law and of the Consents are satisfied.

9.1.2 actively market the SO Dwellings with a view to ensuring (as far as practicable) the disposal or letting of such dwellings to individuals as AHP Housing at Practical Completion (or as soon as reasonably possible thereafter);

9.1.3 advertise all SO Dwellings through the portal at www.shareto-buy.com/firststeps or such other website address notified by the GLA to the Grant Recipients from time to time; and

9.1.4 promptly notify the GLA in writing of any failure or likely failure to comply with Condition 9.1.1(a).

10 **Operational Obligations**

10.1 In delivering the Named Project and in operating and administering the Named Project after Practical Completion, the Grant Recipient must observe and comply with Legislation, the applicable terms of the Affordable Housing Capital Funding Guide, the Recovery Determination and the Consents.

10.2 The Grant Recipient shall procure that the GLA's Representative (or any person nominated by him) shall have at all reasonable times and upon giving reasonable notice the right to enter onto the Site and to take such action as he considers appropriate to inspect the progress of the Named Project and to monitor compliance by the Grant Recipient with its obligations under this Agreement.

10.3 The Grant Recipient must notify the GLA in writing (save in respect of Conditions 10.3.1 and 10.3.2, where notification is required to be given through OPS):

10.3.1 immediately once Start on Site and Practical Completion has occurred with respect to each Named Project;

10.3.2 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 a Named Project (or

any part of it) beyond any amount of Public Sector Subsidy notified to the GLA by the Grant Recipient pursuant to Condition 5.1 or Condition 8.2;

- 10.3.3 immediately upon becoming aware of any event or circumstance which may have a Material Adverse Effect; and
 - 10.3.4 of any other event or circumstance in relation the Named Project as the GLA may reasonably require from time to time and within such timeframes as the GLA may reasonably require.
- 10.4 Without prejudice to Condition 10.1, the Grant Recipient must in operating and administering the Named Project after Practical Completion:
- 10.4.1 not use the AHP Dwellings for any purpose other than the Agreed Purposes without the GLA's prior written consent;
 - 10.4.2 observe and comply with the requirements of the Affordable Housing Capital Funding Guide in relation to:
 - (a) any disposal of the SO Dwellings and ensure that such disposal takes effect only at arm's length and on market terms;
 - (b) the form and content of any Shared Ownership Lease granted by or to be granted by the Grant Recipient in relation to an AHP Dwelling;
 - (c) such eligibility requirements as GLA may specify from time to time; and
 - (d) the nature of the housing and/or housing product (as described in the Affordable Housing Capital Funding Guide) being funded pursuant to this Agreement.
 - 10.4.3 comply at its own cost with the GLA's requirements in relation to Compliance Audit;
 - 10.4.4 in relation to AHP Housing, participate in the CORE system from time to time (including recording any lettings made together with any sales of stock including outright sales and shared ownership sales but excluding any sales of additional equity to the current shared owner);
 - 10.4.5 ensure that all SO Dwellings comprised in the Named Project meet the standards and requirements of a buildings standards indemnity scheme currently approved by the Council of Mortgage Lenders and ensure that such dwellings (if any) which have been developed from former commercial buildings will qualify for mortgages; and
 - 10.4.6 ensure that all AAH Dwellings are made available on terms which comply with the applicable requirements of the Affordable Housing Capital Funding Guide and Legislation (as any of the same may be amended or updated from time to time).
- 10.5 The Grant Recipient shall ensure that the GLA's requirements from time to time in relation to public relations and publicity for capital projects (including Site signage) as notified to

the Grant Recipient from time to time or otherwise as included in the Affordable Housing Capital Funding Guide are observed and implemented in respect of each Named Project.

- 10.6 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.
- 10.7 The Grant Recipient must 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 and comply with the GLA's anti-fraud and corruption policies, a copy of which is available here: <https://www.london.gov.uk/about-us/governance-and-spending/good-governance/our-procedures>, in each case as the GLA or the relevant industry body may update from time to time.
- 10.8 Where the Grant Recipient is aware that it is in breach of an obligation under this Condition 10 it must promptly notify the GLA of the fact and take all such steps as are appropriate in the circumstances to remedy the breach.
- 10.9 Notwithstanding any other provision of this Agreement the Grant Recipient shall, unless otherwise agreed by the GLA, remain liable and responsible for the performance of its obligations under this Agreement in relation to each AHP Dwelling.

11 **Review, Monitoring and Reporting**

- 11.1 The Grant Recipient must promptly advise GLA when any circumstance occurs which may:
- 11.1.1 impact adversely on the Grant Recipient's ability to deliver any Named Project in accordance with the terms of this Agreement; and/or
 - 11.1.2 constitute a Default Event or a breach of Condition 9 or 10.
- 11.2 The Grant Recipient shall attend a review meeting when required to do so by the GLA acting reasonably and the GLA shall provide the Grant Recipient with written details of the matters to be discussed at the review meeting timeously in advance of such meeting.
- 11.3 The Grant Recipient shall provide the GLA as soon as reasonably practicable with such information as the GLA shall reasonably require to support or facilitate the discussions referred to in this Condition 11 and shall use all reasonable endeavours to ensure the accuracy of any information provided.
- 11.4 The Grant Recipient must keep OPS fully updated and ensure that it accurately reflects the agreed Approved Bid and Named Project Details from time to time.
- 11.5 The Grant Recipient shall ensure that it and any Grant Recipient Affiliate (at its or their cost) co-operates with the GLA during an SGEI Review and it shall if requested promptly provide the GLA with SGEI Information and such other information, evidence and/or explanation as the GLA may reasonably require.

12 Disposals

12.1 The Grant Recipient must procure in accordance with the time periods set out in Condition 12.3 that the following restriction has been properly registered at the Land Registry against the Proprietorship Register of the Grant Recipient's title(s) to the Site:

"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 clauses 12.2 and 12.7 of a Grant Agreement dated [] and made between (1) the Greater London Authority and (2) [insert name of Grant Recipient] have been complied with or that they do not apply to the disposition."

12.2 The Grant Recipient:

12.2.1 must not, without the prior written consent of GLA:

- (a) Dispose of the whole or any part of the Site; and/or
- (b) make a Disposal other than to a Registered Provider or (in the case of the Disposal of an increased share of equity in a SO Dwelling) to an individual occupier for use as their only or principle home;

12.2.2 must save where the GLA agrees otherwise procure on a Disposal that the disponee enters into a deed of covenant with the GLA (in such form as the GLA shall reasonably require) in order to:

- (a) obtain written confirmation from the disponee that the amount of the Named Project 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 disponee would not be bound by the terms of the Recovery Determination with equivalent contractual effect to those within the Recovery Determination) are replicated and are binding on the disponee;
- (c) require the disponee to apply to the Land Registry and procure that a restriction in the terms set out in Condition 12.1 (mutatis mutandis) is registered (or continues to be registered) against the Proprietorship Register of the disponee's title(s) to the property comprised in the Disposal; and
- (d) to impose conditions on any future disposals of the property by the disponee in the same terms as those contained in this Condition 12.2.

12.2.3 provide written notification to the GLA of any Disposal within ten (10) Business Days of such Disposal taking place;

12.2.4 ensure that the solicitor or conveyancer providing the certificate pursuant to the restriction set out in Condition 12.1 owes a duty of care to the GLA; and

- 12.2.5 provide the GLA with such information (and within such timescales) as the GLA may reasonably require to enable the GLA to monitor compliance by the Grant Recipient with its obligations under this Condition 12.
- 12.3 The Grant Recipient shall procure that the restriction referred to in Condition 12.1 is registered against the Proprietorship Register of the Grant Recipient's title to the Site as soon as practicable following acquisition by the Grant Recipient of a Secure Legal Interest in the Site and in any event prior to the date upon which the Grant Recipient submits its application for Named Project Grant under Condition 13.1.
- 12.4 Notwithstanding any other provision of this Agreement the Grant Recipient shall unless otherwise agreed by the GLA remain liable and responsible for the performance of its obligations under this Agreement in relation to each SO Dwelling until such time as:
- 12.4.1 the GLA agrees otherwise in writing; or
- 12.4.2 the entirety of the Grant Recipient's interest is transferred in accordance with the terms of a Shared Ownership Lease to the occupier of an SO Dwelling following final staircasing,
- and the parties agree that notwithstanding a disposal by the Grant Recipient pursuant to Condition 12.4.1 and 12.4.2 above, the Grant Recipient shall remain liable and responsible for the performance of its obligations under the Recovery Determination, the Capital Funding Guide and any other obligation in this Agreement (other than an obligation in this Agreement relating solely to the SO Dwelling that is the subject of the disposal).
- 12.5 The Grant Recipient must, forthwith on demand, pay to the GLA the amount of all costs and expenses (including legal fees and irrecoverable VAT relating thereto) incurred by it:
- 12.5.1 in procuring the giving of a certificate referred to in Condition 12.1; and/or
- 12.5.2 in connection with providing consent under Condition 12.2.1 or its entry into the deed of covenant referred to in Condition 12.2.2;
- and shall if required by the GLA procure that its solicitor provides an undertaking for such costs to the GLA prior to the GLA being required to consider any such application by the Grant Recipient or to take any action under this Condition 12.
- 12.6 Nothing in Condition 12.4 shall absolve the Grant Recipient from any obligation to repay such amount of Capital Grant Recoverable as is due under the Recovery Determination.
- 12.7 The Grant Recipient's solicitor or conveyancer may only provide the certificate to the Land Registry pursuant to the restriction referred to in Condition 12.1 where no GLA rights have arisen under Condition 18 and are subsisting.
- 12.8 The Grant Recipient will:
- 12.8.1 use all reasonable endeavours to ensure that that any person providing the notification pursuant to Condition 12.2.3 or any other notifications or certificates from the Grant Recipient to the GLA (the **Grant Recipient Notifications**) is a senior officer of the Grant Recipient with access to the information and knowledge needed accurately to give the information required; and

- 12.8.2 notify the GLA if it becomes aware that the Grant Recipient Notifications are erroneous in any material respect.

13 **Grant Claim Procedures**

13.1 Subject to a Named Project having reached Practical Completion, the Grant Recipient may apply to the GLA for the Named Project Grant payable in respect of that Named Project to be paid to it. The Grant Recipient must make its application through OPS in accordance with the requirements of OPS from time to time and in compliance with the applicable procedures set out in the Affordable Housing Capital Funding Guide.

13.2 In submitting an application pursuant to Condition 13.1 the Grant Recipient is deemed to repeat the representations and warranties set out in Condition 5.2 and further represent and warrant to the GLA that:

13.2.1 Practical Completion has been reached and that such date is no later than that submitted in OPS;

13.2.2 the Named Project has been procured, designed, constructed and delivered (as applicable) in accordance with the requirements of this Agreement;

13.2.3 all notifications, confirmations and certifications made or to be made by the Grant Recipient pursuant to Condition 12 or otherwise in OPS in relation to the Named Project have been, are or will be correct in all material respects;

13.2.4 it has obtained all Consents necessary for the lawful development of the Named Project in accordance with the Named Project Details 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;

13.2.5 it possesses a Secure Legal Interest in the Site

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

13.2.7 no Withholding Event or Default Event has occurred or arisen; and

13.2.8 no SO Dwelling will be disposed of other than on Shared Ownership Lease terms.

14 **Payment of Grant**

14.1 Subject to:

14.1.1 the GLA (acting reasonably) being satisfied with the Grant Recipient's application for payment including the information warranted pursuant to Conditions 13.2;

14.1.2 Conditions 6, 14.3, and 17; and

14.1.3 receipt by the GLA of evidence satisfactory to it that the restriction referred to in Condition 12.1 has been registered at HM Land Registry;

the GLA shall (resources permitting) pay the Named Project Grant to the Grant Recipient within fifteen (15) Business Days of receipt of a relevant and satisfactory application.

14.2 If the GLA is not satisfied with the Grant Recipient's application for payment or of the matters referred to in Condition 14.1.2 or 14.1.3, 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 GLA 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 13 and this Condition 14 (as applicable) will be reapplied to the Grant Recipient's resubmitted or amended application for payment.

14.3 The GLA shall not be obliged to pay the Grant Recipient the Named Project Grant:

14.3.1 before the date identified in the Named Project Details as the forecast date of Practical Completion;

14.3.2 if the Named Project has not been accepted by the GLA through OPS;

14.3.3 in respect of any Named Project which has not reached Practical Completion by the Milestone Date identified in OPS (subject to any extension to such date pursuant to Condition 7.3):

14.4 Where the GLA pays Named Project Grant to the Grant Recipient, the Allocated Grant shall be reduced by a commensurate amount.

14.5 The payment of Named Project Grant or any part thereof hereunder by the GLA to the Grant Recipient shall be regarded as inclusive of any VAT chargeable thereon.

15 **Change in Control**

15.1 During the period prior to and including the date upon which the Named Project Grant is paid the Grant Recipient will not without the prior written consent of the GLA allow any Change in Control of either or both of:

15.1.1 the Grant Recipient; or

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

15.2 The consent of the GLA under Condition 15.1 will not be unreasonably withheld or delayed **provided that** the GLA is notified about any proposed Change in Control and receives all the information required under Condition 15.4 at least twenty-five (25) Business Days prior to the Change in Control being effected and the GLA 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 Named Project or Named Projects.

15.3 Without prejudice to the generality of Condition 15.2, it shall be reasonable for the GLA to withhold its consent either at the date when application for consent to Change in Control is

made to the GLA or after that date but before the GLA's consent is given if the proposed Controller does not have sufficient:

- 15.3.1 financial standing;
- 15.3.2 organisational standing and capacity; or
- 15.3.3 reputation;

for it to be reasonable for the GLA to assume that it will ensure that the Grant Recipient complies with this Agreement.

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

15.4.1 full written details setting out all the terms and conditions of the Change in Control reasonably necessary for the GLA to assess whether the delivery of the Named Projects 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 GLA to assume the proposed Controller will be able to comply with this Agreement;

15.4.2 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;

15.4.3 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;

15.4.4 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 GLA in:

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

15.5 If at any time before the proposed Change in Control has been effected any of the reasons for withholding consent specified in Condition 15.3 apply the GLA may revoke its consent to such proposed Change in Control by written notice to the Grant Recipient.

16 **Records and Accounting**

16.1 The Grant Recipient shall, as and when requested by the GLA, make available in a timely manner to the GLA where required in connection with this Agreement or the Approved Bid a copy of each of:

- 16.1.1 all data, materials, documents and accounts of any nature created, acquired or brought into existence in any manner whatsoever by or on behalf of the Grant Recipient for the purposes of this Agreement; and
- 16.1.2 all such data, materials, documents and accounts created, acquired or brought into existence by the Grant Recipient's officers, employees, agents or consultants relating to the Named Projects and which have been supplied to the Grant Recipient for the purposes of this Agreement.
- 16.2 On the expiry of this Agreement or (if earlier) upon termination thereof, the Grant Recipient shall if requested to do so deliver up to the GLA all the data, materials, documents and accounts referred to in this Condition 16 which it has in its possession, custody or control and shall procure the handing over to the GLA such data, materials, documents and accounts referred to in Condition 16.1.2 or as otherwise directed by the GLA.
- 16.3 The Grant Recipient must for a period of ten (10) years from the date upon which it receives or uses the Named Project Grant retain all of the data, documents, materials and accounts referred to in this Condition 16 and the Grant Recipient may retain such data, documents, materials and accounts in electronic form only.
- 16.4 The Grant Recipient acknowledges that The Comptroller and Auditor General shall have rights of access to the information referred to in Condition 16 pursuant to the National Audit Act 1983 and the Government Resources and Accounts Act 2000.
- 16.5 The Grant Recipient shall co-operate fully and in a timely manner with any reasonable request from time to time of:
 - (a) any auditor (whether internal or external) of the GLA; and/or
 - (b) the GLA where the GLA is required under any Legislation to provide any document relating to the Named Projects to any person.

17 **Withholding of grant**

- 17.1 Notwithstanding any other term of this Agreement the GLA shall not be obliged to make any payment to the Grant Recipient:
 - 17.1.1 the Grant Recipient is unable to give the confirmations or certifications required by OPS or to make the representations and give the warranties referred to in Condition 13.2 (in any case in whole or in part);
 - 17.1.2 a Prohibited Act has been committed by or on behalf of the Grant Recipient and the Grant Recipient has not satisfied the Waiver Condition in respect of such Prohibited Act;
 - 17.1.3 an Insolvency Event has occurred in relation to the Grant Recipient;
 - 17.1.4 the Grant Recipient has ceased to operate;
 - 17.1.5 the Grant Recipient's status as Investment Partner is removed or withdrawn;
 - 17.1.6 not used;

- 17.1.7 where the Grant Recipient is in material breach of Condition 9 or Condition 10 and has not taken steps to remedy it to the GLA's satisfaction (acting reasonably);
- 17.1.8 the Grant Recipient (either by its own actions or omissions or those of its contractors or agents) harms the GLA's, the AHP 2016/21's or the Mayor of London's reputation or brings the GLA, the AHP 2016/21's or the Mayor of London into disrepute;
- 17.1.9 there is a change to the Grant Recipient's financial or commercial standing which the GLA (acting reasonably) would materially and adversely affect the Grant Recipient's ability to comply with the terms of this Agreement; or
- 17.1.10 the Grant Recipient has breached its obligations under any of Conditions 11, 18, or 20.

18 **Repayment of grant**

18.1 The parties acknowledge and agree that:

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

18.2 Without prejudice to any other term of this Agreement, the GLA 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 such sum or such part or aggregation thereof as is determined in accordance with Condition 18.3 (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 Named Project 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 18.2.4;
- 18.2.3 the GLA has made an overpayment in relation to a Named Project or has made a payment in error to the Grant Recipient;
- 18.2.4 the Named Project Grant has been paid to the Grant Recipient but the GLA becomes aware (whether following the completion of a Compliance Audit or otherwise) that the Grant Recipient has failed to deliver the relevant Named Project in accordance with the agreed Named Project Details;

- 18.2.5 the Grant Recipient has breached its obligations under any of Conditions 9, 10, 11, or 20;
 - 18.2.6 a General Termination Event has occurred; or
 - 18.2.7 a Project Termination Event has occurred;
- 18.3 In the circumstances set out in:
- 18.3.1 Conditions 18.2.1 or 18.2.6, the Recoverable Amount shall be a sum equivalent to the Named Project Grant;
 - 18.3.2 Conditions, 18.2.2, 18.2.5, or 18.2.7 the Recoverable Amount shall be a sum equivalent to the Named Project Grant for any affected Named Project;
 - 18.3.3 Conditions 18.2.3, the Recoverable Amount shall be a sum equal to the amount of the overpayment or the sum paid in error as applicable;
 - 18.3.4 Condition 18.2.4, subject always to Condition 18.4 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 Named Project Grant figure reflecting the changed nature of the delivered Named Project as against that described in the Named Project Details;
 - (b) where a revised figure for Named Project Grant is agreed, the Recoverable Amount shall be the product of the following calculation:

$$RA = NPG - RNPG$$
 where
 RA is the Recoverable Amount;
 NPG is the Named Project Grant paid pursuant to Condition 14.1 in respect of the relevant Named Project; and
 RNPG is the revised Named Project Grant figure agreed pursuant to Condition 18.3.4(a);
 - (c) the Grant Recipient shall immediately amend the relevant information on OPS to reflect any agreement reached made pursuant to Condition 18.3.4(a);
 - (d) where the parties are unable to agree a revised Named Project Grant figure in accordance with Condition 18.3.4(a) the GLA shall be entitled to terminate this Agreement in accordance with Condition 19.1 and the Recoverable Amount shall be an amount equal to the Named Project Grant paid pursuant to Condition 14.1 in respect of the relevant Named Project.

Under no circumstances will the GLA be required to make any payment to the Grant Recipient if the application of the calculation in Condition 18.3.4(b) results in RA being a negative figure.

- 18.4 Where the GLA (acting reasonably) considers that the Grant Recipient acted fraudulently or dishonestly in claiming the Named Project Grant f such claim shall be deemed to be a Prohibited Act and the GLA will not be bound by the terms of Condition 18.3.4.
- 18.5 The Grant Recipient must pay the Recoverable Amount to the GLA within ten (10) Business Days of demand together with Interest such Interest to run from the date upon which the Named Project Grant (or relevant part thereof) overpayment or payment in error was paid to the Grant Recipient until the date upon which the GLA receives the repayment required from the Grant Recipient under this Condition 18.
- 18.6 The Grant Recipient acknowledges and agrees that the Disposal or letting of an AHP Dwelling to any person for any purpose other than the relevant Agreed Purpose constitutes a failure to comply with a condition attached to the making of Capital Grant for the purposes of paragraph 6(e) of the 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, where a payment has been made following an administrative error by the GLA, the Grant Recipient shall not be liable for interest on the amount repayable under Condition 18.5.

19 **Default Events and Termination**

19.1 Each of the following circumstances shall constitute a General Default:

- 19.1.1 an Insolvency Event has occurred in relation to the Grant Recipient;
- 19.1.2 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);
- 19.1.3 the Grant Recipient ceases operating;
- 19.1.4 not used;
- 19.1.5 the Grant Recipient's Investment Partner status is lost or removed;
- 19.1.6 a Change in Control has occurred which was not authorised by the GLA in accordance with Condition 15; or
- 19.1.7 there is a change to the Grant Recipient's financial or commercial standing which the GLA (acting reasonably) considers would materially and adversely affect the Grant Recipient's ability to comply with the terms of this Agreement.

19.2 Each of the following circumstances shall constitute a Project Default:

- 19.2.1 failure by the Grant Recipient to comply with its obligations in Conditions 11 or 12.6 and/or any information supplied in connection with its obligations in

Conditions 11 or 12.6, whether in relation to the Open Book Obligations or otherwise, is materially deficient, misleading or inaccurate;

- 19.2.2 a breach of the Open Book Obligations;
 - 19.2.3 the Grant Recipient is unable to make the representations and give the warranties set out in Schedule 1 (in any case in whole or in part) and there is a resulting Material Adverse Effect;
 - 19.2.4 not used;
 - 19.2.5 a breach of the Grant Recipient's obligations under Condition 12;
 - 19.2.6 not used;
 - 19.2.7 the Grant Recipient (either by its own actions or omissions, or those of its contractors or agents) harms the GLA's, the AHP 2016/21's or the Mayor of London's reputation or brings the GLA, the AHP 2016/21's or the Mayor of London into disrepute;
 - 19.2.8 failure by the Grant Recipient to comply with any repayment obligation under this Agreement;
 - 19.2.9 failure or inability of the Grant Recipient to comply with the requirements of Conditions 13.1 or 13.2 (inclusive);
 - 19.2.10 a breach of Condition 9 or 10;
 - 19.2.11 failure by the parties to agree the matter referred to in Condition 18.3.4(d);
 - 19.2.12 any other breach of or failure to comply with the Agreement which has a Material Adverse Effect;
- 19.3 The Grant Recipient must notify the GLA immediately in writing on the occurrence of a Default Event.
- 19.4 Without prejudice to Conditions 19.5 or 19.6, in the event of the occurrence of Default Event and for so long as that Default Event subsists (or another Default Event has occurred and is continuing) the GLA shall be entitled to reject the submission of any Named Project on OPS.
- 19.5 On the occurrence of a General Default the GLA shall be entitled forthwith and without any liability to the Grant Recipient terminate this Agreement.
- 19.6 Where a Project Default is:
- 19.6.1 an occurrence specified in Condition 19.2.5, 19.2.7 or 19.2.11 the GLA shall be entitled forthwith and without any liability to the Grant Recipient but without determining the whole of this Agreement to terminate the Agreement in so far as it relates to the Named Project to which the Project Default relates;
 - 19.6.2 an occurrence specified in Condition 19.2.1, 19.2.2, 19.2.3, 19.2.8, 19.2.9, 19.2.10 or 19.2.12 the GLA may serve notice on the Grant Recipient requiring

the Grant Recipient to remedy the breach and if within a period of thirty (30) Business Days following service of such notice:

- (a) the breach has not been remedied or is not capable of remedy;
- (b) the Grant Recipient has not given an undertaking to remedy the breach on terms satisfactory to the GLA where it has been permitted to do so by the GLA; or
- (c) if it becomes apparent that the Project Default is incapable of remedy either within such period or at all

the GLA shall be entitled on giving not less than ten (10) Business Days' notice and without any liability to the Grant Recipient but without determining the whole of this Agreement to terminate the Agreement insofar as it relates to the Named Project to which the Project Default relates.

20 **Open Book Obligations**

20.1 The Grant Recipient shall on an Open Book Basis:

- 20.1.1 at all times maintain a full record of particulars of all the income (including Public Sector Subsidy) received and Development Costs incurred by the Grant Recipient in respect each Named Project;
- 20.1.2 at all times when reasonably required to do so by the GLA, provide a summary of any of the income and Development Costs referred to in Condition 20.1.1 as the GLA may reasonably require to enable it to monitor the performance by the Grant Recipient of its obligations under this Agreement; and
- 20.1.3 at all times provide such access or facilities as the GLA may reasonably require for its representatives to visit any place where the records are held and examine the records maintained under this Condition 20.

20.2 Compliance with the above shall require the Grant Recipient to keep (and where appropriate to procure that any Subcontractor shall keep) separate books of account (from those relating to any business, activity or operation carried on by the Grant Recipient or Subcontractor and which do not directly relate to any Named Project) in accordance with good accountancy practice with respect to all Named Projects showing in detail:

- 20.2.1 income (including Public Sector Subsidy and receipts);
- 20.2.2 administrative overheads where directly attributed or where apportioned on a pro rata basis;
- 20.2.3 payments made to Subcontractors;
- 20.2.4 capital and revenue expenditure;
- 20.2.5 VAT incurred on all items of expenditure where the Grant Recipient has received grant under this Agreement in respect of such VAT, including the rate of such VAT and full details of the recovery (or not) by the Grant Recipient of

such VAT as input tax from HM Revenue & Customs or other competent authority; and

- 20.2.6 such other items as the GLA may reasonably require to conduct (itself or through a third party) cost audits for verification of income, cost expenditure or estimated expenditure, for the purpose of any of the provisions of this Agreement;

and the Grant Recipient shall have (and procure that to the extent expressly agreed the Subcontractors shall have) the books of account evidencing the items listed in this Condition available for inspection by the GLA (and any person appointed pursuant to the dispute resolution provisions at Condition 27 to determine a dispute or otherwise authorised by the GLA) upon reasonable notice, and shall submit a report of these to the GLA as and when requested.

21 **Information and confidentiality**

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

- 21.2 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 GLA 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.

- 21.3 The obligations of confidence referred to in this Condition 21 shall not apply to any Confidential Information which:

21.3.1 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;

21.3.2 is obtained from a third party without that third party being under an obligation (express or implied) to keep the information confidential;

21.3.3 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

21.3.4 is independently developed without access to the Confidential Information of the other party.

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

21.4.1 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;

- 21.4.2 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 GLA may nevertheless be obliged to disclose such Confidential Information;
 - 21.4.3 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
 - 21.4.4 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.
- 21.5 The Grant Recipient shall ensure that all Confidential Information obtained from the GLA under or in connection with this Agreement:
- 21.5.1 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;
 - 21.5.2 is treated as confidential and not disclosed (without the GLA's prior written approval) or used by any such staff or professional advisors or consultants otherwise than for the purposes of this Agreement;
 - 21.5.3 where it is considered necessary in the opinion of the GLA, the Grant Recipient shall ensure that such staff, professional advisors or consultants sign a confidentiality undertaking before commencing work in connection with this Agreement.
- 21.6 Nothing in this Condition 21 shall prevent the GLA:
- 21.6.1 disclosing any Confidential Information for the purpose of:
 - (a) the examination and certification of the GLA'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 GLA has used its resources;
 - 21.6.2 disclosing any Confidential Information obtained from the Grant Recipient:
 - (a) to any other department, office or agency of the Crown or any member of the GLA Group;
 - (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; or

- (d) to any person engaged in providing any services to the GLA 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 21.6.2(a) to Condition 21.6.2(d) inclusive the GLA 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.

21.7 Nothing in this Condition 21 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.

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

21.9 The GLA shall be responsible for determining in its absolute discretion whether:

21.9.1 any Information is Exempted Information or remains Exempted Information; or

21.9.2 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 GLA 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 GLA unless otherwise expressly authorised to do so by the GLA.

21.10 Subject to Condition 21.11 below, the Grant Recipient acknowledges that the GLA may be obliged under FOIA or EIR to disclose Information:

21.10.1 without consulting the Grant Recipient; or

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

21.11 Without in any way limiting Condition 21.9 or Condition 21.10, in the event that the GLA receives a Request for Information, the GLA will, where appropriate, as soon as reasonably practicable notify the Grant Recipient.

21.12 The Grant Recipient will assist and co-operate with the GLA as requested by the GLA to enable the GLA 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:

21.12.1 transfer any Request for Information received by the Grant Recipient to the GLA as soon as practicable after receipt and in any event within two (2) Business Days of receiving a Request for Information;

21.12.2 provide all such assistance as may be required from time to time by the GLA and supply such data or information as may be requested by the GLA;

- 21.12.3 provide the GLA with any data or information in its possession or power in the form that the GLA requires within five (5) Business Days (or such other period as the GLA may specify) of the GLA requesting that Information;
- 21.12.4 permit the GLA to inspect such as requested from time to time.
- 21.13 Nothing in this Agreement will prevent the GLA 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.
- 21.14 The obligations in this Condition 21 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.
- 21.15 The Grant Recipient acknowledges and agrees that the GLA may in its absolute discretion redact all or part of the Agreement Information prior to its publication. In so doing and in its absolute discretion the GLA may take account of any EIR Exemptions and FOIA Exemptions. The GLA may in its absolute discretion consult with the Grant Recipient regarding any redactions to the Agreement Information to be published pursuant to this Condition 21. The GLA shall make the final decision regarding publication and/or redaction of the Agreement Information.

22 **Data Protection**

- 22.1 The Grant Recipient shall ensure that at all times it complies with its obligations under this Agreement in manner so as to comply with the Data Protection Legislation and all relevant regulations relating to data protection.
- 22.2 The Grant Recipient warrants and represents that it has obtained all necessary registrations, notifications and consents required by the Data Protection Legislation to Process Personal Data for the purposes of performing its obligations under this Agreement.
- 22.3 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 GLA (the **GLA'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 and (from 25 May 2018) Article 5 of the GDPR. 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 Schedule 1 of the DPA and (from 25 May 2018 only) Article 5 of the GDPR.
- 22.4 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 GLA's Personal Data and any person it authorises to have access to any the GLA's Personal Data will respect and maintain the confidentiality and security of the GLA's Personal Data;

- 22.5 The Grant Recipient shall allow the GLA to audit the Grant Recipient's compliance with the requirements of this Condition 22 on reasonable notice and/or, at the GLA's request, provide the GLA with evidence of the Grant Recipient's compliance with the obligations within this Condition 22.
- 22.6 The Grant Recipient undertakes not to disclose or transfer any of the GLA's Personal Data to any third party without the prior written consent of the GLA save that without prejudice to Condition 22.3 the Grant Recipient shall be entitled to disclose the GLA'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.
- 22.7 The Grant Recipient agrees to use all reasonable efforts to assist the GLA to comply with such obligations as are imposed on the GLA by the Data Protection Legislation.
- 22.8 The Grant Recipient shall indemnify the GLA against all claims and proceedings and all liability, losses, costs and expenses incurred in connection therewith by the GLA as a result of the Grant Recipient's destruction, damage or loss of the GLA'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 Data Protection Legislation and/or this Condition 22 by the Grant Recipient, its employees, agents or sub-contractors.
- 22.9 The Grant Recipient undertakes to include obligations no less onerous than those set out in this Condition 22, in all contractual arrangements with agents engaged by the Grant Recipient in performing its obligations under this Agreement to the GLA.

23 **Intellectual Property**

- 23.1 Subject to Condition 23.5 the Grant Recipient shall, to the extent that it is able to do so without incurring material cost, grant to the GLA 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 Named Projects, for any purpose relating to this Agreement.
- 23.2 To the extent that any of the data, materials and documents referred to in Condition 23.1 are generated by or maintained on a computer or in any other machine readable format, the Grant Recipient shall if requested by the GLA use its reasonable endeavours (without having to incur material cost) procure for the benefit of the GLA 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 GLA making such request to access and otherwise use such data for the purposes referred to in Condition 23.1.
- 23.3 Neither party shall infringe any third party's Intellectual Property Rights in connection with this Agreement.
- 23.4 The Grant Recipient shall fully indemnify the GLA within five (5) Business Days of demand under this Condition 23.4 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 23, any breach by the Grant Recipient of this Condition 23 and

against all costs and damages of any kind which the GLA may incur in connection with any actual or threatened proceedings before any court or adjudication body.

23.5 The Grant Recipient shall only be entitled to revoke the licence granted to the GLA under Condition 23.1 in the following circumstances and upon the following terms:

23.5.1 on the termination of the whole of this Agreement in circumstances where no Allocated Grant has been paid to or utilised by the Grant Recipient; or

23.5.2 on the termination of this Agreement (in whole or in part) in circumstances where some Allocated Grant has been paid to or utilised by the Grant Recipient **provided that** nothing in this Condition 23.5.2 shall entitle the Grant Recipient to revoke such licence insofar as it relates to Named Projects in respect of which Named Project Grant has been paid or in respect of which a valid entitlement to claim Named Project Grant has arisen.

24 **Health and Safety and Equality and Diversity**

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

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

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

24.4 To the extent that the GLA is a 'client' for the purposes of the CDM Regulations:

24.4.1 where the Grant Recipient is engaging consultants and a contractor or contractors as Subcontractors to deliver the Named Project the Grant Recipient elects to be the only client in relation to such Named Project; or

24.4.2 where the Grant Recipient is contracting with a developer as a Subcontractor to deliver a Named Project the Grant Recipient shall procure that such developer shall elect to be the only client in relation to the Named Project on or before the date that such project becomes a Named Project;

and the GLA hereby agrees to such election.

24.5 The Grant Recipient shall not seek to withdraw, terminate or in any manner derogate from such election pursuant to Condition 24.4.1 or (if appropriate) shall procure that any developer/employer shall not withdraw, terminate or in any manner derogate from any election pursuant to Condition 24.4.2 without the GLA's prior written consent, which the GLA may in its absolute discretion withhold.

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

24.7 The Grant Recipient will procure that all its Subcontractors and Professional Team comply at all times with the HS Act, the regulations under the HS Act, RIDDOR and the CDM Regulations.

25 **Construction Industry Scheme**

25.1 In this Condition 25 the following definitions shall apply:

Construction Contract is as defined in section 57(2) of the Finance Act 2004;

CIS means chapter 3 of part 3 of the Finance Act 2004 and the CIS Regulations;

CIS Regulations means the Income Tax (Construction Industry Scheme) Regulations 2005; and

HMRC means HM Revenue & Customs.

25.2 GLA does not consider that payments of Named Project Grant are payments under a Construction Contract.

25.3 In the event that GLA considers (in its absolute sole discretion and whether or not as a result of a communication from HMRC) that payments of Named Project Grant are made under a Construction Contract the Grant Recipient will, within ten (10) Business Days of GLA's request, provide GLA with any information requested by it in order for GLA to be satisfied it is complying with its obligations under the CIS.

25.4 The parties agree that GLA shall be entitled to make any deductions it is required to make under the CIS in respect of any payments of Named Project Grant on the basis that such payments are payments under a Construction Contract.

25.5 Where GLA has made a payment of Named Project Grant under this agreement on the basis that such payment was not a payment under a Construction Contract (a **Previous Payment**) and HMRC communicates a decision in writing to GLA that a Previous Payment (or more than one Previous Payment) was a payment under a Construction Contract:

25.5.1 GLA shall seek a direction from an officer of HMRC under Regulation 9(5) of the CIS Regulations in respect of each Previous Payment (at the cost of the Grant Recipient); and

25.5.2 in the event that HMRC do not issue the direction referred to in Condition 25.5.1, the Grant Recipient shall, within ten (10) Business Days of being given a copy of the written decision, pay GLA an amount equal to the highest relevant percentage (as defined in section 61(2) of the Finance Act 2004) of each Previous Payment; and

25.5.3 the Grant Recipient shall, on demand, pay the GLA (on an after-tax basis) an amount equal to any interest or penalty imposed on GLA under the CIS as a result of, in connection with or by reference to each Previous Payment, together with any costs incurred by GLA in connection with such interest or penalty.

25.6 If compliance with the provisions of this Condition 25 involves either of GLA or the Grant Recipient not complying with any other term of this Agreement then the provisions of this Condition 25 will take precedence.

26 **Assignment and sub-contracting**

26.1 The GLA will be entitled to transfer or assign all or part of this Agreement.

26.2 The Grant Recipient will not be entitled to transfer or assign all or part of this Agreement.

27 **Dispute resolution**

27.1 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 27.

27.1.1 In the event that the Grant Recipient or the GLA 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 27.

27.1.2 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.

27.1.3 Where either no representatives of both parties are available to meet within the period set out in Condition 27.1.2 or the representatives fail to agree a unanimous resolution of the Dispute at such meeting, the Dispute shall be referred to the chief executives (or nominated deputies) of the Grant Recipient and the GLA (the **Senior Executives**).

27.1.4 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.

27.1.5 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 27.2.

27.2 In the circumstances contemplated in Condition 27.1.5, the parties will attempt to settle the Dispute by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed by the parties, the mediator will be nominated by CEDR. The parties agree that:

27.2.1 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;

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

27.2.3 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.

28 **Notices**

28.1 Any notice to be given hereunder shall be in writing and shall be sufficiently served if delivered by hand and receipted for by the recipient, (but not by facsimile or electronic mail) or sent by a recorded delivery service addressed in the case of either party to the other party's registered office as set out at the beginning of this Agreement or to such other addresses as either party may from time to time notify to the other in writing provided that such other address is within England and Wales.

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

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

28.2.2 if delivered by a recorded delivery service, three (3) Business Days after delivery including the date of postage;

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

29 **Further assurance**

29.1 At any time upon the written request of the GLA the Grant Recipient:

29.1.1 shall promptly execute and deliver or procure the execution and delivery of any and all such further instruments and documents as may be necessary for the purpose of obtaining for the GLA the full benefit of this Agreement and of the rights and powers herein granted and the Grant Recipient hereby irrevocably appoints the GLA as its attorney solely for that purpose; and

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

30 **No fetter on statutory functions**

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

31 **No agency**

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

31.2 The 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 GLA 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 GLA.

32 **Exclusion of third party rights**

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

33 **Entire Agreement**

33.1 This Agreement and the 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.

33.2 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 GLA of whatsoever nature on the faith of which the Grant Recipient is entering into this Agreement.

34 **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.

35 **Cumulative rights and enforcement**

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

35.2 The parties acknowledge that money damages alone may not properly compensate the GLA 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 GLA may have in Law, in equity or otherwise the GLA shall be entitled to seek injunctive or other equitable relief compelling specific performance of and other compliance with the terms of such obligations.

36 **Waiver**

36.1 Neither the failure of any party at any one time to enforce any provision of this Agreement nor the payments by the GLA of Named Project Grant under Condition 14.1 in any way affects the relevant party's right thereafter to require complete performance by the other party, nor may the waiver of any breach or any provision be taken or held to be a waiver of any subsequent breach of any provision or be a waiver of the provision itself.

36.2 Where in this Agreement any obligation of a party is to be performed within a specified time that obligation shall be deemed to continue after that time if the party fails to comply with that obligation within the time.

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

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

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

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

37 **VAT**

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

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

37.1.2 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.

37.2 The payment of Named Project Grant or any part thereof hereunder by the GLA to the Grant Recipient shall be regarded as inclusive of any VAT chargeable thereon.

38 **Survival of this Agreement**

38.1 Insofar as any of the rights and powers of the GLA provided for in this Agreement shall or may be exercised or exercisable after the termination or expiry of this Agreement the provisions of this Agreement conferring such rights and powers shall survive and remain in full force and effect notwithstanding such termination or expiry.

38.2 Insofar as any of the obligations of 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.

38.3 Without limitation the provisions of any of Conditions 3, 6, 9 to 13 (inclusive), 16 to 23 (inclusive), 27, 35, 36, 41 and this Condition 38 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.

39 **London Living Wage**

39.1 Without prejudice to any other provision of this Agreement, the Grant Recipient shall (and will ensure that their consultants, contractors and sub-contractors shall):

39.1.1 use all reasonable endeavours to ensure that no employees engaged in the provision of the Works is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage;

39.1.2 use all reasonable endeavours to ensure that no employees engaged in the provision of the Works is paid less than the amount to which they are entitled in their respective contracts of employment; and

39.1.3 provide to the GLA such information concerning the London Living Wage as the GLA or its nominees may reasonably require from time to time.

40 **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.

41 **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 27 the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

Schedule 1

Acknowledgements, Representations and Warranties

Part 1

Agreed Principles

- 1 The provisions of this Agreement represent the conditions upon which the GLA makes the Allocated Grant available to the Grant Recipient.
- 2 The GLA has made the Allocated Grant available on the express understanding that it is applied solely for the purposes of funding the Development Costs in respect of AHP Dwellings which are to be let or sold to individuals as AHP Housing.
- 3 The Public Sector Subsidy in respect of a Named Project may not exceed an amount equal to the Actual Development Costs incurred by the Grant Recipient in respect of the delivery of that Named Project nor may the Public Sector Subsidy in respect of the Approved Bid exceed an amount equal to the aggregated Actual Development Costs in respect of the delivery of the Approved Bid.
- 4 All Named Project 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 Sections 30, 34 and 333ZE of the Greater London Authority Act 1999 and any determinations made under such provisions, and the provisions of Condition 18 represent the events and principles determined by the GLA for the purposes of Sections 31-34 of the HRA 2008.
- 5 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 Recovery Determination.
- 6 The terms of the Affordable Housing Capital Funding Guide are incorporated within this Agreement (*mutatis mutandis*).

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 Named Project.
- 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 Named Project.
- 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 Practical Completion of a Named Project 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 GLA 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 GLA of any material change that has occurred since:
- 2.6.1 the date of submission of the proposed 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 GLA 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**

- 3.1 Other than any Nil Grant Units, none of the AHP Dwellings provided pursuant to this Agreement are being subsidised by RTB Funds.
- 3.2 Save where expressly agreed by the GLA, no Named Project which is a Section 106 Project is being subsidised by Named Project Grant.
- 3.3 Save where expressly agreed by the GLA, all AHP Dwellings have been let or disposed of (as applicable) in accordance with the terms of the Approved Bid.
- 3.4 So far as the Grant Recipient is aware (having made all reasonable enquiries) the Approved Bid (including, inter alia, all projected Start on Site Dates and Practical Completion dates) is capable of being delivered without the need for a change to the Approved Bid.

3.5 Where delivering Estate Regeneration in connection with a Named Project the Grant Recipient will comply with the Good Practice Guide to Estate Regeneration.

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;

5.1.2 any contractor engaged or to be engaged by the Grant Recipient in connection with this Agreement;

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

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

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

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

Schedule 2

Development Costs

Part 1

Development Costs

Heads of expenditure

1 Acquisition

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

2 Works Costs

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

3 On costs

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

- 3.10 An appropriate proportion of the Grant Recipient's development and administration costs.
- 3.11 Irrecoverable VAT on the above.

Note 1

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

Note 2

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

Examples of these are as follows:

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

Note 3

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

Part 2

Costs which are not Development Costs

Capital costs incurred:

- 1.1 Which are not eligible for social housing assistance as defined in Section 32(13) of the HRA 2008;
- 1.2 On land (forming part of the total site acquired) which will not be used exclusively for housing provision purposes directly related to the Named Project;
- 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.

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

EXECUTED as a **DEED** by affixing)
the common seal of the)
GREATER LONDON AUTHORITY)
In the presence of:

Authorised Signatory

EXECUTED as a **DEED** by)
[**GRANT RECIPIENT**] acting by two)
directors or a director and the)
company secretary)

[signature of director]

[signature of director or company secretary]