

# HOUSING, HEALTH AND ENVIRONMENT POLICY ADVISORY COMMITTEE MEETING

Date: Tuesday 16 January 2024  
Time: 6.30 pm  
Venue: Town Hall, High Street, Maidstone

Membership:

Councillors Hastie, Jeffery, Joy (Vice-Chairman), Khadka, Knatchbull  
(Chairman), Mortimer, Riordan, Rose and Springett

*The Chairman will assume that all Members will read the reports before attending the meeting. Officers are asked to assume the same when introducing reports.*

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<b><u>AGENDA</u></b>	<b><u>Page No.</u></b>
1. Apologies for Absence	
2. Notification of Substitute Members	
3. Urgent Items	
4. Notification of Visiting Members	
5. Disclosures by Members and Officers	
6. Disclosures of Lobbying	
7. To consider whether any items should be taken in public due to the possible disclosure of exempt information	
8. Minutes of the Meeting held on 12 December 2023	1 - 3
9. Forward Plan relating to the Committee's Terms of Reference	4 - 11
10. Medium Term Financial Strategy 2024 to 2029 - Capital Programme	12 - 25
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12. 1,000 Homes Update	41 - 153

## INFORMATION FOR THE PUBLIC

In order to make a statement in relation to an item on the agenda, please call **01622 602899** or email [committee@maidstone.gov.uk](mailto:committee@maidstone.gov.uk) by 4 p.m. one clear working day before the meeting (i.e. by 4 p.m. on Friday 12 January). You will need to tell us which agenda item you wish to speak on.

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**Issued on Monday 8 November 2023**

**Continued Over/:**



**Alison Broom, Chief Executive**

If you require this information in an alternative format please contact us, call **01622 602899**.

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## MAIDSTONE BOROUGH COUNCIL

### HOUSING, HEALTH AND ENVIRONMENT POLICY ADVISORY COMMITTEE

#### MINUTES OF THE MEETING HELD ON TUESDAY 12 DECEMBER 2023

##### Attendees:

<b>Committee Members:</b>	<b>Councillors Knatchbull (Chairman), Hastie, Jeffery, Khadka, Rose and Wilby</b>
<b>Cabinet Members:</b>	<b>Councillors Burton (Leader of the Council) Garten (Cabinet Member for Environmental Services) Parfitt-Reid (Cabinet Member for Housing and Health)</b>

91. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors Joy, Mortimer, Riordan and Springett.

92. NOTIFICATION OF SUBSTITUTE MEMBERS

Councillor Wilby was present as a Substitute Member for Councillor Mortimer.

93. URGENT ITEMS

There were no urgent items.

94. NOTIFICATION OF VISITING MEMBERS

There were no Visiting Members.

95. DISCLOSURES BY MEMBERS AND OFFICERS

There were no disclosures by Members or Officers.

96. DISCLOSURES OF LOBBYING

There were no disclosures of lobbying.

97. EXEMPT ITEMS

**RESOLVED:** That all items on the agenda be taken in public as proposed.

98. MINUTES OF THE MEETING HELD ON 14 NOVEMBER 2023

**RESOLVED:** That the Minutes of the meeting held on 14 November 2023 be approved as a correct record and signed.

99. FORWARD PLAN RELATING TO THE COMMITTEE'S TERMS OF REFERENCE

**RESOLVED:** That the Forward Plan relating to the Committee's Terms of Reference be noted.

100. CAP ON SAFE AND LEGAL ROUTES GOVERNMENT CONSULTATION

The Leader of the Council introduced the item and advised that the issue would be decided by him rather than the Cabinet Member for Housing and Health as Kent Leaders would also send a response. The Leader stated that the decision no longer needed to be treated as urgent as the deadline for response to the consultation had been extended until 9 January 2024.

The Leader outlined that the Council did not have the capacity to accept more immigration as there were already between 700 to 900 people on the housing register and nearly 300 in temporary or emergency accommodation. There was also very little to no capacity in schools or for GPs. This could not be easily resolved by investing funds as it took years to build housing or train medical staff.

Questions were raised around housing capacity and the committee debated the need to help Maidstone residents and the needs of asylum seekers and those in desperate situations. Concerns were raised that this consultation was being used to further the agenda of national government and that the Council should not provide figures.

**RESOLVED to RECOMMEND to the LEADER of the COUNCIL:** That a blank response to the consultation be approved so as not to be drawn into the national government's politics on this issue.

Note: Councillor Hastie arrived at 6.43 p.m. during consideration of this item.

101. FEES AND CHARGES 2024/25

The Cabinet Member for Environmental Services introduced the report and advised that charges would broadly increase by 5%, which was less than inflation. There would be some discrepancy with the discretionary services such as the crematorium and bereavement services which would be increased following market rules and be decided by the manager of the business. With these there would be steep increases at some points and none at other times.

The report contained the incorrect figures for fixed penalty notices for waste crime as a decision had recently been taken to increase those. The uplifted figures would be provided to Cabinet when agreeing the fees and charges.

A concern was raised that there had been no opportunities in the consultations for local residents to state that they would want an increase in services.

**RESOLVED:** To

1. Note the contents of the report;
2. Recommend to the Cabinet that the Fees and Charges as detailed in Appendix A to the report with the updated figures for fixed penalty notices

for waste crime be approved; and

3. Note the Fees and Charges Policy as detailed in Appendix B to the report.

102. DURATION OF MEETING

6.30 p.m. to 7.21 p.m.

## MAIDSTONE BOROUGH COUNCIL FORWARD PLAN FOR THE FOUR MONTH PERIOD 1 DECEMBER 2023 TO 31 MARCH 2024

This Forward Plan sets out the details of the key and non-key decisions which the Cabinet or Cabinet Members expect to take during the next four-month period.

A Key Decision is defined as one which:

1. Results in the Council incurring expenditure, or making savings, of more than £250,000; or
2. Is significant in terms of its effects on communities living or working in an area comprising two or more Wards in the Borough

The current Cabinet Members are:

 <p>↵ <b>Councillor David Burton</b> Leader of the Council <a href="mailto:DavidBurton@maidstone.gov.uk">DavidBurton@maidstone.gov.uk</a> 07590 229910</p>	 <p><b>Councillor Paul Cooper</b> Deputy Leader and Cabinet Member for Planning, Infrastructure and Economic Development <a href="mailto:PaulCooper@Maidstone.gov.uk">PaulCooper@Maidstone.gov.uk</a> 01622 244070</p>	 <p><b>Councillor John Perry</b> Cabinet Member for Corporate Services <a href="mailto:JohnPerry@Maidstone.gov.uk">JohnPerry@Maidstone.gov.uk</a> 07770 734741</p>
 <p><b>Councillor Claudine Russell</b> Cabinet Member for Communities, Leisure and Arts <a href="mailto:ClaudineRussell@Maidstone.gov.uk">ClaudineRussell@Maidstone.gov.uk</a></p>	 <p><b>Councillor Patrik Garten</b> Cabinet Member for Environmental Services <a href="mailto:PatrikGarten@Maidstone.gov.uk">PatrikGarten@Maidstone.gov.uk</a> 01622 807907</p>	 <p><b>Councillor Lottie Parfitt-Reid</b> Cabinet Member for Housing and Health <a href="mailto:LottieParfittReid@Maidstone.gov.uk">LottieParfittReid@Maidstone.gov.uk</a> 07919 360000</p>

Anyone wishing to make representations about any of the matters listed below may do so by contacting the relevant officer listed against each decision, within the time period indicated.

Under the Access to Information Procedure Rules set out in the Council's Constitution, a Key Decision or a Part II decision may not be taken, unless it has been published on the forward plan for 28 days or it is classified as urgent:

The law and the Council's Constitution provide for urgent key and part II decisions to be made, even though they have not been included in the Forward Plan.

Copies of the Council's constitution, forward plan, reports and decisions may be inspected at Maidstone House, King Street, Maidstone, ME15 6JQ or accessed from the [Council's website](#).

Members of the public are welcome to attend meetings of the Cabinet which are normally held at the Town Hall, High St, Maidstone, ME14 1SY. The dates and times of the meetings are published on the [Council's Website](#), or you may contact the Democratic Services Team on telephone number **01622 602899** for further details.

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**David Burton**  
**Leader of the Council**

<b>Details of the Decision to be taken</b>	<b>Decision to be taken by</b>	<b>Relevant Cabinet Member</b>	<b>Expected Date of Decision</b>	<b>Key</b>	<b>Exempt</b>	<b>Proposed Consultees / Method of Consultation</b>	<b>Documents to be considered by Decision taker</b>	<b>Representations may be made to the following officer by the date stated</b>
<p>1,000 Homes Update</p> <p>This report provides a review of the progress made towards achieving the delivery of the Council's various housing development programmes</p>	Cabinet	Cabinet Member for Housing and Health	24 Jan 2024	No	No Open	Housing, Health and Environment Policy Advisory Committee 16 Jan 2024	1,000 Homes Update	<p><b>William Cornall</b></p> <p>Director of Regeneration &amp; Place</p> <p>williamcornall@maidstone.gov.uk</p>
<p>Medium Term Financial Strategy 2024 to 2029 - Capital Programme</p> <p>Detail of the 10 year capital programme for inclusion in the budget for 2024/25 onwards.</p>	Cabinet	Cabinet Member for Corporate Services.	24 Jan 2024	Yes	No Open	<p>Corporate Services Policy Advisory Committee 17 Jan 2024</p> <p>Communities, Leisure and Arts Policy Advisory Committee 9 Jan 2024</p> <p>Planning, Infrastructure and Economic Development Policy Advisory Committee 10 Jan 2024</p> <p>Housing, Health and Environment</p>	Medium Term Financial Strategy 2024 to 2029 - Capital Programme	<p><b>Paul Holland, Adrian Lovegrove</b></p> <p>Head of Finance</p> <p>paulholland@maidstone.gov.uk, adrianlovegrove@maidstone.gov.uk</p>

<b>Details of the Decision to be taken</b>	<b>Decision to be taken by</b>	<b>Lead Member</b>	<b>Expected Date of Decision</b>	<b>Key</b>	<b>Exempt</b>	<b>Proposed Consultees / Method(s) of Consultation</b>	<b>Documents to be considered by Decision taker</b>	<b>Representations may be made to the following officer by the date stated</b>
						<p>Policy Advisory Committee 16 Jan 2024</p> <p>Overview and Scrutiny Committee 23 Jan 2024</p>		
<p>Property Acquisition 1000 affordable Homes Programme</p> <p>Report seeking approval to enter into works contracts for the 4 sites acquired as part of the 1000 affordable homes programme.</p>	Cabinet	Cabinet Member for Housing and Health	24 Jan 2024	Yes	No Part exempt	<p>Housing, Health and Environment Policy Advisory Committee 16 Jan 2024</p> <p>Previous reports for site acquisitions have been to HHE committee.</p>	Property Acquisition 1000 affordable Homes Programme	<p><b>Philip Morris</b></p> <p>philipmorris@maidstone.gov.uk</p>
<p>Provision of Wheeled Bins</p> <p>Summary of the policy for charging for replacement and new wheeled bins and review of recent developments to the policy.</p>	Cabinet	Cabinet Member for Environmental Services	24 Jan 2024	No	No Open	Housing, Health and Environment Policy Advisory Committee 16 Jan 2024	Provision of Wheeled Bins	<p><b>Jennifer Stevens</b></p> <p>Head of Environmental Services &amp; Public Realm</p> <p>jenniferstevens@maidstone.gov.uk</p>

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3rd Quarter Finance, Performance and Risk Monitoring Report  ∞	Cabinet	Cabinet Member for Corporate Services.	7 Feb 2024	No	No Open	Corporate Services Policy Advisory Committee 5 Feb 2024  Communities, Leisure and Arts Policy Advisory Committee 6 Feb 2024  Housing, Health and Environment Policy Advisory Committee 30 Jan 2024  Planning, Infrastructure and Economic Development Policy Advisory Committee 29 Jan 2024	3rd Quarter Finance, Performance and Risk Monitoring Report	<b>Paul Holland, Adrian Lovegrove</b>  Head of Finance  paulholland@maidstone.gov.uk, adrianlovegrove@maidstone.gov.uk
Biodiversity and Climate Change Action Plan Update	Cabinet	Cabinet Member for Corporate Services.	7 Feb 2024	No	No Open	Corporate Services Policy Advisory Committee 5 Feb 2024	Biodiversity and Climate Change Action Plan Update	<b>James Wilderspin</b>  Biodiversity and Climate Change Manager

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6						<p>Communities, Leisure and Arts Policy Advisory Committee 6 Feb 2024</p> <p>Housing, Health and Environment Policy Advisory Committee 30 Jan 2024</p> <p>Planning, Infrastructure and Economic Development Policy Advisory Committee 29 Jan 2024</p>		jameswilderspin@maidstone.gov.uk
<p>Housing Revenue Account</p> <p>The report sets out the options for management and financial accounting of the 1,000 new affordable homes.</p>	Cabinet	Cabinet Member for Corporate Services.	7 Feb 2024	Yes	No Open	Housing, Health and Environment Policy Advisory Committee 5 Feb 2024	Housing Revenue Account	<p><b>John Littlemore</b></p> <p>Head of Housing &amp; Regulatory Services</p> <p>johnlittlemore@maidstone.gov.uk</p>

<b>Details of the Decision to be taken</b>	<b>Decision to be taken by</b>	<b>Lead Member</b>	<b>Expected Date of Decision</b>	<b>Key</b>	<b>Exempt</b>	<b>Proposed Consultees / Method(s) of Consultation</b>	<b>Documents to be considered by Decision taker</b>	<b>Representations may be made to the following officer by the date stated</b>
<p>Homelessness and Rough Sleeping Strategy 2024-2029 - Initial priorities and feedback</p> <p>Delivering the new strategic priorities for the Council in relation to homelessness and rough sleeping. A review of the themes and priorities for the Council.</p>	Cabinet	Cabinet Member for Housing and Health	20 Mar 2024	Yes	No Open	Housing, Health and Environment Policy Advisory Committee 12 Mar 2024	Homelessness and Rough Sleeping Strategy 2024-2029 - Initial priorities and feedback	<p><b>Hannah Gaston</b></p> <p>hannahgaston@maidstone.gov.uk</p>
<p> Key Performance Indicators</p> <p>Key performance indicators are reviewed annually. This report proposes the KPIs for the period 2024/25.</p>	Cabinet	Leader of the Council	20 Mar 2024	No	No Open	<p>Planning, Infrastructure and Economic Development Policy Advisory Committee 29 Jan 2024</p> <p>Housing, Health and Environment Policy Advisory Committee 30 Jan 2024</p> <p>Communities, Leisure and Arts Policy Advisory</p>	Key Performance Indicators	<p><b>Carly Benville, Anna Collier</b></p> <p>carlybenville@maidstone.gov.uk, annacollier@maidstone.gov.uk</p>

<b>Details of the Decision to be taken</b>	<b>Decision to be taken by</b>	<b>Lead Member</b>	<b>Expected Date of Decision</b>	<b>Key</b>	<b>Exempt</b>	<b>Proposed Consultees / Method(s) of Consultation</b>	<b>Documents to be considered by Decision taker</b>	<b>Representations may be made to the following officer by the date stated</b>
						Committee 6 Feb 2024  Corporate Services Policy Advisory Committee 5 Feb 2024		

# Agenda Item 10

## Housing, Health and Environment Policy Advisory Committee

16 January 2024

### Medium Term Financial Strategy – Capital Programme

<b>Timetable</b>	
<b>Meeting</b>	<b>Date</b>
Housing, Health and Environment Policy Advisory Committee	16 January 2024
Cabinet	24 January 2024
Council	21 February 2024

<b>Will this be a Key Decision?</b>	Yes
<b>Urgency</b>	Not applicable
<b>Final Decision-Maker</b>	Council
<b>Lead Head of Service/Lead Director</b>	Mark Green, Director of Finance, Resources and Business Improvement
<b>Lead Officer and Report Author</b>	Paul Holland, Senior Finance Manager (Client)
<b>Classification</b>	Public
<b>Wards affected</b>	All

#### **Executive Summary**

This report forms part of the process of agreeing a budget for 2024/25 and setting next year's Council Tax. It develops the outline of the capital programme and reconfirms the principles behind the Council's capital strategy, explains how the capital programme will be funded, and describes the individual schemes within the remit of this Committee.

The approved capital programme is not approval to spend. Prior to any capital commitment being entered into, a detailed report setting out a full project appraisal and detailed financial projections is considered by the relevant service committee.

#### **Purpose of Report**

The report enables the Committee to consider and comment on capital programme schemes within its remit.

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**This report makes the following recommendations to the Housing, Health and Environment Policy Advisory Committee:**

That the Committee recommends to Cabinet that it:

1. Agrees the capital programme 2024/25 onwards as set out in Appendix 2 to this report;
2. Notes that agreement to recommendation 1 above will be subject to the prudential borrowing limit which will be recommended to Council as part of the Treasury Management Strategy 2024/25

# Medium Term Financial Strategy – Capital Programme

## 1. CROSS-CUTTING ISSUES AND IMPLICATIONS

<b>Issue</b>	<b>Implications</b>	<b>Sign-off</b>
<b>Impact on Corporate Priorities</b>	The Medium-Term Financial Strategy and the budget are a re-statement in financial terms of the priorities set out in the strategic plan. Specifically, the capital programme allows for investment in long term projects that support the strategic plan objectives.	Section 151 Officer & Finance Team
<b>Cross Cutting Objectives</b>	The MTFS supports the cross-cutting objectives in the same way that it supports the Council's other strategic priorities.	Section 151 Officer & Finance Team
<b>Risk Management</b>	This has been addressed in section 5 of the report.	Section 151 Officer & Finance Team
<b>Financial</b>	Set out in the report.	Section 151 Officer & Finance Team
<b>Staffing</b>	Staffing implications are taken into account when developing individual capital schemes.	Section 151 Officer & Finance Team
<b>Legal</b>	<p>Under Section 151 of the Local Government Act 1972 (LGA 1972) the Section 151 Officer has statutory duties in relation to the financial administration and stewardship of the authority, including securing effective arrangements for treasury management.</p> <p>The Medium-Term Financial Strategy demonstrates the Council's commitment to fulfilling its duties under the Act.</p> <p>Approval of the budget is a matter reserved for full Council upon recommendation by the Cabinet.</p>	Interim Team Leader (Contentious and Corporate Governance)
<b>Information Governance</b>	The recommendations do not impact personal information (as defined in UK GDPR and Data Protection Act 2018) the Council processes.	Senior Information Governance Officer
<b>Equalities</b>	This report sets out the overall capital programme. When an individual capital	Equalities and

	scheme is developed, changed or reviewed, an evidence-based equalities impact assessment will be undertaken. Should an impact be identified appropriate mitigations will be identified.	Communities Officer
<b>Public Health</b>	The resources to achieve the Council's objectives are allocated through the development of the Medium-Term Financial Strategy which sets the overall priorities for the capital programme.	Senior Public Health Officer
<b>Crime and Disorder</b>	The resources to achieve the Council's objectives are allocated through the development of the Medium-Term Financial Strategy which sets the overall priorities for the capital programme.	Section 151 Officer & Finance Team
<b>Procurement</b>	Procurement of the capital schemes described in section 2 of this report will be in accordance with the procurement provisions within the Council's constitution.	Section 151 Officer & Finance Team
<b>Biodiversity &amp; Climate Change</b>	The capital programme includes provision for funding to deliver schemes which will help meet the Council's biodiversity and climate change objectives.	Biodiversity and Climate Change Manager

## **2. INTRODUCTION AND BACKGROUND**

### **Background**

- 2.1 The capital programme plays a vital part in the Council's Strategic Plan, since long term investment is required to deliver many of the objectives of the plan. The capital programme is now a rolling ten-year programme, so sets out over the medium term how the Council will invest its capital resources.
- 2.2 The current capital programme 2023/24 – 2027/28 was approved by Council at its meeting on 22 February 2023 and totals £201.9 million over five years. Details of schemes within the remit of this Committee are set out in Appendix 1.
- 2.3 As part of the budget setting process the capital programme has been reviewed to ensure it is affordable and sustainable. To aid this we have increased the period of the capital programme to 10 years so we understand the longer term implications of borrowing. As part of setting the capital programme we have carried out challenge sessions to ensure projects meet the Council's defined core principles for the inclusion of schemes within the capital programme.
- 2.4 The 10 year programme totals £433.8m. Individual items within the programme will be subject to specific reports for approval to spend through relevant governance. Overall, it is considered that the expansion of the programme is affordable and sustainable and is required in order to deliver the Council's strategic objectives.

### **Capital Strategy**

- 2.5 Under CIPFA's updated Prudential Code, the Council is required to produce a Capital Strategy, which is intended to give an overview of how capital expenditure, capital financing and treasury management activity contribute to the provision of local public services, along with an overview of how associated risk is managed and the implications for future financial sustainability.
- 2.6 The Capital Strategy is being considered by Audit, Governance & Standards Committee at its meeting on 15<sup>th</sup> January 2024 and will subsequently be agreed by Council at its meeting on 21<sup>st</sup> February 2024. The Strategy describes how the Capital Programme is developed and the key points are set out below.
- 2.7 The Council has defined certain core principles for the inclusion of schemes within the capital programme. Schemes may be included in the capital programme if they fall within one of the four following categories:
  - (i) Required for statutory reasons, e.g., to ensure that Council property meets health and safety requirements;
  - (ii) Self-funding schemes focused on Strategic Plan priority outcomes;

- (iii) Other schemes focused on Strategic Plan priority outcomes; and
- (iv) Other priority schemes which will attract significant external funding.

2.8 All schemes within the capital programme are subject to appropriate option appraisal. Any appraisal must comply with the requirements of the Prudential Code and the following locally set principles:

(a) Where schemes fit within a specific strategy and resources are available within the capital programme for that strategy, such as the Asset Management Plan, the schemes are also subject to appraisal and prioritisation against the objectives of that strategy. These schemes must be individually considered and approved by the relevant Policy Advisory Committee.

b) Where schemes require the use of prudential borrowing, a business case must first be prepared setting out the viability and justification in terms of necessity or contribution to the delivery of strategic goals.

c) Schemes will be evaluated against Environmental, Social and Governance objectives, within the overall Strategic Plan priorities. Schemes where this might be relevant would include those which offer:

- Greater environmental sustainability
- Local community benefits
- Implementation of ethical sourcing practices.

2.9 Where schemes do not fit within the criteria above, but an appropriate option appraisal has been completed, they may still be included within the programme if they fall within one of the four categories set out above.

2.10 If, following all considerations, there are a number of approved schemes that cannot be accommodated within the current programme, a prioritised list of schemes that can be added to the programme as future resources permit will be created and approved by Cabinet, thus allowing officers to focus funding efforts on delivering schemes that are next in priority order.

2.11 The Medium-Term Financial Strategy (MTFS) requires the Council to identify actual funding before commencement of schemes. Accordingly, while schemes may be prioritised for the programme, ultimately commencement of any individual scheme can only occur once all the necessary resources have been identified and secured.

2.12 The MTFS principles require that the Council will maximise the resources available to finance capital expenditure, in line with the requirements of the Prudential Code, through:

- a) The use of external grants and contributions, subject to maintaining a focus on the priority outcomes of its own strategies;

b) Opportunities to obtain receipts from asset sales as identified in the asset management plan and approved for sale by Cabinet;

c) The approval of prudential borrowing when the following criteria also apply to the schemes funded by this method:

- i. financial viability of the schemes can be clearly evidenced;
- ii. the outcome returns economic value commensurate to the cost incurred by borrowing to fund the schemes;
- iii. after covering the cost of funding, a further benefit accrues to the Council that directly or indirectly supports the objectives of the strategic plan or the medium-term financial strategy.

d) The use of residual New Homes Bonus and Funding Guarantee for capital purposes in line with the Council's strategic plan priorities;

e) The implementation of a community infrastructure levy (CIL) and the management of its use, along with other developer contributions (S106), to deliver the objectives of the infrastructure delivery plan.

2.13 Service managers submit proposals to include projects in the Council's capital programme. Bids are collated by Corporate Finance who calculate the financing cost (which can be nil if the project is fully externally financed). Each Policy Advisory Committee appraises the proposals based on a comparison with corporate priorities. The Cabinet then recommends the capital programme which is then presented to Council in February each year.

2.14 Prior to any capital commitment being entered into, a detailed report setting out a full project appraisal and detailed financial projections is considered by the relevant service committee.

### **Funding the Capital Programme**

2.15 All capital expenditure must be financed, either from external sources (grant funding and other contributions), the Council's own resources (revenue contributions, earmarked reserves, internal borrowing and capital receipts) or debt (external borrowing and other forms of corporate finance).

2.16 The Council currently has external borrowing of £5 million, representing Public Works Loan Board borrowing plus we have also committed to borrow £80 million in advance over the period 2024 to 2026 at an affordable rate. With internal resources expected to be fully utilised in future, the Council will look to increase external borrowing to a maximum of £360.3m over the 10-year lifetime of the capital programme. Over this time the Council will seek a mixture of long term and short-term debt to minimise the risk of refinancing. The Director of Finance, Resources & Business Improvement may look to procure forward borrowing terms ahead of requiring funding for the capital programme. This is to lock into preferential rates in case of future rate rises.

- 2.17 The Council has hitherto used the New Homes Bonus to fund capital expenditure. The allocation for 2024/25 onwards has been reduced to £1.9 million, so to ensure that there is sufficient funding to support the viability of the 1,000 New Homes programme it is envisaged that this will be topped up from the Funding Guarantee that was announced as part of the Local Government Financial Settlement in December 2023.
- 2.18 External funding is sought wherever possible. The Council has received funding from the Government via the UK Shared Prosperity Fund, some of which is allocated to capital schemes, and funding will be sought in particular to support the Affordable Housing Programme.
- 2.19 Funding is also available through developer contributions (S 106) and the Community Infrastructure Levy (CIL).

### **Capital Programme Proposals**

- 2.20 Capital Programme proposals have been developed based on the principles set out above and reflect the strategic priorities agreed by Council when it set the current Strategic Plan.
- 2.21 Appendix 2 to this report sets out the recommended programme for this Committee. This includes schemes which were programmed for 2024/25 – 2028/29 within the existing capital programme together with new schemes that it is now proposed to include within the capital programme. Further details are set out below.
- 2.22 The Housing Programme comprises of a mix of Private rented sector, Affordable homes and Temporary accommodation. We have a strategy to deliver this mixed housing economy. As projects develop in the later years of the 10 year programme we will get greater clarity on the split across the mixed housing economy.
- 2.23 Private Rented Sector Housing Programme - £99.8 million

This encompasses a number of schemes that are in the process of being identified and brought forward, where PRS housing will form part of a mix of tenures alongside Affordable Housing. This covers projects such as Maidstone East and Springfield library, but at this stage in the main are not contractually committed. These will be the subject of separate committee reports at the point a decision to proceed or not is required. All these PRS assets will be owned by the Council but leased (on a long-term basis) upon completion to Maidstone Property Holdings Limited to manage.

Note that no PRS housing is shown in years 7-10 of the capital programme. This is not intended to indicate that the Council will move away from promoting a mix of tenures in future, rather that there have been no specific schemes with a PRS component identified in those years.

- 2.24 1,000 Homes Affordable Housing Programme - £155.7 million

In the Autumn of 2021, the Leader of the Council announced his ambition to build 1,000 affordable homes in the shortest period possible. A development strategy setting out how this ambition can best be achieved was agreed by

Policy & Resources Committee on 19th January 2022. It is likely that the whole programme will take ten years to deliver. The programme is likely to provide only Affordable Rented homes that will be let at 80% of market rent, capped at the Local Housing Allowance. The expenditure shown excludes any grant receipts from the likes of Homes England that will be necessary to deliver the programme. Assumptions have been made around the level of funding that could be received and this is dealt with in the funding section of this report. During 2023/24 a number of sites were identified and there are schemes that are now being actively developed.

#### 2.25 Temporary Accommodation - £20.0 million

The Council has a programme to acquire housing on the open market for temporary accommodation, as it is more cost-effective to use our own property for this purpose and enables delivery of a revenue saving. It is proposed to buy further units in 2024/25 to help deal with the rising numbers of people who are being made homeless because of the current economic crisis.

#### 2.26 Commercial and Community Developments £3.8m

The New Business and Housing Development team are in the process of preparing and submitting a planning application for the sites including Maidstone East, St Faiths Community Centre and Heather House Community Centre

#### 2.27 Disabled Facilities Grants - £8.0 million

The Council works with Kent County Council Social Services to deliver adaptations and facilities to enable disabled people to remain at home. This element of the capital programme therefore has a directly beneficial impact for individual local residents. Assistance under this budget is not funded by the Council but is funded from the Department of Health Better Care Fund (BCF) as a specific capital grant.

#### 2.28 Street Scene Investment - £500,000

This capital programme allows for items such as the provision of new bins.

#### 2.29 Flood Action Plan - £350,000

The flood action plan budget was set up to allow the Council to deliver, or contribute towards, schemes that would mitigate flood risk. At this stage, the only schemes that have been identified have been small scale natural flood management schemes. Officers are discussing with counterparts in the Environment Agency, Kent County Council and the Upper Medway Internal Drainage Board what can be done to promote appropriate and practical schemes in the future.

#### 2.30 Continued Improvements to Play Areas - £740,000

This budget allows for play areas to continue to be upgraded to ensure they meet the current specifications and requirements.

### 2.31 Parks Improvements - £1.1 million

This is an annual budget to allow for any works that are identified in the parks to be undertaken to improve the standard of the facilities for the public when they visit the parks.

### 2.32 Parks & Open Spaces Infrastructure Maintenance – £2.0 million

Ongoing investment in the infrastructure of the parks will enable the revenue budgets to remain focused on delivering the more regular maintenance such as shrub bed pruning, grass cutting, weeding etc and on ensuring the parks are safe and functional for residents and visitors. Poor maintenance of the parks infrastructure will also impact on the parks revenue budgets due to insurance claims or having to close sections of pathway.

### 2.33 Grounds Maintenance Machinery Replacement Programme – £855,000

This is a new budget to enable the regular replacement of grounds maintenance equipment when it is no longer adequate for purpose.

### 2.34 Waste Crime Team Additional Resources - £40,000

This budget will allow the team to invest in new technology to assist in the investigation, detection and prosecution of offenders.

### 2.35 Section 106 Funded Works Open Spaces – £4.0 million

This reflects open spaces capital projects that are funded by S.106 contributions. These works have been taking place for a number of years, but it is considered appropriate that the programme reflects this to show the total forecast capital expenditure.

### 2.36 Improvements to the Cemetery - £120,000

Further works are required to complete the tarmacking works in the cemetery and there are further plans for new fencing and possible expansion of the site to create space for new graves.

### 2.37 Purchase of New Waste Collection Vehicles - £6.3 million

Funding is allocated within the Capital Programme for the purchase of the waste collection fleet that forms part of the new contract for Refuse Collection due to commence in March 2024. Replacement of the fleet is envisaged seven years later when the fleet acquired in March 2024 has reached the end of its useful life.

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## **3. AVAILABLE OPTIONS**

- 3.1 Recommend the capital programme proposals as presented for approval by the Cabinet and then for consideration by Council.

- 3.2 Recommend amendments or deletion to some or all of the proposals and make any new alternative projects for consideration by the Cabinet.
- 

#### **4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS**

- 4.1 The preferred option is that the Committee recommends the proposed capital programme (option 3.1) to the Cabinet.
- 

#### **5. RISKS**

##### *Funding*

- 5.1 From now on, the capital programme will primarily be funded through prudential borrowing. For the capital programme as a whole, the funding risk has been mitigated by committing to borrow £80 million in advance over the period 2024 to 2026 at an affordable rate. This has given some assurance about delivery of the capital programme in the short term. The main item of expenditure during this period the Affordable Housing Programme, which will therefore benefit from these relatively low borrowing costs. However, it is difficult to predict likely interest rates over the period of peak expenditure on the new leisure centre. With interest rates at their current elevated levels, it is not worth locking in a future borrowing commitment at this stage. We will use our Treasury Management Strategy to manage the cost of subsequent borrowing but there is a risk that funding costs could remain at current levels, thus putting at risk the viability of the scheme.

##### *Delivery*

- 5.2 The scale of the capital programme, at £303.4 million for this Committee alone, will require considerable capacity for delivery and project management.
- 

#### **6. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK**

- 6.1 Corporate Services PAC received an initial report on the MTFs at its meeting on 12 July 2023. This Committee was then consulted on the revenue budget proposals within its remit at its meeting on 6 September 2023 and on Fees and Charges and the budget consultation at its meeting on 12 December 2023. This consultation identified that the most popular area amongst respondents for new investment was infrastructure, with flood prevention and the street scene cited as examples in the survey to illustrate what 'infrastructure' means. The other PACs are considering the budget proposals relating to capital schemes within their portfolios during January 2024.
-

## **7. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION**

7.1 The timetable for setting the budget for 2024/25 is set out below.

<b><i>Date</i></b>	<b><i>Meeting</i></b>	<b><i>Action</i></b>
24 January 2024	Cabinet	Agree Capital Programme
21 February 2024	Council	Approve Revenue Budget 2024/25 and Capital Programme

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## **8. REPORT APPENDICES**

The following documents are to be published with this report and form part of the report:

- Appendix 1: Existing Capital Programme 2023/24 to 2027/28
  - Appendix 2: Proposed Capital Programme 2024/25 to 2033/34
- 

## **9. BACKGROUND PAPERS**

There are no background papers.

	2023/24	2024/25	2025/26	2026/27	2027/28	Total (5 years)
	£000	£000	£000	£000	£000	£000
Private Rented Sector Housing	3,090	6,765	6,832	9,578	6,861	33,125
1,000 Homes Affordable Housing Programme - Expenditure	6,123	20,080	22,825	25,487	22,442	96,958
1,000 Homes Affordable Housing Programme - Social Housing Grant	-5,790	-3,120	-1,290	-8,250	-6,060	-24,510
Temporary Accommodation	12,000	12,000	8,000			32,000
Commercial Development - Maidstone East	156	623	623	468	100	1,970
Heather House Community Centre	319	701	351	75		1,446
Housing - Disabled Facilities Grants Funding	800	800	800	800	800	4,000
Acquisitions Officer - Social Housing Delivery P/ship	200					200
Street Scene Investment	50	50	50	50	50	250
Flood Action Plan	200	200	150			550
Continued Improvements to Play Areas	50	50	60	60	60	280
Parks Improvements	50	60	70	70	80	330
Section 106 funded works - Open Spaces	400	400	400	400	400	2,000
Expansion of Cemetery (New scheme)	80	120				200
Expansion of Crematorium (New scheme)	340					340
Purchase of New Waste Collection Vehicles (New scheme)	5,800					5,800
<b>Total</b>	<b>23,868</b>	<b>38,730</b>	<b>38,871</b>	<b>28,737</b>	<b>24,733</b>	<b>154,939</b>

**Housing, Health and Environment**  
**Capital Budget Proposals 2024/25 - 2033/34**

	<b>24/25</b>	<b>25/26</b>	<b>26/27</b>	<b>27/28</b>	<b>28/29</b>	<b>5-year total</b>	<b>29/30</b>	<b>30/31</b>	<b>31/32</b>	<b>32/33</b>	<b>33/34</b>	<b>10-year total</b>
	<b>£000</b>	<b>£000</b>	<b>£000</b>	<b>£000</b>	<b>£000</b>	<b>£000</b>	<b>£000</b>	<b>£000</b>	<b>£000</b>	<b>£000</b>	<b>£000</b>	<b>£000</b>
Private Rented Sector Housing (Gross cost)	21,065	31,879	25,574	12,370	7,274	98,161	1,656					99,817
1,000 Homes Affordable Housing Programme (Gross cost)	31,096	42,722	25,921	13,908	14,995	128,643	10,251	4,711	5,487	4,026	2,576	155,693
<b>Net Total - Housing Schemes</b>	<b>52,161</b>	<b>74,601</b>	<b>51,495</b>	<b>26,278</b>	<b>22,269</b>	<b>226,804</b>	<b>11,907</b>	<b>4,711</b>	<b>5,487</b>	<b>4,026</b>	<b>2,576</b>	<b>255,510</b>
Temporary Accommodation	20,000					20,000						20,000
Other Property - Community and Commercial	1,809	1,089	663	143	100	3,804						3,804
Housing - Disabled Facilities Grants Funding	800	800	800	800	800	4,000	800	800	800	800	800	8,000
Street Scene Investment	50	50	50	50	50	250	50	50	50	50	50	500
Flood Action Plan	200	150				350						350
Continued Improvements to Play Areas	50	60	70	80	80	340	80	80	80	80	80	740
Parks Improvements	260	70	80	90	100	600	100	100	100	100	100	1,100
Parks Improvements - Infrastructure Maintenance (New Scheme)	200	200	200	200	200	1,000	200	200	200	200	200	2,000
Grounds Maintenance Machinery Replacement Programme (New Scheme)	100	110	105	123	42	480	75	75	75	75	75	855
Waste Crime Team - Additional Resources	20	10	10			40						40
Section 106 funded works - Open Spaces	400	400	400	400	400	2,000	400	400	400	400	400	4,000
Improvements to Cemetery	120					120						120
Purchase of New Waste Collection Vehicles								6,380				6,380
<b>TOTAL</b>	<b>76,170</b>	<b>77,540</b>	<b>53,873</b>	<b>28,163</b>	<b>24,041</b>	<b>259,787</b>	<b>13,612</b>	<b>12,796</b>	<b>7,192</b>	<b>5,731</b>	<b>4,281</b>	<b>303,398</b>

# Agenda Item 11

## Housing, Health and Environment Policy Advisory Committee

**Tuesday 16  
January 2024**

### Provision of Wheeled Bins

<b>Timetable</b>	
<b>Meeting</b>	<b>Date</b>
Housing, Health and Environment Policy Advisory Committee	Tuesday 16 January 2024
Cabinet	Wednesday 24 January 2024

<b>Will this be a Key Decision?</b>	Yes
<b>Urgency</b>	Not Applicable
<b>Final Decision-Maker</b>	Cabinet
<b>Lead Head of Service</b>	William Cornall, Director of Regeneration and Place
<b>Lead Officer and Report Author</b>	Jennifer Stevens, Head of Environment and Public Realm
<b>Classification</b>	Public
<b>Wards affected</b>	All

#### **Executive Summary**

In April 2023, the Council changed its policy for the replacement of wheeled bins. This report reviews the impact of this and the subsequent amendments to the policy.

This report presents the new policy for the provision of wheeled bins for approval by Cabinet.

#### **Purpose of Report**

Recommendation to Cabinet

#### **This report asks the Committee to consider the following recommendation to the Cabinet:**

1. That the lessons learnt from the policy change are noted.
2. That the new revised policy for the provision of replacement bins is approved.

# Provision of Wheeled Bins

## 1. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
<b>Impact on Corporate Priorities</b>	<p>The four Strategic Plan objectives are:</p> <ul style="list-style-type: none"> <li>• Embracing Growth and Enabling Infrastructure</li> <li>• Safe, Clean and Green</li> <li>• Homes and Communities</li> <li>• A Thriving Place</li> </ul> <p>Effective delivery of the waste and recycling service positively contributes to the Council’s strategic objective for a <i>Safe, Clean and Green</i> Borough. This report outlines the actions that have been taken to ensure that the Bin Replacement Policy continues to support this objective, whilst recognising the significant financial impact this policy has on the Council’s budget position.</p>	Head of Environment and Public Realm
<b>Cross Cutting Objectives</b>	<p>The four cross-cutting objectives are:</p> <ul style="list-style-type: none"> <li>• Heritage is Respected</li> <li>• Health Inequalities are Addressed and Reduced</li> <li>• Deprivation and Social Mobility is Improved</li> <li>• Biodiversity and Environmental Sustainability is respected</li> </ul> <p>Environmental sustainability has been a key consideration of the policy decisions, to reduce unnecessary wastage of resources, whilst promoting recycling</p>	Head of Environment and Public Realm
<b>Risk Management</b>	The risks are set out in Section 5.	Head of Environment and Public Realm
<b>Financial</b>	The change in policy regarding the withdrawal of the charges for replacement	Head of Finance

	broken bins is likely to create a £100k budget pressure. This pressure has been built into the 2024/25 budget. The budget is still subject to approval by Council in February as part of the budget setting process.	
<b>Staffing</b>	<p>Implementation of the Bin Replacement Policy has placed a considerable demand on the Waste Team, impacting their ability to deliver other actions including the proactive promotion of the recycling services to improve performance.</p> <p>Other departments such as Customer Services and the formal Complaints team have also had a considerable increase in workload.</p>	Head of Environment and Public Realm
<b>Legal</b>	By virtue of Section 46 of the Environmental Protection Act 1990 the Council can specify the receptacles which must be used in order to present waste for collection and can decline to collect waste that is not presented as specified.	Team Leader, Contracts and Commissioning, MKLS
<b>Information Governance</b>	The recommendations do not impact personal information (as defined in UK GDPR and Data Protection Act 2018) the Council Processes.	Information Governance Team – either Anna, Georgia or Lauren to review and approve.
<b>Equalities</b>	We recognise the recommendations may have varying impacts on different communities within Maidstone. Therefore, we have completed a separate equalities impact assessment (Appendix 3).	Equalities & Communities Officer
<b>Public Health</b>	We recognise that the recommendations will not negatively impact on population health or that of individuals.	Senior Public Health Officer
<b>Crime and Disorder</b>	There are no implications to Crime and Disorder	Head of Environment and Public Realm
<b>Procurement</b>	There are no implications to Crime and Disorder	Head of Environment

		and Public Realm
<b>Biodiversity and Climate Change</b>	<p>The implications of this report on biodiversity and climate change have been considered and are;</p> <ul style="list-style-type: none"> <li>• There are no implications on biodiversity and climate change.</li> </ul>	Biodiversity and Climate Change Officer

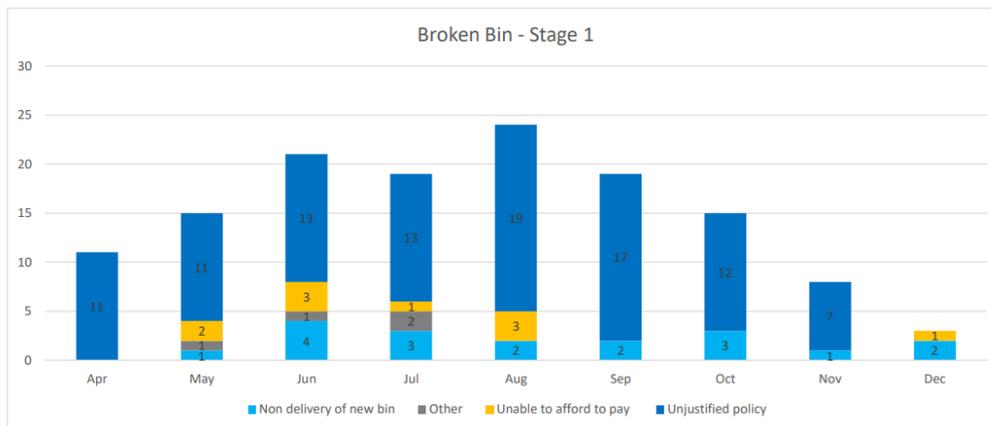
## 2. INTRODUCTION AND BACKGROUND

- 2.1 In 1999, Maidstone Borough Council introduced wheeled bins for the collection of residents' rubbish. Wheeled bins for recycling were then introduced in 2008 and food waste bins in 2011. The current annual replacement rate is approximately 12%, significantly higher than the 3% estimated within the contract. However, given wheeled bins have a life expectancy of 10+ years, the current replacement rate is not unrealistic.
- 2.2 Over the past 4 years, this has cost the Council, on average, £300k per year.
- 2.3 Several years ago, charges were introduced for the provision of bins to new build properties or for new occupiers of properties whereby the previous owner or tenant had removed the bins. For the latter of these, the provision of bins is standardly included in the property's fixture and fitting list, enabling residents to ensure that the bins are left at the property.
- 2.4 In 2022/23, this contributed £58k towards the cost of providing wheeled bins. Therefore, there remained a significant cost of over £220k per year to the Council of providing replacement bins.
- 2.5 Charging for all replacement bins was proposed as a savings option as part of the Medium-Term Financial Strategy. This was approved by the Council in February 2023 and implemented in April 2023.
- 2.6 This policy was in place for 24 weeks and during that time there was a 40% decrease in requests for replacement bins compared with the previous year. For the bins eligible for payment, 78% were paid and the remaining were provided free of charge. During this time, 106 complaints were received about the charges which equates to 7% of the bin replacement requests.
- 2.7 Following review of the data, feedback from customer services and consideration of the complaints received, the policy was updated to remove the charge for the replacement of bins which were reported as unserviceable by the collection crews. This was implemented from 25 September 2023 and is included in Appendix 1.
- 2.8 Over the past 11 weeks, there have been 584 requests for replacement refuse or recycling bins. This suggests a 12% reduction in requests for replacement refuse and recycling bins since the revised policy was

introduced in September 2023. However, the majority (83%) of bins provided were free of charge.

2.9 The payment rate for the replacement of missing bins remains at 76%.

2.10 The graph below shows the complaints data relating to the charging for replacement bins. The number of complaints peaked in August and have shown steady decline since and now in line with levels before the policy was first introduced.



2.11 An overall comparison on bin orders shows a 17% projected decrease in requests compared with 2022/23, which equates to an estimated £50,000 saving.

2.12 Overall, the withdrawal of the charges for replacement broken bins is likely to create a £100k budget pressure in 2024/25. This has been captured in the Medium-Term Financial Strategy.

### **Lessons Learnt**

2.13 The original charging policy was introduced to help tackle budget pressures and generate a saving to support the Council’s Medium-Term Financial Strategy. Research had shown that the policy had been successfully implemented in neighbouring boroughs and in many locations across the UK.

2.14 However, it may be assumed that the age of Maidstone’s bin stock, originally introduced in 1999, is the likely reason for the high replacement rate and therefore the charges had a bigger impact on residents.

2.15 Over the 24 years since Maidstone first introduced wheeled bins, there have been over 8 different bin suppliers which restricts the ability to carry out repairs i.e. the replacement of lids. The use of different manufacturers is largely outside of the Council’s control, with the original supplier no longer in business and fluctuating demand significantly impacting lead-times. However, every effort should be made to limit future suppliers to enable replacement parts to be held in stock.

2.16 The impact of the charges is likely to have been felt more acutely due to the current financial pressures on householders and therefore greater

consideration should have been given when the policy was being developed to how those facing Poverty could be supported. Options for second-hand bins and subsidised rates were introduced in September, however this should have been considered earlier.

- 2.17 The revised policy, requiring the bin to be unserviceable before being replaced has continued to reduce the level of bin requests suggesting a reduction in the unnecessary replacement of bins with superficial damage or that are dirty.

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### **3. AVAILABLE OPTIONS**

- 3.1 The review of the previous policy, impact of the revised policy and lessons learnt are for noting and then the Council could decide to take one of the following actions:
- 3.2 Option 1: Adopt the revised *Provision of Wheeled Bins Policy* (Appendix 2) which details when bins will be provided and where charges apply for both individual and communal properties.
- 3.3 Option 2: Retain the *Bin Charging Policy* issued in September 2023 (Appendix 1).
- 3.4 Option 3: Carry out a further review of the charges for the provision of wheeled bins and reconsider the application of charges for damaged bins.

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### **4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS**

- 4.1 It is recommended that Option 1 is agreed, with the approval of the new *Provision of Wheeled Bins Policy*. With most replacement bins now being provided free of charge, this policy focuses on when and how bins will be provided, responsibilities of managing agents and what the charges for new bins will be.
- 4.2 Under this policy, charges will only apply to new build properties, new occupiers and when bins are stolen or lost. Bins that reach the end of their usable life – including where the lid is missing – will be replaced free of charge. Bins that go into the back of the collection vehicle will also be replaced by the Contractor, at their cost.
- 4.3 This policy also specifies the arrangements for bins at communal properties and the managing agents' responsibility to oversee the waste and recycling arrangements, tackle contamination or inappropriate usage of the bins and replace or repair damages bins – unless caused by the negligence of the crew.
- 4.4 Option 2 is not recommended as it has been identified that there are areas of ambiguity in the policy, specifically around missing lids and communal bins.

- 4.5 Option 3 is not recommended as the original charges for broken bins generated a significant number of complaints, became difficult to administer and put substantial pressure on several teams within the Council. Whilst the charges had a positive impact on the Council's budget and an overall reduction in the provision of bins, the negative impact outweighed this.
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## **5. RISK**

- 5.1 There are two significant risks to the Council relating to the provision of wheeled bins;
- 5.2 Reputational Risk – the waste and recycling service is provided to all households in the borough and therefore has one of the greatest impacts on the Council's reputation.
- 5.3 Over the course of the 24 weeks that the original charging policy was in place, there was significant criticism received both internally and externally about charging for broken bins. There was some press and social media coverage, however most negative comments were received via official complaints or correspondence with local councillors.
- 5.4 The revised policy addressed these concerns, and the level of complaints has decreased substantially as shown in the report.
- 5.5 Financial Risk – in 2022/23, the Council spent over £200k on the replacement of wheeled bins, £100k of this was not budgeted. The initial policy was designed to address this risk and generate a saving to the Council.
- 5.6 The revised policy poses a significant financial risk to the Council as the costs for replacement bins have risen steadily over the past few years with the increasing cost of plastics and contract costs. The requirement for the collection crew to report the bins as broken will reduce the number of unnecessary replacements and should mitigate some cost. However, £100k pressure has been identified in the Medium-Term Financial Strategy.
- 

## **6. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK**

- 6.1 There has been significant discussion regarding the charging for replacement wheeled bins at Housing, Health and Environment Policy Advisory Committee and Council. The changes to the policy in September 2023 were supported, however a full review of the data was requested and for lessons learnt to be presented to the Housing, Health and Environment PAC.
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## **7. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION**

7.1 No further communication is proposed if Option 1 is agreed as this is in line with the current practice. However, the new document will be circulated to internal teams to ensure that it is used consistently to respond to residents' enquiries.

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## **8. REPORT APPENDICES**

[The following documents are to be published with this report and form part of the report:

- Appendix 1: Wheeled Bin Charging Policy – September 2023
  - Appendix 2: Provision of Wheeled Bins Policy – January 2024
  - Equality Impact Assessment
- 

## **9. BACKGROUND PAPERS**

None

# Maidstone Borough Council

## Wheeled Bin Charging Policy

September 2023

For most homes, wheeled bins have been provided by the Council for the collection of recycling and rubbish. Residents are responsible for looking after these bins and replacing them if they become lost or are stolen. The charge is a contribution towards the overall cost of the bin, administration and delivery. There is no profit element. Where a bin reaches the end of its usable life, the Council will provide a replacement. The Council does not provide replacement bins where the bin remains usable, such as superficial damage or the bin is dirty.

### New properties

For new build properties, the developer should provide a grey rubbish bin, green recycling bin and food waste bin at their cost. These should be purchased from the Council, however if they purchase their own, all three bins must be provided when residents move in and prior to collections commencing.

### Missing bins

Residents are required to pay for replacement rubbish or recycling bins if they go missing or are stolen. Residents are advised to put their house number on their bin to ensure their bin is returned to their property and to return their bins to their property as soon as possible after collection. Bins left out on the pavement may be removed by the Council.

On occasion, wheeled bins can fall into the back of the collection vehicle during emptying. The collection crew will report this, and a replacement bin will be ordered automatically and delivered free of charge.

### Additional bins

Additional recycling bins can be purchased. However additional rubbish bins are not available and only one rubbish bin will be emptied per property.

### Broken bins

Broken bins that are no longer serviceable will be reported by the collection crew and a replacement bin will be ordered free of charge.

Replacement food bins are provided free of charge to promote food recycling. Replacement garden waste bins are also provided at no extra charge as the cost is recovered through the annual subscription charge.

### Charges

	<b>Charge</b>
Bin goes missing or is stolen (excluding going into collection vehicle)	£25 per bin
New property or new occupier	£25 per bin
Replacement bin requested when bin is still usable	£25 per bin
Additional recycling bin	£25 per bin
Bin reaches end of its usable life e.g. front lip damage	No charge
Bin goes into the back of (or is crushed by) the collection vehicle	No charge

### Discounts

Discounts are offered to residents in receipt of Council Tax Support. Discounted bins are charged at £15 each. In cases of extreme financial difficulty, second-hand bins will be offered when available.

For most homes, wheeled bins have been provided by the Council for the collection of recycling and rubbish. The Council will determine if a property is suitable for wheeled bins based on space for storage and collection. The common reasons that a property is unsuitable for wheeled bins are:

- No frontage i.e. front door is directly onto highway / pavement
- Frontage is too small to store bins and property does not have rear access
- Too many steps or their condition making movement of bin dangerous to resident or collection crew
- Gravel or uneven surface making movement of bin dangerous to resident or collection crew

Residents are responsible for looking after these bins and replacing them if they become lost, stolen or are not at their property when they move in. The charge is a contribution towards the overall cost of the bin, administration, and delivery. There is no profit element.

Where a bin reaches the end of its usable life, the Council will provide a replacement. The Council does not provide replacement bins where the bin remains usable but has superficial damage or is dirty.

#### New properties

For new build properties, the developer must provide a grey rubbish bin, green recycling bin and food waste bin at their cost. These should be purchased from the Council, however if they purchase their own, all three bins must be provided when residents move in and prior to collections commencing.

For flats, communal bins will often be considered and must be agreed with the Waste Team. These must be purchased by the developer or managing agent before residents move into the property. Information on the bin specification, quantity and cost is provided during the planning application process.

#### Missing bins

Residents are required to pay for replacement rubbish or recycling bins if they go missing or are stolen. Residents are advised to put their house number on their bin to ensure their bin is returned after collection and to return their bins to their property as soon as possible. Bins left out on the pavement may be removed by the Council if they are causing an obstruction.

On occasion, wheeled bins can fall into the back of the collection vehicle during emptying. The collection crew will report this, and a replacement bin will be ordered automatically and delivered free of charge.

#### Additional bins

Additional recycling bins can be purchased. However additional rubbish bins are not available and only one rubbish bin will be emptied per property.

#### Broken bins

Broken bins that are no longer serviceable, meaning they cannot be emptied safely, or the lid is missing, will be reported by the collection crew and a sticker will be placed on the bin. The resident is requested to contact the Council to confirm the delivery address and then a replacement bin will be ordered free of charge.

Replacement food bins are provided free of charge to promote food recycling. Replacement garden waste bins are also provided at no extra charge as the cost is recovered through the annual subscription charge.

### Charges for 2-wheeled bins

	<b>Charge</b>
Bin goes missing or is stolen (excluding going into collection vehicle)	£25 per bin
New property or new occupier	£25 per bin
Replacement bin requested when bin is still usable	£25 per bin
Additional recycling bin	£25 per bin
Bin reaches end of its usable life e.g. front lip damage	No charge
Bin lid is missing	No charge
Bin goes into the back of (or is crushed by) the collection vehicle	No charge

### Discounts

Discounts are offered to residents in receipt of Council Tax Support. Discounted bins are charged at £15 each. In cases of extreme financial difficulty, second-hand bins will be offered when available.

### Communal metal 4-wheeled bins

Large communal bins must be purchased by the developer or managing agent and will include a delivery charge. These bins can be damaged by large or heavy waste items placed in them. It is the managing agent's responsibility to replace or pay for repair of any damaged communal bins within their developments. The management of waste and recycling in communal bins and storage areas is the responsibility of the managing agent, or in their absence, the landlord. This includes dealing with any contamination of recycling bins and misuse of refuse bins, as well as the dumping of bulky waste in bin stores. Any failures will be dealt with through enforcement action, including the issuing of Community Protection Warnings (CPW) and Notices (CPN).

# Maidstone Borough Council Equality Impact Assessment

## Part 1: Background and information

<b>Title of Proposal</b> (strategy, policy, plan, project, contract, service change)
Provision of Wheeled Bins Policy (January 2024)
<b>Brief description of proposal</b> (objective & purpose)
The development of a policy to cover the provision of wheeled bins for new properties and when they become damaged or go missing, including when replacement bins will be provided free of charge.
<b>Is this Proposal new/a review of an existing provision/a change/deletion of existing provision</b>
This is a review of the Bin Charging Policy originally introduced in April 2023 to create a more comprehensive Provision of Wheeled Bin Policy following 9 months data and feedback from Councillors and residents.
<b>Who will be affected by this proposal?</b> (Residents, Staff, Visitors, Businesses?)
Residents
<b>Weblink to full details</b> (if applicable)
<b>Lead Director/HoS/Manager</b>
Head of Environment and Public Realm
<b>EqIA lead officer</b>
<b>EqIA contributors</b> (other services involved in proposal)
Customer Services
<b>Date of EqIA</b>
December 2023

**The Equality Act (2010) places a general duty on all public sector organisations to have 'due regard' to its three main aims.**

How does the proposal meet the general duty of the act's aims as listed below? (Please see the guidance document for further detail on what is meant by 'due regard' and types of discrimination).

<b>General duty</b>	<b>Please Explain</b>
Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010	Ensuring that a consistent policy is applied to all residents across the borough and ensuring that no one is disadvantaged due to their protected characteristics.
Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.	Removing the charges for broken bins, ensures that all residents have equal opportunity to access the waste and recycling services.
Foster good relations between persons who share a relevant protected characteristic and persons who do not share it	Ensure that all residents have the equal opportunity to receive replacement bins, removing any views of disparity of service between different groups.

## Part 2: Impact Assessment and Supporting evidence

Identify the positive and / or negative impact of the proposal change on any of the protected characteristics. Please consider the impact as an employer (staff), a service provider and a community leader (residents, businesses etc).

<b>Protected characteristic</b>	<b>Positive impact</b>	<b>Negative impact</b>	<b>No impact</b>
Age			X
Disability			X
Race (including ethnicity and nationality)			X
Religion or Belief			X
Sex			X
Sexual Orientation			X
Gender Reassignment			X
Pregnancy and Maternity			X
Marriage or Civil Partnership			X

Please also consider the impact of the proposal in relation to:

<b>Local characteristic</b>	<b>Positive impact</b>	<b>Negative impact</b>	<b>No impact</b>
<b>Poverty</b> (in relation to groups with protected characteristics and those	X Free replacement bins now provided when damaged		

without)			
<b>Armed Forces Community</b> (Serving/ Veterans)			X

### Summary of Impact and Supporting Evidence

Please list below any data/evidence you have used to draw your conclusions. This could include national or local data sets, results from consultation and engagement activities or meetings etc. (see guidance document for internal support offer).

Supporting data/evidence	Source
Complaints data from April 2023 – September 2023 identified issues with affordability and residents struggling with hardship being able to purchase replacement bins, which impacted their ability to access the services	MBC Complaints Data
Bin replacement data – review of data of replacement bins ordered over past 12 months, including whether they were purchased or provided FOC	DASH forms

Having considered the impact of the proposal on the general duties of the Equality Act and the impact on groups with protected characteristics, please provide a summary of the overall impact your proposal (with reference to supporting evidence):

It was identified that the original policy to charge for all replacement broken and missing bins detrimentally impacted those facing Poverty, meaning that they may not be able to access the waste and recycling services. Removing the charges for broken bins removes this barrier to the services for those facing Poverty and ensures equality of services.

The revised policy is focused on ensuring all residents have access to a "useable" or "serviceable" bin, meaning they can use the waste and recycling services.

The complaints data will continue to be reviewed and there are options within the policy to enable residents experiencing hardship / poverty, they are able to get further support to ensure they can have the full provision of wheeled bins.

### Do you have any gaps in data or evidence to assess or understand impact?

**No** (please delete as appropriate and if 'yes' provide details below))

Gaps in data/evidence	Planned action to address evidence gaps
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**Do you have any plans to reduce the impact on the groups identified?**

<b>Proposed Action/Plan</b>	<b>Purpose</b>	<b>Impact Groups</b>	<b>Timescale</b>
Monitor the orders for new subsidised bins	Identify whether the subsidy is sufficient to enable those experiencing poverty to access the service	Poverty	6 months
Review Complaints data relating to unaffordability of bins	Identify whether the subsidy is sufficient to enable those experiencing poverty to access the service	Poverty	6 months
Generate stock of serviceable second-hand bins	To offer those experiencing poverty the option of a free second-hand bin	Poverty	3 months

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***To be completed by Equalities Officer***  
*(with Lead Officer)*

### **Part 3: Recommendations and Sign Off**

Recommendations should be based on evidence available at the time and aim to mitigate negative impacts or enhance positive impacts on any or all of the protected characteristics.

Recommendation	Lead Officer	Timescale

**HOUSING, HEALTH &  
ENVIRONMENT POLICY  
ADVISORY COMMITTEE**

**16 January  
2024**

**1,000 Homes Update**

<b>Timetable</b>	
<b>Meeting</b>	<b>Date</b>
Housing, Health and Environment Policy Advisory Committee	16 January 2024
Cabinet	24 January 2024

<b>Will this be a Key Decision?</b>	No
<b>Urgency</b>	Not Applicable
<b>Final Decision-Maker</b>	Cabinet
<b>Lead Head of Service</b>	Chief Executive
<b>Lead Officer and Report Author</b>	William Cornall, Director of Regeneration & Place
<b>Classification</b>	Public
<b>Wards affected</b>	All

**Executive Summary**

This report provides a review of the progress made towards achieving the delivery of the Council's various housing development programmes and seeks approval to potentially enter into a grant funding agreement with Homes England.

**Purpose of Report**

For decision

**This report makes the following recommendations to the Committee:**

1. To note the contents of this report.
2. To approve that the Director of Finance and Business Improvement, in consultation with the Leader of the Council, be authorised to enter into “Local Authority Grant Agreement for the Affordable Homes Programme 2021 to 2026”, with Homes England as detailed in **Appendix 1**, on the most advantageous grant rates achievable for the Council through the grant bidding process.

## 1,000 Homes Update

### CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
<b>Impact on Corporate Priorities</b>	<p>The four Strategic Plan objectives are:</p> <ul style="list-style-type: none"> <li>• Embracing Growth and Enabling Infrastructure</li> <li>• Safe, Clean and Green</li> <li>• Homes and Communities</li> <li>• A Thriving Place</li> </ul> <p>Accepting the recommendations will materially improve the Council’s ability to achieve all four priorities.</p>	Director of Regeneration and Place
<b>Cross Cutting Objectives</b>	<p>The four cross-cutting objectives are:</p> <ul style="list-style-type: none"> <li>• Heritage is Respected</li> <li>• Health Inequalities are Addressed and Reduced</li> <li>• Deprivation and Social Mobility is Improved</li> <li>• Biodiversity and Environmental Sustainability is respected</li> </ul> <p>The report recommendation supports the achievement of the cross-cutting objectives.</p>	Director of Regeneration and Place
<b>Risk Management</b>	The risks to programme delivery are explored within the main body of the report.	Director of Regeneration and Place

<b>Financial</b>	The Capital programme for 2024/25 to 2033/34 is being finalised as part of the current budget process. It will include the latest assumptions on the housing programme reflecting the latest costs and funding assumptions. This will be reported to PACs and Cabinet in January and then February Council as part of signing off the full budget proposals for Revenue and Capital.	Head of Finance
<b>Staffing</b>	We will deliver the recommendations with our current staffing.	Director of Regeneration and Place
<b>Legal</b>	<p>Under s1 of the Localism Act 2011 the Council has a general power of competence which enables it to do anything that individuals generally may do.</p> <p>Under section 111 of the Local Government Act 1972 the Council has power to do anything (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions.</p> <p>The Council has the power to acquire properties by agreement under the Local Government Act 1972, section 120.</p>	Team Leader (Contentious and Corporate Governance)
<b>Information Governance</b>	The recommendations do not impact personal information (as defined in UK GDPR and Data Protection Act 2018) the Council processes.	Information Governance Team
<b>Equalities</b>	The recommendations do not propose a change in service therefore will not require an equalities impact assessment.	Equalities & Communities Officer
<b>Public Health</b>	Important to note that with the increase in housing stock it could put additional strain on existing public health services such as the NHS (GP's, Dentist, A&E attendances, mental health). if no new resources are earmarked.	Sarah Ward, Public Health Officer

<b>Crime and Disorder</b>	N/A	Director of Regeneration and Place
<b>Procurement</b>	N/A.	Director of Regeneration and Place
<b>Biodiversity and Climate Change</b>	The implications of this report on biodiversity and climate change have been considered. '1,000 Affordable Homes Scheme will have a significant impact on MBC's net zero 2030 commitment, causing the council's overall carbon emissions to increase through construction and operation when the homes are lived in. Aligning the scheme with the MBC Biodiversity and Climate Change Action Plan to ensure climate adaptation, low carbon heating, renewable energy generation, sustainable transport, and biodiversity enhancement will greatly reduce this impact.'	Biodiversity and Climate Change Officer

## 1. INTRODUCTION AND BACKGROUND

1.1 The Policy & Resources Committee approved the 1,000 Affordable Homes programme in January 2022. This report is the second annual progress report to review the work undertaken to date to deliver upon this key ambition.

1.2 The Council's current capital programme proposes considerable investment in housing over the coming years, as follows: -

- 1,000 Affordable Rented Homes £178.2m (net of grant) over 10-yrs.
- 186 Private Rented Sector (PRS) Homes £46.5m over 10-yrs.

1.3 Therefore, the Council is aiming to develop and or acquire around 1,186 homes over the next ten years. The main driver is of course the 1,000 Affordable Rented (AR) homes, which was the ambition set out by the Leader of the Council in early 2022. However, the Council was developing PRS homes before this ambition was launched, and the continuation of our investment in this tenure remains important, as it will enable us to achieve cross-subsidy, social cohesion, and risk management at both a project and programme level.

1.4 At the time of writing, the Council's housing portfolio comprises:

- |   |            |              |
|---|------------|--------------|
| • Affordable Rented Homes               | 29         | units        |
| • Temporary Accommodation (MBC owned)   | 108        | units        |
| • Regulated / General Needs (MBC owned) | 11         | units        |
| • Gypsy & Traveller Plots               | 32         | units        |
| • Private Rented Sector (PRS) (MPH Ltd) | 107        | units        |
| • <b>Total</b>                          | <b>277</b> | <b>units</b> |

- 1.5 Furthermore, by 31<sup>st</sup> March 2024, the 20 flats at Granada House, which are currently PRS, will transfer to become AR Homes, via funding from the Local Authority Housing Fund. Therefore, by the end of the current financial year, the Council's Affordable Rented portfolio will rise (from 29) to 49 units.
- 1.6 The Council continues to invest in Temporary Accommodation (TA), and it is envisaged that by the end of the next financial year (24/25), this portfolio will rise to around 160 units.
- 1.7 This report will assess the progress made to date, and the direction of travel against the following topic areas: -
- Staffing
  - Project pipeline
  - Scheme viability pressures
  - Conclusions

### **Staffing - New Business & Housing Development Team**

- 1.8 Ove the past two years the New Business & Housing Development team has been created to fulfil the Council's housebuilding ambitions, and is led by Philip Morris, the Head of Service. The team comprises six full time staff and is supplemented with external consultancy support from time to time.
- 1.9 The team is performing well and since its formation, it has secured several new scheme approvals and site acquisitions as set out below. This team also deals with the acquisition and repair of street properties for TA and will soon be starting work on the Private Sector Leasing (PSL) scheme for TA too, but this report will not focus on the TA aspects of their work, but rather the development and acquisition of homes for AR and PRS.

### **Project Pipeline**

- 1.10 The programme secured to date is as follows: -

	Affordable	Housing					
	AR	First Homes	PRS	Total	Status	Completion Year	Notes
Trinity Place	23			23	Complete	21/22	Stock tranfer from Hyde Housing
Appledown Grange	4			4	Complete	23/24	Zero SHG - Funded via S106 / Planning Gaine
Lyle Court	2			2	Complete	23/24	Funded by Local Authority Housing Fund
Granada House	20			20	On site	23/24	Funded by Local Authority Housing Fund
Royal British Legion and Heather House	7	4		11	On site	25/26	Cabinet tenure switch approval required
Bathstore	19			19	Acquired	25/26	Contractor procurment near complete
Corben's Yard	24			24	Acquired	25/26	Contractor procurment near complete
Britannia House	28			28	Acquired	25/26	Contractor procurment near complete
Land at Granville Road	12			12	Acquired	25/26	Contractor procurment near complete
Maidstone East	115		102	217	Acquired	26/27 onwards	Planning application submitted
Springfield Library	55		52	107	Acquired	26/27 onwards	Planning application submitted Dec 23
Approved PRS scheme			25	25	Approved	24/25	Approved but due diligence ongoing
Approved AR & PRS scheme	6		7	13	Approved	24/25	Approved but due diligence ongoing
Heathlands AR S106	100			100	Pipeline	28/29 onwards	Pipeline project
	<b>415</b>	<b>4</b>	<b>186</b>	<b>605</b>			

- 1.11 The table above demonstrates that excellent progress has been made towards delivering the overall target of 1,186 homes in the capital programme, inasmuch more than half (603) is credibly in place, with 465 of these homes contractually secured.

- 1.12 The tenure splits for Maidstone East and Springfield Library are indicative at this stage, whilst the Royal British Legion was approved on the basis of 7 PRS units but the intention is to convert these to AR – this scheme also contains 4 First Homes, which are a new form of Affordable Housing where the homes need to be sold at a discount to market value to first time buyers, and held as such in perpetuity. First Homes are a recent addition to the national planning framework, and so it is likely that more future schemes will contain an element of First Homes (in lieu of AR).

### **Scheme viability pressures and opportunities**

- 1.13 The Council has an ambitious housebuilding programme, but as is the case for most housing developers, the present operating is extremely challenging for the following reasons: -
- 1.14 Prior to the pandemic, **construction prices** in the Maidstone area were stable, typically at around £2,250 per m<sup>2</sup> of built accommodation (for medium density urban schemes). However, since 2020, construction prices have been gripped by very rapid inflation, driven by a combination of the following; BREXIT and post pandemic supply chain issues, rising build standards in the form of complying with Local Design Guidance (Supplementary Planning Guidance etc), National Space Standards, Nation Design Standards and the phased introduction of the Future Homes Standard (delivered through enhanced Building Regulations). Consequently, the comparable expected m<sup>2</sup> build rate is now c £3,500 as we move towards 2024. IE the cost of construction has risen by around 55% in 5 years.
- 1.15 This situation causes a fundamental viability issue for new developments in Maidstone, as sales values of completed schemes are only presently a little higher than this at c £4,000 per m<sup>2</sup> (£375 per ft<sup>2</sup>). This metric is worse for apartments because their communal parts typically add around 20% to the m<sup>2</sup>, but this element is not saleable.
- 1.16 The Council is just in the process of reviewing the construction tenders received for four schemes (Bathstore, Corben's Yard, Britannia House, & land at Granville Road), where the tender returns are above the construction sums approved on aggregate position. Potentially, this can be offset through higher levels of Social Housing Grant, and any re-approvals to reflect this situation will be sought in due course.
- 1.17 Therefore, this situation means that on a "residual" basis, there is not much left in the development appraisal to allow for the purchase of land and the associated "on-costs" of development (fees, development finance, CIL / S106 etc), let alone a suitable allowance for developer's risk. IE whilst schemes can still generate a reasonable Internal Rate of Return (IRR) and Net Present Value (NPV) with the benefit of internal and or external subsidy, the day one, cost / value ratio remains problematic, and realistically the Council continues to "take a view" that gradually increasing house prices over time will resolve this metric.
- 1.18 There are various **house price** forecasters, but Savills are among the most credible. Their latest position is as follows: -

	2024	2025	2026	2027	2028	5 years to 2028
UK	-3.0%	3.5%	5.0%	6.5%	5.0%	17.9%
North East	-1.5%	4.5%	5.5%	7.0%	4.5%	21.4%
Wales	-2.0%	4.5%	5.5%	7.0%	5.0%	21.4%
North West	-2.5%	4.5%	5.5%	7.0%	4.5%	20.2%
Scotland	-2.0%	4.0%	5.5%	6.5%	5.0%	20.2%
Yorkshire and The Humber	-2.5%	4.5%	5.5%	7.0%	4.5%	20.2%
West Midlands	-2.0%	4.0%	5.5%	6.5%	5.0%	20.2%
East Midlands	-2.5%	4.0%	5.5%	6.5%	5.0%	19.6%
South West	-3.0%	3.5%	5.0%	6.5%	5.0%	17.9%
South East	-3.5%	3.0%	4.5%	6.5%	5.5%	16.7%
East of England	-3.5%	3.0%	4.5%	6.5%	5.5%	16.7%
London	-4.0%	2.0%	4.0%	6.0%	5.5%	13.9%

- 1.19 Therefore, Savills suggest a small dip for 2024, and steady growth thereafter through the five years to 2028, but this cannot be guaranteed. It does however provide some comfort and confidence when considering schemes for approval with an adverse cost / value ratio.
- 1.20 Furthermore **PRS rents** are rising strongly, and so this will help the viability of PRS schemes as they move towards delivery, and this phenomenon has meant that the government has recently announced in the Autumn Statement that the **Local Housing Allowance (LHA)** will be modestly adjusted upwards, and so this will help the viability for all Affordable Rented schemes as they move towards delivery too, as their rents are at the lower of 80% of the market rent or the LHA.
- 1.21 Turning to **contractor financial stability**, it would not be an understatement to say that 2023 has been the most tumultuous year for contractors serving the residential sector since the fallout of the 2008 crash. There has been an unprecedented number of established firms entering administration, caused by them incurring losses on fixed price contracts, where they have been caught out by inflationary pressures within their supply chains. It is also worth noting that there have also been some high-profile failures amongst Modern Methods of Construction (MMC) contractors too, to include Ilke Homes, and the fact that Legal & General decided to close their MMC factory this year too.
- 1.22 To clients, such as the Council, this means that we need to be ever more diligent in terms of checking the financial standing of contractors pre award, ensuring Performance Bonds or enhanced retentions are in place, as well as monitoring performance on site closely in terms of both quality and time.

- 1.23 These adverse conditions are even more challenging for SME contractors, and so the Council will need to be extra cautious when considering entering projects with smaller firms, making sure deals are structured skilfully to mitigate the risks. These tactics will be described in specific project approval reports as they come forward.
- 1.24 If a contractor goes into administration mid project, there is the risk of a cost increase through switching contractor, although in theory this can be mitigated by the insistence upon a Performance Bond. Perhaps the larger impact of such failures, especially if it happens on larger schemes, or several schemes concurrently, is **the risk the Council's overall cash flow**, inasmuch there will be sunk costs, but there would inevitably be delays, until the scheme actually becomes income producing. This is arguably more often the more damaging impact on clients.
- 1.25 In terms of **interest rates**, the Council has secured its first tranche of borrowing on very competitive terms, but since then, the cost of borrowing has risen sharply, and most market commentators feel that rates will remain (relatively) high for longer. This is a big risk to the overall programme, inasmuch it may mean that the Council will need to phase the letting of the construction contracts on its larger projects until there is more certainty about what the terms will be on the Council's next tranche of borrowing.
- 1.26 The **volume housebuilders** operating in Maidstone are also facing headwinds with reduced buyer demand compounded by the recent cessation of the government's Help to Buy scheme. Therefore, there will most likely be a fairly steep fall in the number of completions delivered by volume housebuilders in Maidstone over the next 6-12 months. However, this sector tends to focus their delivery on houses rather than apartments, and they are now much more adept at managing their supply of new homes completed to firm buyer orders, than was the case following the 2008 crash. Accordingly, it is not envisaged that that there will be bulk deals available at discounts to the Council as a strategy for further developing our programme, but this will be kept under constant review.
- 1.27 In terms of **Registered Provider (RP) activity**, across Kent there has been evidence of diminished RP activity to acquire S106 stock from housebuilders across some parts of Kent, but to date, this has not been a feature of the RP/S106 market in Maidstone, which remains robust, so there is no need for the Council to step into this space at the present time. However, housebuilders operating in Maidstone are on notice that should the RP appetite wane here, the Council would certainly consider of S106 stock. To recap, the presumption is against the Council operating in this space as it secures the nomination rights to those homes, regardless of whether it owns them or not. More generally, RPs are known to be reducing their development ambitions owing to the following headwinds in their business plans; rising interest rates and costs, as well as the need to address their existing stock in terms of both building safety and its eco credentials.

- 1.28 Therefore, for all housing developers, the overall viability position has worsened in the past twelve months for most residential projects. Anecdotally, the land market for larger housebuilder type sites, which would feature in the Local Plan/s is subdued. However, this does not seem to have meant that these strategic sites are coming to the market at subdued pricing, moreover, the land market for such sites is characterised by very low volumes of transactions. However, in terms of urban / brownfield / regeneration sites, there are definitely opportunities to buy sites more cheaply than would have been the case 1-2 years ago, and this is where the Council should and continues to focus its acquisition activity. IE the programme table earlier in this report largely comprises such sites.
- 1.29 When the Council launched its 1,000 homes programme, it made the assumption that it would be able to successfully apply to **Homes England (HE) for Social Housing Grant (SHG)** to enable AR rents to be viably charged. Homes England are currently inviting bids for affordable housing schemes that can deliver completions by March 2026. The Council currently has five such schemes that meet this requirement; RBL, Bathstore, Corben's Yard, Britannia House and Land at Granville Road, totalling some 90 homes for AR. The team have worked with the Director of Finance & Business Improvement to set our sought grant rate per home at a level that fully takes into account the challenges presented by the operating environment discussed in this report. With the approval of the S151 Officer, the bid was submitted to Homes England in December 2023 for those five schemes only, and the outcome is expected in January 2024. Assuming that the bid is successful, the Council will need to enter into a "Local Authority Grant Agreement for the Affordable Homes Programme 2021 to 2026" with Homes England, most likely before the end of the financial year. The sample form of contract is provided at **Appendix 1**.
- 1.30 In terms of the proposed contract with Homes England, its purpose is to set out the procedures as to how SHG claims should be made and processed, and what are the qualifying expenses against which SHG can be claimed. Homes England is under strict targets for the delivery of Affordable Housing from government, so this pressure is passed on to the recipients of SHG through the contract, in terms of the need to forecast scheme milestones for SHG claims accurately, and then draw down the SHG in a timely manner. Where this is not possible, there are obligations on the claimant to keep Homes England advised of changes to schemes, and ultimately grant can be withheld or re-claimed by Homes England if there are serious contractual or performance breaches, and the recipient is assessed against the agreed targets, and in due course, this performance becomes a consideration as to how successful the claimant is likely to be in future SHG bids. IE Homes England wants to work with the developers of affordable housing that can deliver their programmes to time, cost and quality.
- 1.31 The claimant holds the risk for scheme cost overspends and is responsible for delivering schemes in a manner that is reflective of them being publicly funded, so high standards around the procurement processes utilised, contract administration, health & safety as well as general value for money considerations are enforced. By utilising SHG for the development of affordable homes, the contract then binds claimants to the government's rent setting policy for affordable housing and the general due diligence processes and expectations for new schemes built,

through the Homes England Capital Funding Guide.

- 1.32 By way of a summary, the funding and provision of affordable housing is tightly regulated and given the amount of SHG potentially available, once taken it fetters those residential assets in perpetuity, and even if they are disposed of, there remain strict rules as to how the SHG obtained needs to be either recycled into the re-provision of new affordable homes or returned to Homes England. Finally, to reiterate the key consideration, is that when an affordable home is funded through SHG, its valuation will be reduced on the Council's Balance Sheet relative to its previous unfettered market value. Generally, there are two alternative valuation methodologies that the Council will be expected to utilise by its Auditor, being "Existing Use Value - Social Housing" or "Market Value - Subject to Tenancy", with the former being more advantageous than the latter. In theory, the SHG received should largely fill the valuation gap (relative to market value), but if not, the Housing Investment Fund (internal subsidy) referred to elsewhere in the report, will fill the remainder. The terms of the contract available with Homes England are non-negotiable, other than the level of SHG obtained per home which is set via a continues market engagement bidding process.
- 1.33 **Social Housing Grant (SHG)** provided by Homes England is intended to plug the income gap (as a capitalised lump sum) to the landlord (Council) between charging a market rent and charging an AR, it has that sole purpose.
- 1.34 The Council also collects monies from developers that can be utilised to help fund our programme. IE **commuted S106 sums for off-site affordable housing** (IE where the developer is not willing to deliver the affordable housing on site). This pot stands at £2.25m with a further £950k due. It is likely that the Council will use these sums as a match fund to Homes England when it applies for SHG.
- 1.35 However, there are **other funding streams** available that are intended to address underlying site viability issues such as demolition, contamination, and exceptional infrastructure cost etc. IE these issues could deem an important or strategic site unviable / undeliverable for any tenure (private or affordable), and it can be possible to secure both types of funding on a given site. An example of this, is where the Council has already been successful in securing Brownfield Land Release Fund (BLRF) monies of £2.1m for Maidstone East and £0.1m for the RBL & Heather House site, from the Department of Levelling Up Housing & Communities. The Council also intends to apply for BLRF monies for Springfield Library in 2024. Similarly, the Council is also engaging with Homes England in respect of their Brownfield, Infrastructure & Land (BIL) Fund, which has a similar purpose to BLRF, but is not restricted just to Councils. This BIL Fund could well be an alternative for Springfield Library.
- 1.36 **The Council has secured £80m of borrowing** to commence this programme, and it is envisaged that the next five schemes to start on site (RBL & Heather House, Bathstore, Corben's Yard, Britannia House and Land at Granville Road), that will total 94 homes, will have a net cost (after any sale and grant receipts) of around £25m. There are other components of the capital programme, such as the acquisition of TA stock, that will call upon this borrowing too. Accordingly, the Council does not have sufficient borrowing in place to also commit to the

construction of both Maidstone East and Springfield Library, it may just be possible to fund only Springfield Library out of the borrowing facilities currently in place.

- 1.37 The Director of Finance and Business Improvement is evaluating the lending market closely, but presumably will only want to make a move once the terms available become more conducive to long terms residential investment. This topic will be advanced through the regular reporting of the capital programme through 2024 and beyond.
- 1.38 **In conclusion**, the availability of long-term funding on competitive terms is a headwind to the programme. This situation together with the other various risks and opportunities described in this report means that the Council should "flex" its delivery strategy a little to achieve its overall ambitions as follows: -
- 1.39 **Land Banking**. The Council should continue to purchase (ideally) large urban sites that are available on reasonable terms at the present time owing to the financial climate and sector specific challenges in the housing development market. Whilst such sites may not have a straightforward path to viability, they can be purchased with site specific holding strategies in mind and brought forward to development once the climate is right coupled with the requisite grant funding package. This approach would tie into broader Council strategies to include the Local Plan Review and the emerging Town Centre Strategy, both of which signal considerable amounts of residential led mixed-use development in and around the town centre, which is unlikely to be taken forward by the private sector in at least the medium term. Obvious locations for land banking activity are on the west side of the river, between Maidstone West Station and the Maidstone East footbridge.
- 1.40 **Partnership working**. On larger sites that are particularly cash intensive, such as Maidstone East, the Council should look to attract joint venture partners that would be willing to participate in the scheme through the provision of non-affordable rented housing tenures, so market sale, shared ownership and potentially further PRS stock too. This approach could de-risk projects from the Council's perspective, reduce the cash requirement to deliver them, and improve the long-term social cohesion of the schemes through the provision of increased tenure diversity. Furthermore, partnership working on such sites would enable the delivery to be brought forward faster, and the regeneration impacts of them enjoyed sooner, than if the Council elected to work alone on them.
- 1.41 **Housing Investment Fund (HIF)**. In the previous reports on the 1,000 Homes, the concept of the Council providing internal subsidy for the provision of each affordable home built has been established. IE the costs of provision, coupled with modest SHG and rental levels make this a necessity. The Council's Medium Term Financial Strategy (MTFS) sets the HIF at £50k per affordable homes built. There are not grounds to adjust this subsidy level at the present time because whilst build costs have increased, this is to some extent offset by lower land prices, a slightly higher rents through the increased LHA, and the (potential for) slightly higher than originally envisaged SHG from Homes England. The biggest variable is possibly the SHG situation, which will become a known once our forthcoming bid is determined in 2024.

- 1.42 Therefore, for business planning purposes, the current level of HIF should remain unchanged at the present time. It will however be reviewed again in the MTFS production for next year, which will be informed by longer-term (50-year) business planning work for the proposed Housing revenue Account (or alternative) that is being undertaken by Finance colleagues together with specialist expert consultancy advice from Altair. Their initial findings and conclusions will be reported in due course through Finance and Corporate Services PAC in the new year and will further scrutinise the financial deliverability and sustainability of the Council's ambitious house building programmes.
- 1.43 The Council can hold up to 200 affordable homes in its General Fund, but after this it would need to re-open its ring-fenced **Housing Revenue Account** (HRA) (that was closed after the Golding Homes stock transfer). There are some alternatives to the HRA route, and these are all being explored and a report on this topic specifically will come through the Finance and Corporate Services PAC in the new year, which will make a firm proposal as to which approach to adopt.

---

## **2. AVAILABLE OPTIONS**

- 2.1 **Option 1.** To approve that the Director of Finance and Business Improvement, in consultation with the Leader of the Council, be authorised to enter into "Local Authority Grant Agreement for the Affordable Homes Programme 2021 to 2026", with Homes England as detailed in **Appendix 1**, on the most advantageous grant rates achievable for the Council through the grant bidding process.
- 2.2 **Option 2.** To not pursue a "Local Authority Grant Agreement for the Affordable Homes Programme 2021 to 2026" with Homes England.
- 

## **3. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS**

- 3.1 **Option 1** is preferred, because without grant funding from Homes England, the Council's proposed investment in affordable housing would not be financially sustainable.
- 

## **4. RISK**

- 4.1 The various risks are explored within the main body of the report.
- 

## **5. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK**

- 5.1 N/A.
- 

## **6. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION**

- 6.1 New schemes for approval will continue to be brought through the Communities Housing & Environment Policy and Advisory Committee and the Executive.
- 

## **7. REPORT APPENDICES**

- 7.1 **Appendix 1** – Sample "Local Authority Grant Agreement for the Affordable Homes Programme 2021 to 2026" with Homes England.
- 

## **8. BACKGROUND PAPERS**

- 8.1 Affordable Housing Delivery by the Council – [Report to Policy & Resources Committee on 19<sup>th</sup> January 2022.](#)
- 8.2 1,000 Homes Update – [report to the Communities, Housing & Environment Policy Advisory Committee on 14<sup>th</sup> March 2023.](#)

dated 20

**Homes and Communities Agency (trading as Homes England)**  
and  
**[Grant Recipient]**

**Grant Agreement (Local Authority)**

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

Homes England  
[Housing.Contracts@homesengland.gov.uk](mailto:Housing.Contracts@homesengland.gov.uk)

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DRAFT

# Grant Agreement

## Date

## Parties

- (1) **Homes and Communities Agency** (trading as Homes England), a body corporate under Section 1 of the Housing and Regeneration Act 2008 of One Friargate, Coventry, CV1 2GN (including any statutory successor) (**Homes England**); and
- (2) [ ] whose registered office is at [ ] (the **Grant Recipient**).

## Introduction

- (A) Homes England is empowered under Section 19 of the Housing and Regeneration Act 2008 inter alia, to make grants available to facilitate the development and provision of housing.
- (B) The Grant Recipient has submitted a bid to Homes England for grant funding to assist the Grant Recipient in the delivery of affordable housing.
- (C) Homes England has agreed in response to the Grant Recipient's bid to advance grant funding to the Grant Recipient pursuant to Homes England's Affordable Homes Programme 2021-2026 (**AHP 2021/26**) in an initial amount of [£ ] to facilitate the delivery of certain affordable housing schemes subject to and in accordance with the terms of this Agreement. Further grant funding may be made available to the Grant Recipient pursuant to the AHP 2021/26 to facilitate the delivery of further affordable housing schemes subject to and in accordance with the terms of this Agreement.
- (D) All grant funding paid by Homes England to the Grant Recipient pursuant to this Agreement is social housing assistance as defined in Section 32(13) of the Housing and Regeneration Act 2008.
- (E) The grant funding provided under this Agreement is (at its date) made in compliance with the United Kingdom Competition Requirement.
- (F) The purpose of the grant provided under this Agreement is to fund affordable housing which will be owned and operated by a local authority and the parties have entered into this Agreement on the basis that no Subsidy therefore arises.
- (G) In using the grant funding provided under this Agreement the Grant Recipient must comply with the applicable requirements of the Capital Funding Guide, the Recovery Determination and the information submitted and approved on IMS.

## 1 Definitions and interpretations

### 1.1 Definitions

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

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

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

**Acquisition Date** means the date identified in IMS on which Grant Recipient is forecast to possess (and does possess) a Completed Interest;

**Acquisition Stage** means (where applicable) the Grant Recipient possesses a Completed Interest;

**Acquisition Tranche Grant** means subject to Clause 5.4 (*Firm Schemes*) (and any variation required or agreed pursuant to the terms of this Agreement) an amount equivalent to such per centum of the Firm Scheme Grant as is approved by Homes England on IMS as payable on achievement of the Acquisition Stage with respect to the relevant Firm Scheme;

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

**Additional Scheme** means a scheme for the Delivery of AHP Housing proposed by the Grant Recipient in addition to the Original Schemes;

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

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

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

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

**Agreement** means this grant agreement (including its Schedules);

**Agreement Funding** means any funding given to the Grant Recipient by Homes England under the provisions of this Agreement;

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

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

**AHP Dwelling** means:

- (a) a house, flat, maisonette or other form of dwelling which was developed with the benefit of grant payable under this Agreement and in relation to

each relevant Firm Scheme as more particularly described in the relevant Firm Scheme Details; and

- (b) a Nil Grant Unit;

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

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

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

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

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

**Applicable Tranche** means:

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

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

**Approved Housing** means in respect of any:

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

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

**Approved Standard** means:

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

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

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

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

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

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

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

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

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

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

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

**Change in Control** means the Grant Recipient is or will be subject to a process of local government re-organisation approved by the Secretary of State which results in another local authority obtaining the legal capacity, power and authority to become a party to and to perform the obligations of the Grant Recipient under this Agreement;

**CIPFA** means the Chartered Institute of Public Finance and Accountancy;

**Competent Authority** means (as the case may be):

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

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

**Completed Interest** means a Secure Legal Interest which:

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

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

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

and **Complete** shall be construed accordingly;

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

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

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

**Confidential Information** means in respect of Homes England all information relating to Homes England's business and affairs, its employees, suppliers including IMS systems, data and software programs and otherwise relating to the existence or terms of this Agreement in respect of which 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 Homes England or any of its advisers or from any third party if the information was obtained by that third party directly or indirectly from Homes England or any of its

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 Homes England in writing prior to the date hereof as confidential information for the purposes of this Agreement;

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

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

**Continuing Firm Scheme** means a Firm Scheme in respect of which:

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

**Contractual Interest** means a Secure Legal Interest which meets the description set out in limb (d) of the definitions of SLI (SO Accommodation) or SLI (Rented Accommodation);

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

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

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

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

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

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

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

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

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

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

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

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

**EIR Exception** means any applicable exemption to EIR;

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

**Empty Homes Scheme (L&R)** means an Empty Homes Scheme where the Grant Recipient holds or will hold a Secure Legal Interest (Empty Homes L&R);

**Empty Homes Scheme (P&R)** means an Empty Homes Scheme where the Grant Recipient holds or will hold a Secure Legal Interest (Empty Homes P&R);

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

**Excused Scheme** means:

- (a) an Empty Homes Scheme (L&R); or

- (b) a Firm Scheme comprised of dwellings in respect of which the Capital Funding Guide authorises the Grant Recipient to hold a variant legal interest to that contemplated in this Agreement and such variant legal interest has been approved by Homes England on IMS;

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

**Expert** means:

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

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

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

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

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

- (a) in accordance with Clause 5.1 (*Firm Schemes*); or

- (b) in accordance with Clause 9.4 (*Firm Scheme substitution and additions*) or Clause 9.11 (*Firm Scheme substitution and additions*);

**Firm Scheme Completion** means:

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

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

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

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

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

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

**First Claim Date** means the first date set out in the relevant Firm Scheme Details on which the Grant Recipient is entitled to submit a claim for the relevant First Tranche pursuant to Clause 14 (*Grant Claim Procedures*);

**First Tranche** means the first (or in the case of a Single Claim Scheme, only) Tranche which may be claimed once the Grant Recipient has achieved the Relevant Claim Stage;

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

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

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

**FOIA Exemption** means any applicable exemption to FOIA;

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

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

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

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

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

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

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

**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; and
- (b) any subsidiary, associate or joint venture in which a local authority has a material interest sufficient to require group financial statements to be prepared which account for these interests, in accordance with CIPFA's Code of Practice on Local Authority Accounting in the United Kingdom 2020/21 (as amended or updated) which is the Statement of Recommended Practice on local authority accounting or any code or other document which replaced it as the Statement of Recommended Practice;

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

**GW1 Event** means the occurrence any of the following:

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

**GW2 Event** means any of the following:

- (a) the Grant Recipient's Investment Partner status is lost, removed or relinquished;
- (b) the Regulator directs or recommends that Capital Grant is not to be paid to the Grant Recipient; or
- (c) the Grant Recipient fails to deliver all the AHP Housing which it was committed to deliver under the Approved Capital Bid by 31 March 2026 (or such other date agreed by Homes England (in its absolute discretion) in IMS); or
- (d) a Section 114 Report has been made in relation to the Grant Recipient which in Homes England's opinion has or will have a Material Adverse Effect;

**GW3 Event** means any of the following:

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

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

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

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

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

**Home Ownership Agency Arrangement** means any scheme or arrangement promoted by Homes England from time to time in order to facilitate the process surrounding applications for Shared Ownership Dwellings including any existing arrangements with Help to Buy Agents;

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

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

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

**HRA 2008** means the Housing and Regeneration Act 2008;

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

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

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

**Indicative First Claim Date** means the last day of the Quarter set out in the relevant Indicative Scheme Details by which the Grant Recipient is forecast to submit a claim for the First Tranche for any resulting Firm Scheme;

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

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

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

**Information** has the meaning in relation to:

- (a) the FOIA, given under Section 84 of the FOIA and which is held by Homes England or 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 Homes England or Grant Recipient (as appropriate) at the time of receipt of an RFI;

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

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

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

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

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

**Legal Opinion** means a legal opinion in the form set out in Schedule 10 (*Legal Opinion*) given by the Grant Recipient's solicitor and dated on or prior to the date of this Agreement;

**Legislation** means:

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

in each case in the United Kingdom; and

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

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

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

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

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

**Milestone Extension Event** means any of the following:

- (a) exceptionally adverse weather conditions;
- (b) delay in receipt of any necessary permission or approval of any statutory body or other person which the 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 construction Works necessary to the Delivery of the Firm Scheme by restricting the availability or use of labour which is essential to the proper carrying out of such Works or preventing the 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 (where applicable); or
- (l) any material failure by the Building Contractor under the terms of the Building Contract (where applicable) which has the direct result of delaying the 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 Homes England 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 Firm Scheme by the Firm Scheme Completion Date;

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

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

**Minimum Unexpired Term** means the relevant lease has an unexpired term of, having regard to the acknowledgment set out in paragraph 11 of the Agreed Principles, at least one hundred and twenty five (125) years;

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

**MMC Stage** means each such stage in the delivery of a MMC Scheme which the parties agree must be achieved pursuant to Clause 14.4 (*Grant Claim Procedures*) before the Grant Recipient may submit a claim for Firm Scheme Grant;

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

**NHBC** means the National House-Building Council;

**Nil Grant Unit** means a house, flat, maisonette or other form of dwelling comprised within a Firm Scheme in respect of which unit the Grant Recipient did not seek grant funding under this Agreement;

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

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

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

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

**Open Book Basis** means the full and transparent disclosure and declaration of all information which the 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;

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

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

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

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

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

**Original Scheme** means:

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

**Permitted Disposal** means any of the following:

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

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

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

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

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

- (a) an agreement (and any approvals given pursuant to such agreement) in respect of and affecting any AHP Dwelling (or prospective AHP Dwelling) made pursuant to Section 106 of the Town and Country Planning Act 1990 and/or Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and/or Section 38 and/or Section 278 of the Highways Act 1980 and/or Section 104 of the Water Industry Act 1991 and/or the Housing Acts (and any other enabling powers) or an agreement with any competent authority or body relating to other similar services including any nominations agreements or similar; and/or
- (b) a Planning Condition;

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

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

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

**Practical Completion Tranche Grant** means subject to Clause 5.4 (*Firm Schemes*) (and any variation required or agreed pursuant to the terms of this Agreement) an amount equivalent to such per centum of the Firm Scheme Grant as is approved by Homes England on IMS as payable on achievement of Practical Completion with respect to the relevant Firm Scheme;

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

**Pre-First Claim Change** means a change to a Firm Scheme proposed by the Grant Recipient pursuant to Clause 7.1 (*Changes to Firm Schemes*) in the period prior to the payment of the First Tranche in relation to that Firm Scheme;

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

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

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

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

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

**Prohibited Act** means:

- (a) offering, giving or agreeing to give to any servant of Homes England any gift or consideration of any kind as an inducement or reward:
  - i for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement; or
  - ii for showing or not showing favour or disfavour to any person in relation to this Agreement;
- (b) entering into this Agreement or any other agreement with Homes England relative to this Agreement in connection with which commission has been paid or has been agreed to be paid by 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 Homes England;
- (c) committing any offence:
  - i under Legislation creating offences in respect of fraudulent acts;
  - ii at common law in respect of fraudulent acts in relation to this Agreement; or
  - iii under the Bribery Act 2010 or the Criminal Finances Act 2017; or
- (d) defrauding or attempting to defraud or conspiring to defraud Homes England or the Regulator;

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

**Public Sector Funding** means all funding in relation to a Firm Scheme in money or money's worth (including the Firm Scheme Grant) received or receivable by the Grant Recipient from public sector bodies including for this purpose funding from government bodies (whether national or local), the European Union or bodies in receipt of lottery funds from the National Lottery Distribution Fund pursuant to the National Lotteries Acts 1993 and 1998 and any further funding by Homes England not provided under this Agreement;

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

**Quarter** means the period between each Quarter Date;

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

**RCGF** means the Recycled Capital Grant Fund maintained by the Grant Recipient in accordance with the Recovery Determination;

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

**RCGF Proceeds** means those proceeds of the RCGF utilised by the Grant Recipient in meeting in whole or in part the Development Costs;

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

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

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

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

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

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

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

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

**Relevant Body** means:

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

**Relevant Claim Stage** means the Acquisition Stage, Start on Site, Firm Scheme Completion and/or (in the case of any MMC Scheme) any applicable MMC Stage identified on IMS which must be achieved prior to the Grant Recipient making a claim for the Applicable Tranche in relation to the relevant Firm Scheme;

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

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

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

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

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

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

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

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

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

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

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

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

**Right to Shared Ownership** means the right for a tenant to purchase an eligible dwelling on Shared Ownership Lease terms as more particularly described in the RTSO Guidance and the Capital Funding Guide;

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

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

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

- (a) the Grant Recipient is unable to make the representations and give the warranties set out in this Agreement (in any case in whole or in part) or is in breach of any representation or warranty set out in such Schedule and there is or is likely to be a resulting Material Adverse Effect in relation to that Firm Scheme;
- (b) the withdrawal or revocation of any Consent required to enable the Grant Recipient to Deliver that Firm Scheme;
- (c) a breach of the Grant Recipient's obligations under any of Clause 10 (*Delivery Obligations*) or Clause 11 (*Operational Obligations*) other than Clause 11.8 (*Operational Obligations*) in relation to that Firm Scheme;
- (d) the exercise by Homes England of its rights under Clause 16.1.2 (*Adjustments to Final Tranche*) or a failure by the Grant Recipient to agree any adjustment proposed by Homes England to the Firm Scheme Grant pursuant to Clause 16.2 (*Adjustments to Final Tranche*);
- (e) the Grant Recipient is in material breach of the Agreement or has otherwise failed to comply with any term of this Agreement and such breach or failure has or will have a Material Adverse Effect in relation to the Firm Scheme;
- (f) a failure or inability by the Grant Recipient to comply with the requirements of Clauses 14.1 (*Grant Claim Procedures*) to 14.4 (*Grant Claim Procedures*) (as applicable);
- (g) Start on Site is not achieved by the Start on Site Date and following discussions with the Grant Recipient Homes England (acting reasonably) considers that the Firm Scheme is unlikely to reach Firm Scheme

Completion by 31 March 2026 (or such other date agreed by Homes England (in its absolute discretion) in IMS);

- (h) the Grant Recipient fails to achieve Firm Scheme Completion by 31 March 2026 (or such other date agreed by Homes England (in its absolute discretion) in IMS); or
- (i) a failure by the parties to agree a revised Firm Scheme Grant figure pursuant to Clause 18.3.3 (*Repayment of Grant*);

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

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

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

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

**Secure Legal Interest** means a:

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

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

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

**Secure Legal Interest (Empty Homes L&R)** means the Grant Recipient has in respect of the Site a:

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

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

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

**Shared Ownership Lease** means a shared ownership lease that:

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

**Shared Personal Data** means Personal Data shared between Homes England and the Grant Recipient for Processing pursuant to this Agreement which is currently anticipated to be limited to Personal Data relating to Homes England employees such as email addresses and contact names and/or data requested pursuant to Clause 12.19.2 (*Review, Monitoring and Reporting*);

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

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

**SLI (SO Accommodation)** means the Grant Recipient has in respect of the Site;

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

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

- (d) a binding contract with the owner of the legal and beneficial interest in the Site to acquire one of the interests in limbs (a), (b) or (c) and that acquiring that interest is conditional only upon matters that are within the direct and unilateral control of the Grant Recipient;

**SLI (Rented Accommodation)** means the Grant Recipient has in respect of the Site;

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

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

- (d) a binding contract with the owner of the legal and beneficial interest in the Site to acquire one of the interests in limbs (a), (b) or (c) and that acquiring that interest is conditional only upon matters that are within the direct and unilateral control of the Grant Recipient;

**SLI (Excused)** means the Grant Recipient has in respect of:

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

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

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

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

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

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

**Specified Default** means the occurrence of any of the following:

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

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

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

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

**Start on Site Tranche Grant** means subject to Clause 5.4 (*Firm Schemes*) (and any variation required or agreed pursuant to the terms of this Agreement) an amount equivalent to such per centum of the Firm Scheme Grant as is approved by Homes England on IMS as payable on achievement of Start on Site with respect to the relevant Firm Scheme;

**Start on Site Works** means:

- (a) in respect of any:
  - i Empty Homes Scheme; or
  - ii Firm Scheme which comprises Rehabilitation,the commencement of the physical Works to the Site; and
- (b) in respect of any Firm Scheme which is not identified in the above limbs (a)i or (a)ii:

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

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

**Subcontractor** means any subcontractor appointed by the Grant Recipient to undertake all or part of the Works;

**Submitted Standards** means:

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

**Subsidy** means any direct or indirect financial assistance which:

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

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

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

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

**SW2 Event** means the occurrence of any of the following:

- (a) the Grant Recipient is unable to give the confirmations or certifications required by IMS or to make the representations and give the warranties referred to in Clause 14.3 (*Grant Claim Procedures*) (in any case in whole or in part); or
- (b) a material breach by the Grant Recipient of any obligation under this Agreement in relation to a Firm Scheme (other than one comprised within an SW1 Event or SW3 Event in relation to that Firm Scheme) and which:
  - i the Grant Recipient has not taken steps to remedy it to Homes England's satisfaction (acting reasonably); or
  - ii which is incapable of remedy;
- (c) any Consent necessary to Deliver the Firm Scheme is revoked or withdrawn;

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

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

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

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

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

**Transparency Code** means the Code of Recommended Practice entitled "Local Government Transparency Code 2015" on data transparency for local authorities published by the Department for Communities and Local Government in February 2015 (or any other like or successor code or guidance published by any successor department);

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

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

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

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

**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 Homes England 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 Homes England 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;

**Withdrawn Scheme** means a Firm Scheme withdrawn by the Grant Recipient pursuant to Clause 7.3.1 (*Changes to Firm Schemes*);

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

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

## 1.2 Interpretation

- 1.2.1 Words denoting any gender include all other genders.
- 1.2.2 The singular includes the plural and vice versa.
- 1.2.3 Any reference in this Agreement to any Clause, sub-Clause, paragraph, schedule or section heading is, except where it is expressly stated to the contrary, a reference to such Clause, sub-Clause, paragraph, schedule or section heading of this Agreement.
- 1.2.4 Any reference to this Agreement or to any other document or publication shall include (except where expressly stated otherwise) any variation, amendment or supplement to or restatement of such document or publication to the extent that such variation, amendment, supplement or restatement is not prohibited under the terms of this Agreement.
- 1.2.5 Any reference to any enactment, order, regulation, determination or similar instrument shall (except where expressly stated otherwise) be construed as a reference to the enactment, order, regulation, determination or instrument as amended, replaced, consolidated or re-enacted.
- 1.2.6 A reference to a person includes firms, partnerships and corporate bodies and their successors and permitted assignees or transferees.
- 1.2.7 Headings are for convenience of reference only.
- 1.2.8 A party means a party to this Agreement.
- 1.2.9 The words includes or including are to be construed without limitation.
- 1.2.10 Where any discretion is granted by this Agreement to any party, that party shall be entitled to exercise that discretion freely and without fetter (implied or otherwise)
- 1.2.11 A paragraph in a Schedule shall be construed as reference to a paragraph in that particular Schedule.
- 1.2.12 A deliberate act or omission of any person shall exclude acts or omissions which were within the contemplation of the parties or which were otherwise provided for in this Agreement.
- 1.2.13 In any case where the consent or approval of Homes England (or any officer of Homes England) is required or a notice is to be given by Homes England, such consent or approval or notice shall only be validly given if it is in writing and signed by (if relevant) the officer stipulated in this Agreement or such other person as may be specified by Homes England by notice in writing to the Grant Recipient.
- 1.2.14 An obligation to do anything includes an obligation to procure its being done.
- 1.2.15 Any restriction includes an obligation not to permit infringement of the restriction.
- 1.2.16 The terms "Site" and "Firm Scheme" include each and every part of it.

- 1.2.17 When there are two or more persons affected by the obligations under this Agreement such obligations are to bind each such person jointly and severally.
- 1.2.18 Save where a contrary intention is shown, any reference to Homes England acting reasonably shall be interpreted as requiring Homes England to act in a commercially reasonable manner and any reference to the exercise of a discretion by Homes England shall be construed as permitting Homes England to exercise its discretion freely and without constraint of any kind.
- 1.2.19 If there is any ambiguity or conflict between the implied terms and the express terms of this Agreement then the express terms shall prevail.
- 1.2.20 The Grant Recipient shall in relation to the delivery of its obligations under this Agreement be responsible as against Homes England for the acts or omissions of any Grant Recipient Party as if they were the acts or omissions of the Grant Recipient.
- 1.2.21 Neither the giving of any approval, consent, examination, acknowledgement, knowledge of the terms of any agreement or document nor the review of any document or course of action by or on behalf of Homes England shall, unless otherwise expressly stated in this Agreement or agreed in writing by Homes England, 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 Homes England in respect of or in connection with the matter to or in relation to which such approval consent examination acknowledgement was given or review made.
- 1.2.22 In the event of any conflict between the Original Allocated Capital Grant figure set out in IMS (and accepted by Homes England through IMS) and the Original Allocated Capital Grant figure set out in the definition of Original Allocated Capital Grant in this Agreement, the Original Allocated Capital Grant figure set out in IMS shall prevail.
- 1.2.23 Where this Agreement refers to information set out in IMS, this Agreement shall be construed as incorporating such information into its terms.
- 1.2.24 The terms "Allocated Capital Grant" "Original Allocated Capital Grant" and "Firm Scheme Grant" shall (unless the context precludes such interpretation) include every Tranche thereof.
- 1.2.25 Any terms used in the definition of "Subsidy" shall, unless the context requires otherwise, be construed as having the meaning given to them in the United Kingdom Competition Requirement.
- 1.2.26 Any reference to a Section and/or a Chapter of the Capital Funding Guide in this Agreement shall refer to any successor, replacement or amendment of such Section or Chapter from time to time.

## 2 Purpose

2.1 Homes England has agreed to make the Allocated Capital Grant available to the Grant Recipient to enable it to provide the AHP Housing subject to and in accordance with the terms and conditions of this Agreement.

2.2 Each party undertakes to co-operate with the other to facilitate the proper performance of this Agreement and the delivery of the Indicative Schemes and the Firm Schemes.

## 3 Acknowledgements, Representations and Warranties

3.1 Without prejudice to any other term of this Agreement, the parties acknowledge for the purposes of the record that Homes England agreed in response to the Grant Recipient's initial bid under the AHP 2021/26 to advance grant funding to the Grant Recipient in an initial amount equal to the Original Allocated Capital Grant to facilitate the delivery of the Original Approved Capital Bid.

3.2 Without prejudice to any other term of this Agreement, the Grant Recipient:

3.2.1 expressly acknowledges the Agreed Principles and agrees to observe them and to be bound by them;

3.2.2 represents and warrants in the terms set out in Part 2 of Schedule 1 (*Representations and Warranties*) to Homes England on the date hereof and on each day during the currency of this Agreement; and

3.2.3 acknowledges and agrees that Homes England is relying on such representations and warranties and that each of such warranties and representations shall be separate and independent and, save as expressly provided to the contrary, shall not be limited by reference to any of them or by any other provisions of this Agreement.

## 4 Indicative Schemes

4.1 The Grant Recipient confirms that such details of each Indicative Scheme comprised within the Original Approved Capital Bid as Homes England requires have been uploaded onto IMS by the date of this Agreement.

4.2 The Grant Recipient shall be entitled to submit Proposed Indicative Schemes to Homes England after the date of this Agreement and where it wishes to do so, it must submit to Homes England through IMS such details of such Proposed Indicative Schemes as Homes England may require.

4.3 Homes England shall be entitled to accept or reject the details submitted for any Proposed Indicative Scheme. Where Homes England accepts a Proposed Indicative Scheme into the Approved Capital Bid pursuant to Clause 4.2 (*Indicative Schemes*), it shall confirm its acceptance to the Grant Recipient through IMS.

4.4 If a Proposed Indicative Scheme is accepted by Homes England in IMS pursuant to Clause 4.3 (*Indicative Schemes*) then with effect from the date of that acceptance:

- 4.4.1 such scheme shall be deemed to be an Indicative Scheme and becomes subject to the processes set out in Clauses 4.4 to 4.9 (inclusive) (*Indicative Schemes*) and Clause 5.1.2 (*Firm Schemes*);
- 4.4.2 any details set out by the Grant Recipient with respect to such Indicative Scheme in IMS and as confirmed by Homes England in IMS shall be deemed to be the relevant Indicative Scheme Details for the purposes of this Agreement; and
- 4.4.3 the Allocated Capital Grant shall be deemed to be adjusted by the amount of the Indicative Allocation agreed by Homes England in IMS in relation to the new Indicative Scheme.
- 4.5 The Grant Recipient must use all reasonable endeavours to ensure that each Indicative Scheme:
- 4.5.1 is worked up so that it is capable of being brought forward as a Firm Scheme by the Indicative First Claim Date; and
- 4.5.2 is uploaded onto IMS in accordance with the procedure and timescale set out in Clause 5.1.2 (*Firm Schemes*).
- 4.6 The Grant Recipient must notify Homes England in writing immediately upon becoming aware of any matter or circumstance which is likely to prejudice the Grant Recipient's ability to comply with its obligations under Clause 4.5 (*Indicative Schemes*).
- 4.7 On receipt of a notice under Clause 4.6 (*Indicative Schemes*) or on otherwise becoming aware of any likely delay to an Indicative Scheme becoming a Firm Scheme by the Indicative First Claim Date, Homes England (acting reasonably) shall be entitled to withdraw the relevant Indicative Allocation and in determining whether to pursue any such withdrawal Homes England shall be entitled to take into account such factors as it considers appropriate including:
- 4.7.1 the likely availability of Homes England resources in relation to any delayed Delivery of the prospective Firm Scheme; and
- 4.7.2 the adequacy of the Grant Recipient's performance to date in respect of other Indicative Schemes and Firm Schemes.
- 4.8 The Grant Recipient shall be entitled to propose changes to any Indicative Scheme at any point prior to the date which is ten (10) Business Days before the Indicative First Claim Date. Any such changes must be communicated to Homes England by the Grant Recipient proposing changes to the Indicative Scheme Details through IMS. Homes England shall be entitled at its discretion to:
- 4.8.1 accept the proposed changes, in which case the Grant Recipient must ensure that the accepted changes are correctly logged in IMS. The changes shall be deemed to be effective from the point at which they are formally accepted by Homes England in IMS; or
- 4.8.2 reject the proposed changes, in which case the parties will be bound by the Indicative Scheme Details as they existed prior to the changes proposed under this Clause 4.8 (*Indicative Schemes*).

4.9 If an Indicative Scheme is withdrawn from the Approved Capital Bid the Allocated Capital Grant figure shall be reduced commensurately.

## 5 Firm Schemes

5.1 The Grant Recipient must:

5.1.1 not less than five (5) Business Days (or such other period agreed by Homes England in its absolute discretion) prior to the projected First Claim Date ensure that such details of each Original Scheme (other than an Indicative Scheme) as are required by Homes England have been accurately uploaded onto IMS; and

5.1.2 (subject to Clauses 4.5 (*Indicative Schemes*) to 4.7 (*Indicative Schemes*) (inclusive)) as soon as reasonably practicable and in any event by the Indicative First Claim Date, upload onto IMS (or amend through IMS) such details of each Indicative Scheme as are required in order for Homes England to consider the conversion of such Indicative Scheme to a Firm Scheme for the Delivery of AHP Housing,

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

5.2 The Grant Recipient represents and warrants to Homes England in relation to each Firm Scheme that:

5.2.1 the Firm Scheme:

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

5.2.2 the Grant Recipient:

- (a) possesses a Secure Legal Interest in the Site;
- (b) has obtained all Consents necessary for the lawful Delivery of the Firm Scheme in accordance with the Firm Scheme Details as are then required;
- (c) has complied with all applicable requirements of the Capital Funding Guide in relation to the Firm Scheme;
- (d) is not subject to any Section 15 Direction nor do any circumstances exist which would permit such a direction to be issued; and
- (e) has not nor have any of its officers made a Section 114 Report nor is it aware of any circumstances which would give rise to the making of a Section 114 Report.

- 5.3 Homes England has no obligation to make any payment of grant to the Grant Recipient in relation to anything other than a Firm Scheme.
- 5.4 Homes England may at its absolute discretion vary the percentages attributed to the Acquisition Tranche Grant, the Start on Site Tranche Grant and/or Practical Completion Tranche Grant (as applicable) from time to time save that no such variation will take effect in relation to a Tranche which has already been paid.
- 5.5 Under no circumstances shall Homes England be obliged to accept any scheme as a Firm Scheme if Homes England (acting reasonably) believes that it does not, will not or is unlikely to have sufficient financial resources available to it (taking account inter alia of its commitments under the AHP 2021/26 or other programme commitments) to provide grant funding in relation to the relevant scheme.

## 6 Empty Homes Schemes, HOLD Schemes and OPSO Schemes

- 6.1 Where the Grant Recipient is Delivering or will Deliver one or more Empty Homes Schemes as part of the Approved Capital Bid, the terms of this Agreement shall apply, be interpreted and take effect subject to the exceptions and adaptations specified in Schedule 2 (*Empty Homes Schemes*) with respect to each such Empty Homes Schemes.
- 6.2 Where the Grant Recipient is Delivering or will Deliver one or more HOLD Schemes or OPSO Schemes as part of the Approved Capital Bid, the terms of this Agreement shall apply, be interpreted and take effect subject to the exceptions and adaptations specified in Schedule 3 (*HOLD Schemes and OPSO Schemes*) with respect to each such HOLD Schemes and/or OPSO Schemes (as applicable).

## 7 Changes to Firm Schemes

- 7.1 The Grant Recipient may propose changes to any Firm Scheme at any time prior to the Firm Scheme Completion Date. Any such changes must be proposed via IMS and must take account of any Tranche already received by the Grant Recipient.
- 7.2 Where a Pre-First Claim Change is proposed, Homes England will be entitled to accept or reject such change or to accept it subject to adjustment by Homes England in accordance with the process set out in Clause 7.3 (*Changes to Firm Schemes*) unless Homes England agrees that the relevant change may be agreed by some other means.
- 7.3 If Homes England:
- 7.3.1 accepts a Pre-First Claim Change in principle, it shall be entitled to recalculate the Firm Scheme Grant allocated to the Firm Scheme by reference to the proposed change. Where the result of that recalculation is a lower Firm Scheme Grant figure than that set out in the Firm Scheme Details, Homes England will notify the Grant Recipient and the Grant Recipient will have twenty (20) Business Days from the date of receipt of Homes England's notification to advise Homes England as to whether it wishes to withdraw the Firm Scheme from this Agreement or proceed with it on the basis of the recalculated Firm Scheme Grant figure or to withdraw the proposed a Pre-First Claim Change. If:
- (a) the Firm Scheme is withdrawn by the Grant Recipient, Homes England will (subject to any invocation by the Grant Recipient of Clause 9.1 (*Firm*

*Scheme substitution and additions*) and any resulting operation of Clause 9 (*Firm Scheme substitution and additions*)) withdraw the Firm Scheme Grant allocated to such scheme and the Allocated Capital Grant figure will be reduced commensurately;

- (b) the proposed Pre-First Claim Change is withdrawn by the Grant Recipient, the Grant Recipient shall reinstate in IMS the Firm Scheme Details ante the date of the proposed Pre-First Claim Change and, following Homes England's approval of such reinstated details in IMS, the Firm Scheme shall proceed on the basis of those reinstated Firm Scheme Details;
- (c) the Grant Recipient wishes to proceed with the Firm Scheme, it must immediately amend the Firm Scheme Details in IMS to reflect the Pre-First Claim Change and the recalculated Firm Scheme Grant figure. The amended Firm Scheme Details (together with any adjustments to the sum and percentages of any subsequent Tranche due resulting from the recalculated Firm Scheme Grant figure being lower than the original Firm Scheme Grant figure) will be deemed to be effective from the date of their acceptance by Homes England (through IMS); or
- (d) a Notification Failure occurs, Homes England shall be entitled (but not obliged) to treat such failure as a decision by the Grant Recipient to withdraw the Firm Scheme from this Agreement.

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

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

- (a) the Firm Scheme is withdrawn by the Grant Recipient, Homes England will permanently withdraw the Firm Scheme Grant allocated to such scheme and the Allocated Capital Grant figure will be reduced commensurately; or
- (b) a Notification Failure occurs, Homes England shall be entitled (but not obliged) to treat such failure as a decision by the Grant Recipient to withdraw the Firm Scheme from this Agreement and Clause 7.3.3(a) (*Changes to Firm Schemes*) shall apply.

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

7.5 If Homes England:

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

- (a) the Grant Recipient wishes to withdraw the Firm Scheme, Homes England will permanently withdraw the balance of the Firm Scheme Grant allocated to such scheme and the Grant Recipient must repay Homes England a sum equivalent to such part of the Firm Scheme Grant as has then been received by it (if any), such repayment to be made within fifteen (15) Business Days of receipt of Homes England's written demand for the same;
- (b) the Grant Recipient wishes to proceed with the Firm Scheme, it must immediately amend the Firm Scheme Details in IMS to reflect both the Pre-Final Claim Change and the recalculated Firm Scheme Grant figure and the amended Firm Scheme Details will be deemed to be effective from the date of their acceptance by Homes England (through IMS). The remaining Tranches due to be paid to the Grant Recipient in respect of the Firm Scheme (each a **Remaining Tranche**) will be adjusted downwards to take account of the recalculated Firm Scheme Grant figure in such proportions as Homes England shall determine. If such adjustment would result in any Remaining Tranches being a negative figure (and being therefore an overpayment of Firm Scheme Grant), the Grant Recipient must pay Homes England a sum equivalent to the difference (expressed as a positive sum) between the negative figure and zero within fifteen (15) Business Days of receipt of Homes England's written demand for the same;
- (c) the Grant Recipient wishes to retract the Pre-Final Claim Change, it must do so immediately via IMS and the Firm Scheme will proceed as contemplated ante the Grant Recipient's submission of the Pre-Final Claim Change; or
- (d) a Notification Failure occurs, Homes England shall be entitled (but not obliged) to treat such failure as a decision by the Grant Recipient to withdraw the Firm Scheme from this Agreement and Clause 7.5.1(a) (*Changes to Firm Schemes*) shall apply.

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

7.5.3 rejects the Pre-Final Claim Change, Homes England will notify the Grant Recipient and the Grant Recipient will have twenty (20) Business Days from the

date of Homes England's notification to advise Homes England as to whether it wishes to proceed with the Firm Scheme on the original basis or to withdraw it. If:

- (a) the Grant Recipient wishes to withdraw the Firm Scheme, Homes England will permanently withdraw the balance of the Firm Scheme Grant allocated to such scheme and the Grant Recipient must repay Homes England a sum equivalent to such part of the Firm Scheme Grant as has then been received by it, such repayment to be made within fifteen (15) Business Days of receipt of Homes England's written demand for the same; or
- (b) a Notification Failure occurs, Homes England shall be entitled (but not obliged) to treat such failure as a decision by the Grant Recipient to withdraw the Firm Scheme from this Agreement and Clause 7.5.3(a) (*Changes to Firm Schemes*) shall apply.

7.6 The parties acknowledge and agree that any changes required to Firm Scheme Details with respect to a Single Claim Scheme will be governed by the principles set out in Clauses 7.2 and 7.3 (*Changes to Firm Schemes*).

7.7 Homes England will not be obliged to pay any Tranche to the Grant Recipient in relation to any Firm Scheme unless any extant changes required to be made to the Firm Scheme Details by Clause 7.3 (*Changes to Firm Schemes*) or Clause 7.5 (*Changes to Firm Schemes*) have been made and have been accepted by Homes England in IMS.

7.8 Under no circumstances will Homes England be required to accept any Pre-First Claim Change or Pre-Final Claim Change which would have the result of increasing the amount of the Allocated Capital Grant or the Firm Scheme Grant in relation to the relevant Firm Scheme.

7.9 Where pursuant to Clause 7.5.1(b) (*Changes to Firm Schemes*) any Tranche must be adjusted downwards to take account of the recalculated Firm Scheme Grant figure, nothing shall preclude the parties from agreeing the proportion of such adjustment but in default of agreement the proportion determined by Homes England shall prevail.

7.10 Any change to the Firm Scheme Details and/or the Approved Capital Bid resulting from the application of this Clause 7 (*Changes to Firm Schemes*) shall be implemented by the Grant Recipient amending the Firm Scheme Details in IMS and confirmed by Homes England's acceptance of that amendment through IMS and in default of agreement the parties will be bound by the Firm Scheme Details as they existed prior to the change proposed.

## 8 **Time extensions**

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

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

- 9.3.8 that no Bid Default, Fundamental Default nor Specified Default subsists; and
- 9.3.9 that the Submitted Standards and the Strategic Objectives submitted in respect of such scheme by the Grant Recipient are satisfactory,

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

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

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

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

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

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

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

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

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

9.9 Where Clause 9.8 (*Firm Scheme substitution and additions*) applies, the Grant Recipient shall submit to Homes England through IMS such details of the proposed Additional Scheme as Homes England may require. In submitting such details, the Grant Recipient makes the same representations and warranties in relation to the proposed Additional Scheme as it makes to Homes England pursuant to Clause 5.2 (*Firm Schemes*).

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

9.10.1 the Additional Scheme offers value for money;

9.10.2 the Grant Recipient's performance in respect of other Firm Schemes comprised within the Approved Capital Bid has been of an acceptable standard and has satisfied the terms of this Agreement;

9.10.3 Start on Site for the Additional Scheme will occur on or before 30 September 2025 (or such other date as Homes England may in its absolute discretion agree)

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

9.10.4 no Bid Default, Fundamental Default nor Specified Default subsists; and

9.10.5 the Submitted Standards and the Strategic Objectives submitted in respect of such Additional Scheme by the Grant Recipient are satisfactory,

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

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

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

9.12.1 the Additional Scheme shall be deemed to be a Firm Scheme for the purposes of this Agreement and immediately subject to its whole terms and conditions;

9.12.2 the details set out by the Grant Recipient in respect of the Additional Scheme in IMS and as confirmed by Homes England through IMS shall be deemed to be Firm Scheme Details for the purposes of this Agreement; and

9.12.3 the Grant Recipient must ensure that it complies with all of its obligations under this Agreement as they apply to such new Firm Scheme.

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

## 10 **Delivery Obligations**

10.1 The Grant Recipient must in relation to each Firm Scheme:

10.1.1 carry out the acquisition of the Site (where required), procure and (where applicable) diligently pursue the completion of the Works so that:

(a) the Firm Scheme is (subject to Clause 8.1 (*Time extensions*)) Delivered in accordance with the Firm Scheme Delivery Timetable;

(b) when Delivered, the Firm Scheme fully complies with the Firm Scheme Details and meets the Submitted Standards and the Strategic Objectives;

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

10.1.2 actively market or allocate the AHP Dwellings with a view to ensuring (as far as practicable) the disposal or letting of such dwellings to individuals as AHP

Housing following Firm Scheme Completion (or as soon as reasonably possible thereafter);

- 10.1.3 promptly notify Homes England in writing of any failure or likely failure to comply with Clause 10.1.1(a) (*Delivery Obligations*);
- 10.1.4 procure that prior to any AHP Dwelling comprised in such Firm Scheme being occupied, all certification required in respect of the Firm Scheme (or any part thereof) is obtained (including certification that such AHP Dwelling has passed "Gateway 3" when implemented) under any building safety legislation arising out of the Building Safety Bill 2021; and
- 10.1.5 where any AHP Dwelling forms part of a building that is above either 18 metres or 7 storeys in height (whichever is the lower), register as a signatory to the Building a Safer Future Charter.

## 11 **Operational Obligations**

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

- 11.5 Without prejudice to Clause 11.1 (*Operational Obligations*), the Grant Recipient must in operating and administering a Firm Scheme after Firm Scheme Completion:
- 11.5.1 subject to Clause 18.1 (*Repayment of Grant*) not use the AHP Dwellings for any purpose other than the Agreed Purposes without Homes England's prior written consent;
  - 11.5.2 not charge a higher initial rent in relation to an AHP Rent Dwelling or a Rent to Buy Dwelling than set out in the relevant Firm Scheme Details;
  - 11.5.3 subject to any contrary requirement of Legislation comply with the Rent Standard in respect of the AHP Rent Dwellings;
  - 11.5.4 comply with the Tenancy Standard in respect of the AHP Rent Dwellings and Rent to Buy Dwellings;
  - 11.5.5 observe and comply with the requirements of the Capital Funding Guide (and where applicable, the SO Consultation Outcome) in relation to:
    - (a) any disposal of the Shared Ownership Dwellings and ensure that such disposal takes effect only at arm's length and on market terms;
    - (b) the form and content of any Shared Ownership Lease granted by or to be granted by the Grant Recipient in relation to an AHP Dwelling;
    - (c) the letting, management or disposal of AHP Rent Dwellings;
    - (d) the purpose, client group, letting, rents, management and disposals of Rent to Buy Dwellings; and
    - (e) the nature of the housing and/or housing product (as described in the Capital Funding Guide) being funded pursuant to this Agreement.
  - 11.5.6 comply at its own cost with Homes England's requirements in relation to Compliance Audit;
  - 11.5.7 in relation to AHP Housing, participate in the CORE system from time to time (including recording any lettings made together with any sales of stock including outright sales and shared ownership sales but excluding any sales of additional equity to the current shared owner);
  - 11.5.8 in relation to each AHP Rent Dwelling use the most appropriate form of tenancy having regard to the terms of the Tenancy Standard and the efficient use of public funds;
  - 11.5.9 ensure that it participates in any Home Ownership Agency Arrangements where any Firm Scheme includes Shared Ownership Dwellings or Rent to Buy Dwellings;
  - 11.5.10 not seek possession of any Shared Ownership Dwelling on the basis of Ground 8 of Schedule 2 Housing Act 1988;

- 11.5.11 ensure that all Rent to Buy Dwellings are made available as Rent to Buy Dwellings for a period of not less than five (5) years from the point at which they first becomes available for letting and ensure that prior to any change to that purpose or to any disposal they are offered for sale to the then current Rent to Buy Tenant in occupation;
- 11.5.12 comply with any Legislation, regulations and guidance issued by any Regulatory Body which is in force and/or applies in England in relation to building safety; and
- 11.5.13 provide Homes England with such information (and within such timescales) as Homes England may reasonably require to enable Homes England to monitor compliance by the Grant Recipient with its obligations under this Agreement.
- 11.6 The Grant Recipient shall ensure that Homes England's requirements from time to time in relation to public relations and publicity for capital projects (including Site signage) as notified to the Grant Recipient from time to time or otherwise as included in the Capital Funding Guide are observed and implemented in respect of each Firm Scheme.
- 11.7 Where the Grant Recipient possesses a Secure Legal Interest which is a leasehold interest it must:
- 11.7.1 ensure that the terms of the relevant lease:
- (a) are not inconsistent with the principles of the AHP 2021/26 nor the Grant Recipient's obligations under this Agreement; and
  - (b) do not permit such lease to be terminated (save in the case of non payment of rent or breach of tenant covenants) prior to the expiry of the Minimum Unexpired Term or Minimum SO Lease Term (as applicable); and
- 11.7.2 the Grant Recipient must not vary the lease referred to in Clause 11.7 (*Operational Obligations*) in a manner which could frustrate the operation of this Agreement.
- 11.8 In discharging its obligations or making any representation or warranty under this Agreement, the Grant Recipient must act at all times with the utmost good faith, with the intent to deliver the Approved Capital Bid and with proper regard to the need for efficiency in the use of public funds.
- 11.9 Where the Grant Recipient is aware that it is in breach of an obligation under this Agreement it must promptly notify Homes England of the fact and take all such steps as are appropriate in the circumstances to remedy the breach.
- 11.10 The Grant Recipient must:
- 11.10.1 provide Homes England with a completed Disposal Notification (in accordance with any applicable requirements of the Capital Funding Guide and the requirements of Clause 11.11 (*Operational Obligations*)) no less than ten (10) Business Days prior to a Disposal taking place (and for the avoidance of doubt, the parties acknowledge that the provisions of this clause 11.10.1 apply to any RTB Disposal); and

11.10.2 save where a Disposal is an RTB Disposal (or where Homes England otherwise agrees):

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

11.11 The Grant Recipient will:

11.11.1 ensure that that any Disposal Notification, Constitutional Change Notification or any other notifications or certificates from the Grant Recipient to Homes England (the **Grant Recipient Notifications**) are provided by the Grant Recipient's Representative and must further ensure that such Grant Recipient Representative has access to the information and knowledge needed accurately to give the information required; and

11.11.2 notify Homes England if it becomes aware that any Grant Recipient Notification is erroneous in any material respect.

11.12 The Grant Recipient must procure that a valuation of each Site is obtained in accordance with any applicable requirements of Section 3.6 (*Valuations*) in the Chapter of the Capital Funding Guide entitled "Procurement and Scheme Issues" and any other requirements identified by Homes England from time to time (acting reasonably).

## 12 **Review, Monitoring and Reporting**

12.1 The Grant Recipient shall comply fully with the contract management and reporting obligations set out in this Agreement.

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

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

- 12.2.2 indicate that Homes England is making available more grant than is required to Deliver any Firm Scheme or the Approved Capital Bid;
- 12.2.3 give rise to the making of a Section 114 Report or the issue of a Section 15 Direction;
- 12.2.4 constitute a breach of Clauses 10 (*Delivery Obligations*) or 11 (*Operational Obligations*); or
- 12.2.5 constitute a Default Event.

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

12.3 Where Homes England becomes aware either via the Contract Monitoring Outputs or through other monitoring, that delivery of the Approved Capital Bid has not been secured in accordance with the requirements of this Agreement or is unlikely to be so secured (a **Delivery Failure**), Homes England may in order to address such Delivery Failure issue an Allocation Change Notice requiring:

- 12.3.1 a reduction, increase or other change to the number of AHP Dwellings to be delivered; and/or
- 12.3.2 a reduction or other adjustment to the Allocated Capital Grant or to any Firm Scheme Grant; and/or
- 12.3.3 any other change to the Approved Capital Bid that Homes England deems reasonably necessary,

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

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

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

12.6 The Grant Recipient's Representative (or, where agreed with Homes England in advance, such other member of the Grant Recipient's executive management team) shall attend a review meeting when requested to do so by Homes England with reasonable prior written notice.

12.7 Homes England shall attend a review meeting reasonably requested by the Grant Recipient provided that:

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

- 12.7.2 the Grant Recipient provides an agenda for such meeting at the time of request.
- 12.8 At each Review Meeting Homes England and the Grant Recipient shall discuss or review (without limitation):
- 12.8.1 all changes made to any Firm Scheme or to the Approved Capital Bid in the period since the immediately preceding Review Meeting (or since the date of this Agreement where no Review Meeting has been held) and any changes anticipated by the Grant Recipient to be requested during the current Financial Year;
  - 12.8.2 all withdrawals of Indicative Schemes;
  - 12.8.3 the capacity of the Grant Recipient to bring forward additional housing supply under AHP 2021/26;
  - 12.8.4 the Grant Recipient's performance in delivering the Approved Capital Bid (including the conversion of Indicative Schemes into Firm Schemes);
  - 12.8.5 progress in relation to each Indicative Scheme and Firm Scheme including delivery forecasts, lettings and sales forecasts and progress against previous such forecasts;
  - 12.8.6 the Contract Monitoring Outputs;
  - 12.8.7 any Change in Control which is anticipated in the then current or upcoming Financial Year;
  - 12.8.8 the Grant Recipient's performance in meeting the Strategic Objectives; and
  - 12.8.9 such other matters in relation to the performance or subject matter of this Agreement as are notified by either party to the other in writing at least five (5) Business Days prior to the date of the Review Meeting.
- 12.9 The parties agree that the Regulator shall also be entitled to send a representative to attend any Review Meeting.
- 12.10 Save as otherwise agreed between the parties, any meeting under this Clause 12 (*Review, Monitoring and Reporting*) shall be minuted by the Grant Recipient and such minutes shall be distributed within ten (10) Business Days following the meeting to Homes England and any other attendee.
- 12.11 The Grant Recipient shall:
- 12.11.1 provide Homes England with such information as Homes England shall reasonably require to support or facilitate the discussions and monitoring referred to in this Agreement; and
  - 12.11.2 take all reasonable steps to ensure that any information provided to Homes England pursuant to this Clause 12 (*Review, Monitoring and Reporting*) is accurate in all material aspects.

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

England (or such other persons as are referred to in this Clause 12 (*Review, Monitoring and Reporting*)) as and when requested to do so; and

12.18.2 procure that a representative of Homes England (or any of its auditors or advisors) may on reasonable notice visit any place where any records or information of the type described in this Clause 12 (*Review, Monitoring and Reporting*) are held or maintained and examine such records or information.

12.19 The Grant Recipient shall promptly:

12.19.1 participate in any evaluation of AHP 2021/26 that MHCLG or Homes England or its or their agents may require from time to time;

12.19.2 supply (subject always to its data protection obligations under Schedule 8 (*Data Protection*)) any information and data requested by MHCLG, Homes England or its or their agents in respect of any such evaluation, which may include information/data pertaining to any AHP Dwellings (including, inter alia, addresses and tenures of such dwellings); and

12.19.3 accurately update IMS with such information as may be requested by Homes England from time to time (acting reasonably) in connection with the terms of this Agreement.

12.20 The Grant Recipient shall provide Homes England with a completed Constitutional Change Notification (in accordance with the requirements of Clause 11.11 (*Operational Obligations*)) at least ten (10) Business Days prior to any Change in Control.

12.21 The Grant Recipient will promptly notify Homes England if any Know Your Customer Information becomes inaccurate or out of date and provide Homes England with revised Know Your Customer Information promptly upon Homes England's request.

12.22 The parties acknowledge and agree that Homes England may review whether the Grant Recipient continues to meet the requirements for Investment Partner status and the Grant Recipient will co-operate with such review and will provide Homes England with such further information, evidence and/or explanation with respect to any such review as Homes England may request.

### 13 **Transparency Obligations**

13.1 The Grant Recipient must comply with the Transparency Code.

13.2 If the Transparency Code is not binding upon it, the Grant Recipient acknowledges that:

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

13.2.2 except for any information which is exempt from disclosure in accordance with the FOIA, and notwithstanding any other term of this Agreement, its consent is

hereby given to Homes England to publish such information as it considers appropriate in relation to the AHP 2021/26, including, but not limited to, details of the Approved Capital Bid, Development Costs, other costs and funding for Firm Schemes, including from time to time agreed changes to this information.

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

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

13.3.2 without consulting the Grant Recipient.

13.4 The Grant Recipient shall assist and cooperate with Homes England to enable Homes England to publish the information referred to in Clause 13.2.2 (*Transparency Obligations*).

#### 14 **Grant Claim Procedures**

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

14.1.1 the Acceptance Date has passed; and

14.1.2 the Grant Recipient possesses a Secure Legal Interest and the parties acknowledge and agree that for the purposes of this Clause 14.1.2 (*Grant Claim Procedures*), a Contractual Interest shall be disregarded and of no effect.

14.2 Subject to the Relevant Claim Stage having been achieved by the Relevant Claim Date, the Grant Recipient shall be entitled to submit a claim for the Applicable Tranche through IMS in accordance with the requirements of IMS from time to time and in compliance with the applicable procedures relating to grant claim and payments set out in the Capital Funding Guide.

14.3 In submitting a claim pursuant to Clause 14.2 (*Grant Claim Procedures*) the Grant Recipient:

14.3.1 is deemed to repeat the representations and warranties set out in Clause 5.2 (*Firm Schemes*) other than Clause 5.2.2(b) (*Firm Schemes*) and for the purposes of this Clause 14.3.1 (*Grant Claim Procedures*) the parties acknowledge and agree that a Contractual Interest shall be disregarded and of no effect;

14.3.2 represents and warrants to Homes England that:

(a) the Relevant Claim Stage has been achieved and the date on which the Relevant Claim Stage was achieved is no later than the date forecast in IMS;

(b) where the claim is being made for a Tranche with respect to a Flex Scheme it has incurred Actual Development Costs to at least the value of the Applicable Tranche;

- (c) it has procured a valuation of the relevant Site in accordance with Clause 11.12 (*Operational Obligations*) (where applicable);
- (d) all confirmations and certifications made or to be made by the Grant Recipient in IMS in relation to the Firm Scheme have been, are or will be correct in all material respects;
- (e) the Grant Recipient is a Registered Provider and retains its status as an Investment Partner;
- (f) no Withholding Event or Default Event has occurred or arisen (excluding any Withholding Event or Default Event which has either been waived in writing by Homes England or remedied to the satisfaction of Homes England (in its absolute discretion) and Homes England has confirmed this in writing);
- (g) it has provided Homes England with a Disposal Notification in accordance with the requirements of Clause 11.10 (*Operational Obligations*) in respect of any Disposal of the relevant Site;
- (h) any Change in Control which has taken place since the date of the Agreement has been notified to Homes England pursuant to Clause 12.20 (*Review, Monitoring and Reporting*);
- (i) all information provided to Homes England pursuant to Clause 12 (*Review, Monitoring and Reporting*) and/or set out on IMS in relation to progress of the delivery of the Approved Capital Bid and each applicable Firm Scheme Delivery Timetable remains accurate and correct in all material respects;
- (j) it has obtained all Consents necessary for the lawful Delivery of the Firm Scheme in accordance with the Firm Scheme Details as are then required or, with respect to a Firm Scheme which has achieved Practical Completion, to the extent that they are not obtained the 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;
- (k) the Firm Scheme will be or has been Delivered (as applicable) in accordance with the Submitted Standards, the Strategic Objectives, the Firm Scheme Details and the requirements of this Agreement;
- (l) it is participating in the Home Ownership Agency Arrangements (where applicable);
- (m) it is not subject to any Section 15 Direction nor do any circumstances exist which would permit such a direction to be issued; and
- (n) no Section 114 Report has been made nor is the Grant Recipient aware of any circumstances that would give rise to the making of any such report.

14.4 Where any Firm Scheme is identified on IMS as being an MMC Scheme, the parties may agree alternative Relevant Claim Stages and/or Milestones (which better reflect the nature and characteristics of Modern Methods of Construction) in IMS or in such other medium as Homes England may specify and where this Clause 14.4 (*Grant Claim Procedures*) applies Homes England reserves the right to require that the Grant Recipient makes additional representations and warranties as a condition of any claim for Firm Scheme Grant.

## 15 **Payment of Grant**

15.1 Subject to:

15.1.1 Homes England (acting reasonably) being satisfied with the Grant Recipient's application for payment including the information warranted pursuant to Clause 14.3 (*Grant Claim Procedures*);

15.1.2 Clause 7.6 (*Changes to Firm Schemes*), Clause 15.3 (*Payment of Grant*), Clause 15.4 (*Payment of Grant*), Clause 16 (*Adjustments to Final Tranche*) and Clause 17 (*Withholding of Grant*); and

15.1.3 the Condition Precedent having been satisfied,

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

15.2 If Homes England is not satisfied with the Grant Recipient's application for payment, it must notify the Grant Recipient in writing as soon as reasonably practicable and in any event within ten (10) Business Days of receipt of the application for payment identifying the reason for its dissatisfaction. Homes England 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 Clause 14 (*Grant Claim Procedures*) and this Clause 15 (*Payment of Grant*) (as applicable) will be reapplied to the Grant Recipient's resubmitted or amended application for payment.

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

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

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

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

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

15.3.5 Tranche (of any description) if the Firm Scheme has not been accepted by Homes England through IMS or the Grant Recipient does not possess a Completed Interest.

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

16 **Adjustments to Final Tranche**

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

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

16.1.2 to:

- (a) withhold and cancel the Final Tranche payment due in relation to the relevant Firm Scheme;
- (b) reallocate or redirect an amount equivalent to such Final Tranche payment due to such other person or purpose as Homes England in its discretion considers appropriate; and
- (c) recover from the Grant Recipient a sum equivalent to any Firm Scheme Grant already paid to it in relation to the relevant Firm Scheme.

16.2 If Homes England exercises its right under Clause 16.1.1 (*Adjustments to Final Tranche*), Homes England will notify the Grant Recipient and the Grant Recipient will have ten (10) Business Days from the date of receipt of Homes England's notification to advise Homes England as to whether it wishes to withdraw the Firm Scheme from this Agreement or to proceed with the Firm Scheme on the basis of the recalculated Firm Scheme Grant figure. If:

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

16.2.2 the Grant Recipient wishes to proceed with the Firm Scheme:

- (a) it must immediately amend the Firm Scheme Details in IMS to reflect the recalculated Firm Scheme Grant figure and any Tranche already received. The amended Firm Scheme Details will be deemed to be effective from the date of their acceptance by Homes England (through IMS);
- (b) the Practical Completion Tranche Grant figure will be adjusted to take account of the recalculated Firm Scheme Grant figure and of any change to the sum and percentage amount necessitated by the recalculated Firm

Scheme Grant figure being lower than the original Firm Scheme Grant figure. If such adjustment would result in the Practical Completion Tranche Grant being a negative amount (and being therefore an overpayment of Firm Scheme Grant), the Grant Recipient must pay Homes England a sum equivalent to the difference (expressed as a positive sum) between the negative amount and zero within fifteen (15) Business Days of receipt of Homes England's written demand for the same; and

- (c) Homes England will (resources permitting) pay the adjusted Practical Completion Tranche Grant due (subject to it being a positive amount) to the Grant Recipient within fifteen (15) Business Days of the date of Homes England's acceptance of the Grant Recipient's amendments to the Firm Scheme Details referred to in Clause 16.2.2(a) (*Adjustments to Final Tranche*).

16.3 If the Grant Recipient fails to provide a definitive response to Homes England within the period prescribed in Clause 16.2 (*Adjustments to Final Tranche*), Homes England shall be entitled (but not obliged) to treat such failure as a decision by the Grant Recipient to withdraw the Firm Scheme from this Agreement and the provisions of Clause 16.2.1 (*Adjustments to Final Tranche*) shall take effect.

16.4 Under no circumstances will Homes England be required to accept or implement any recalculation pursuant to Clause 16.2 (*Adjustments to Final Tranche*) which would have the result of increasing the amount of the Allocated Capital Grant or the Firm Scheme Grant in relation to the relevant Firm Scheme as reflected in the Firm Scheme Details ante the amendments referred to in Clause 16.2.2(a) (*Adjustments to Final Tranche*).

16.5 If Homes England exercises its rights under Clause 16.1.2 (*Adjustments to Final Tranche*), the Grant Recipient must repay Homes England all sums due thereunder in accordance with the provisions of Clause 18.5 (*Repayment of Grant*).

## 17 **Withholding of Grant**

17.1 Notwithstanding any other term of this Agreement:

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

- (a) shall be entitled to suspend the payment of any Tranche due to the Grant Recipient;
- (b) shall, as soon as reasonably practicable, notify the Grant Recipient of such suspension and the period within which it (acting reasonably) requires the failure or breach giving rise to the GW1 Event (the **GW1 Failure**) to be remedied;
- (c) shall, if it is satisfied (acting reasonably) that the GW1 Failure has been remedied, notify the Grant Recipient to that effect and shall (subject to Clause 17.3 (*Withholding of Grant*)) make such payment of any Tranche as may then be due to the Grant Recipient (assuming no other General Withholding Event subsists). Such payment to be made within ten (10)

Business Days of the date of Homes England's notification under this Clause 17.1.1(c) (*Withholding of Grant*); and

- (d) shall be entitled, if the GW1 Failure has not been remedied within the period prescribed pursuant to Clause 17.1.1(b) (*Withholding of Grant*) or it is or becomes apparent that the GW1 Failure is incapable of remedy either within such period or at all, to exercise the same rights as are set out in Clauses 17.1.2(a) (*Withholding of Grant*) to 17.1.2(c) (*Withholding of Grant*) (inclusive).

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

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

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

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

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

- (a) shall not be obliged to make any payment to the Grant Recipient in relation to the relevant Firm Scheme pending the outcome of the procedure described in Clause 16 (*Adjustments to Final Tranche*); and
- (b) shall be entitled to exercise its rights under Clause 16 (*Adjustments to Final Tranche*);
- (c) shall where the provisions of Clause 16.2.1 (*Adjustments to Final Tranche*) have effect, be entitled to reallocate or redirect such part of the Firm Scheme Grant (which has not yet been paid to the Grant Recipient) to such other person or for such purpose as Homes England in its discretion considers appropriate.

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

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

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

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

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

## 18 **Repayment of Grant**

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

- 18.1.1 the Recovery Determination has effect (*mutatis mutandis*) in respect of grant paid under this Agreement and that each party has the respective rights and obligations described in such determination;
- 18.1.2 for the purposes of the Recovery Determination the terms of this Agreement represent the conditions attached to the making of Capital Grant; and
- 18.1.3 on the occurrence of a Relevant Event the 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, Homes England reserves the right whether following termination of this Agreement or otherwise (which right the Grant Recipient expressly acknowledges and agrees) at its discretion to recover from the Grant Recipient the Firm Scheme Grant or such part or aggregation thereof as is determined in accordance with Clause 18.3 (*Repayment of Grant*) (the **Recoverable Amount**) in circumstances where:
- 18.2.1 a Prohibited Act has occurred and the Grant Recipient has not satisfied the Waiver Condition in respect of such Prohibited Act;
- 18.2.2 the relevant Tranche 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 Clause 18.2.5 (*Repayment of Grant*);
- 18.2.3 Homes England has made an overpayment in relation to a Firm Scheme or has made a payment in error to the Grant Recipient;
- 18.2.4 a Balancing Sum has arisen;
- 18.2.5 the Final Tranche has been paid to the Grant Recipient but Homes England becomes aware (whether following the completion of a Compliance Audit or otherwise) that the Grant Recipient has failed to Deliver the relevant Firm Scheme in accordance with the agreed Firm Scheme Details;
- 18.2.6 the Grant Recipient has breached its obligations under any of Clauses 10 (*Delivery Obligations*), Clause 11 (*Operational Obligations*) or Clause 12 (*Review, Monitoring and Reporting*);
- 18.2.7 a Scheme Termination Event has occurred;
- 18.2.8 a Total Termination Event has occurred;
- 18.2.9 Homes England has exercised its rights under:
- (a) Clause 17.1.1 (*Withholding of Grant*) (and the GW1 Failure has not been remedied within the period prescribed in Clause 17.1.1(b) (*Withholding of Grant*)); or
- (b) Clause 17.1.2 (*Withholding of Grant*);
- 18.2.10 Homes England has exercised its rights under or Clause 17.1.3 (*Withholding of Grant*);

- 18.2.11 Homes England has exercised its rights under:
- (a) Clause 17.1.5 (*Withholding of Grant*) (and the SW2 Failure has not been remedied within the period prescribed in Clause 17.1.5(b) (*Withholding of Grant*)); or
  - (b) under Clause 17.1.6 (*Withholding of Grant*); or
- 18.2.12 Homes England has exercised its rights under Clauses 16.1.2 (*Adjustments to Final Tranche*), 16.2.1 (*Adjustments to Final Tranche*) or 16.3 (*Adjustments to Final Tranche*); or
- 18.2.13 Start on Site (including the actions contemplated thereby) for the relevant Firm Scheme has not been achieved by 30 September 2025 (or such other date agreed by Homes England (in its absolute discretion) in IMS) and no Start on Site Tranche Grant has been paid.

18.3 In the circumstances set out in:

18.3.1 Clauses 18.2.1 (*Repayment of Grant*), 18.2.2 (*Repayment of Grant*), 18.2.6 (*Repayment of Grant*) or 18.2.7 (*Repayment of Grant*) the Recoverable Amount shall be a sum equivalent to the Firm Scheme Grant paid with respect to any Firm Scheme deemed by Homes England (acting reasonably) to have been affected;

18.3.2 Clauses 18.2.3 (*Repayment of Grant*) and 18.2.4 (*Repayment of Grant*), the Recoverable Amount shall be a sum equal to the amount of the overpayment, the sum paid in error or the Balancing Sum as applicable;

18.3.3 Clause 18.2.5 (*Repayment of Grant*), subject always to Clause 18.4 (*Repayment of Grant*) the Recoverable Amount shall be determined in accordance with the following procedure:

(a) the parties (acting in good faith) shall seek to agree within fifteen (15) Business Days of the Non Compliance Notification Date a revised figure for the Firm Scheme Grant figure reflecting the changed nature of the delivered Firm Scheme as against that described in the Firm Scheme Details;

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

$$RA = FSG - RFSG$$

where

RA is the Recoverable Amount;

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

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

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

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

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

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

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

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

18.3.7 Clause 18.2.11 (*Repayment of Grant*) the Recoverable Amount shall be a sum equal to any Firm Scheme Grant already paid to the Grant Recipient in relation to the relevant Firm Scheme;

18.3.8 Clause 18.2.12 (*Repayment of Grant*) the Recoverable Amount shall be a sum equivalent to any Firm Scheme Grant already paid in relation to the relevant Firm Scheme; or

18.3.9 Clause 18.2.13 (*Repayment of Grant*) the Recoverable Amount shall be a sum equivalent to any Acquisition Tranche Grant paid.

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

- 18.5 The Grant Recipient must pay the Recoverable Amount to Homes England within ten (10) Business Days of demand together with interest at two per centum (2%) above the base rate from time to time of the Royal Bank of Scotland plc such interest to run from the date upon which the Firm Scheme Grant (or relevant part thereof), overpayment or payment in error was paid to the Grant Recipient until the date upon which Homes England receives the repayment required from the Grant Recipient under this Clause 18 (*Repayment of Grant*).
- 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 7(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 Clause 18 (*Repayment of Grant*), where a payment has been made following an administrative error by Homes England (for which the Grant Recipient was not responsible), the Grant Recipient shall not be liable for interest on the amount repayable under Clause 18.5 (*Repayment of Grant*).

19 **Default Events and Termination**

- 19.1 On the occurrence of a Scheme Default, Homes England shall (subject to Clause 19.2 (*Default Events and Termination*)) be entitled (without any liability to the Grant Recipient) immediately upon serving written notice to:
- 19.1.1 terminate this Agreement insofar as it relates to the Firm Scheme to which the Scheme Default relates;
  - 19.1.2 withhold and cancel any further payment of Firm Scheme Grant due to the Grant Recipient in relation to the Firm Scheme; and
  - 19.1.3 reallocate or redirect such part of the Firm Scheme Grant which has not yet been paid to the Grant Recipient to such other person or for such purpose as Homes England in its discretion considers appropriate.
- 19.2 Where the Scheme Default is of a type described in limb (a), (c) or (e) of the definition of "Scheme Default", Homes England:
- 19.2.1 must notify the Grant Recipient of the Scheme Default and of the period within which it (acting reasonably) requires the Scheme Default to be remedied; and
  - 19.2.2 shall be entitled, if the Scheme Default has not been remedied within the period prescribed pursuant to Clause 19.2.1 (*Default Events and Termination*) or it is or becomes apparent that the Scheme Default is incapable of remedy either within such period or at all, to exercise the rights set out in Clause 19.1 (*Default Events and Termination*).
- 19.3 On the occurrence of a Specified Default, Homes England shall (subject to Clause 19.4 and Clause 19.8 (*Default Events and Termination*)) be entitled and without any liability to the Grant Recipient to:

- 19.3.1 terminate this Agreement in its entirety;
- 19.3.2 withhold and cancel any further payment of Allocated Capital Grant due to the Grant Recipient under this Agreement (other than any payments payable in relation to Continuing Firm Schemes); and
- 19.3.3 reallocate or redirect such part of the Allocated Capital Grant (which has not yet been paid to the Grant Recipient and which is not payable in relation to Continuing Firm Schemes) to such other person or for such purpose as Homes England in its discretion considers appropriate.
- 19.4 Homes England's entitlement to exercise the rights set out in Clause 19.3 (*Default Events and Termination*) shall be suspended pending completion of the following procedure within the timescales prescribed below:
- 19.4.1 Homes England must serve written notice on the Grant Recipient requiring the Grant Recipient to remedy the Specified Default;
- 19.4.2 If within a period of thirty (30) Business Days following service of such notice:
- (a) the Specified Default has not been remedied;
  - (b) where so permitted by Homes England, the Grant Recipient has not given an undertaking to remedy the Specified Default on terms satisfactory to Homes England; or
  - (c) it becomes apparent that the Specified Default is incapable of remedy either within such period or at all,
- Homes England shall be entitled immediately and without any liability to the Grant Recipient to exercise its rights under Clause 19.3 (*Default Events and Termination*).
- 19.5 On the occurrence of a Bid Default, Homes England shall (subject to Clause 19.6 (*Default Events and Termination*) and Clause 19.8 (*Default Events and Termination*)) be entitled and without any liability to the Grant Recipient to:
- 19.5.1 terminate this Agreement in its entirety;
- 19.5.2 withhold and cancel any further payment of Allocated Capital Grant due to the Grant Recipient under this Agreement (other than any payments payable in relation to Continuing Firm Schemes); and
- 19.5.3 reallocate or redirect such part of the Allocated Capital Grant (which has not yet been paid to the Grant Recipient and which is not payable in relation to Continuing Firm Schemes) to such other person or for such purpose as Homes England in its discretion considers appropriate.
- 19.6 Homes England's entitlement to exercise the rights set out in Clause 19.5 (*Default Events and Termination*) shall be suspended pending completion of the following procedure within the timescales prescribed below:

- 19.6.1 Homes England must notify the Grant Recipient in writing of its intention to call a Bid Default and to exercise its rights under Clause 19.5 (*Default Events and Termination*);
- 19.6.2 the parties (acting in good faith) shall meet within ten (10) Business Days of the date of the notice referred to in Clause 19.6.1 (*Default Events and Termination*) to seek to agree adjustments to the Approved Capital Bid and/or the Allocated Capital Grant to reflect any demonstrable underperformance by the Grant Recipient against its delivery projections as set out in the Approved Capital Bid;
- 19.6.3 where adjustments are agreed, the Grant Recipient shall promptly (and in any event within fifteen (15) Business Days of the date of the above meeting) make all such amendments to the information contained in IMS in respect of the Approved Capital Bid as are necessary to reflect the agreement made pursuant to Clause 19.6.2 (*Default Events and Termination*) and in that case Homes England's rights under Clause 19.5 (*Default Events and Termination*) shall lapse in respect of that Bid Default which gave rise to the implementation of the procedure under this Clause 19.6 (*Default Events and Termination*); and
- 19.6.4 if the parties are unable to agree adjustments to the Approved Capital Bid pursuant to Clause 19.6.2 (*Default Events and Termination*) within fifteen (15) Business Days of the date of the meeting or the Grant Recipient fails correctly to amend the information contained in IMS in accordance with Clause 19.6.3 (*Default Events and Termination*), Homes England shall be entitled immediately and without any liability to the Grant Recipient to exercise its rights under Clause 19.5 (*Default Events and Termination*).
- 19.7 On the occurrence of a Fundamental Default, Homes England shall on the service of written notice be entitled forthwith and without any liability to the Grant Recipient to:
- 19.7.1 terminate this Agreement in its entirety;
- 19.7.2 withhold and cancel any further payment of Allocated Capital Grant due to the Grant Recipient under this Agreement; and
- 19.7.3 reallocate or redirect such part of the Allocated Capital Grant (which has not yet been paid to the Grant Recipient) to such other person or for such purpose as Homes England in its discretion considers appropriate.
- 19.8 Where Clause 19.3 (*Default Events and Termination*) or Clause 19.5 (*Default Events and Termination*) applies and:
- 19.8.1 there are no Continuing Firm Schemes, Homes England may terminate this Agreement in its entirety in accordance with the terms of Clause 19.3 (*Default Events and Termination*) or Clause 19.5 (*Default Events and Termination*) (as applicable); and
- 19.8.2 there are Continuing Firm Schemes, Homes England may terminate this Agreement in relation to all but the Continuing Firm Schemes, such termination to take effect in accordance with the timescales specified in Clause 19.4 (*Default Events and Termination*) or Clause 19.6 (*Default Events and Termination*) as applicable.

20 **Subsidy**

20.1 The parties acknowledge that they have structured this Agreement with the objective that it is lawful and complies with the requirements of the United Kingdom Competition Requirement.

20.2 Notwithstanding anything in this Agreement:

20.2.1 Homes England shall only provide Firm Scheme Grant to the extent that such does not give rise to Unlawful Subsidy; and

20.2.2 the Grant Recipient must comply with the requirements of the United Kingdom Competition Requirement (where applicable) in respect of any Firm Scheme Grant paid.

20.3 Notwithstanding Clauses 20.1 and 20.2 of this Agreement if any Firm Scheme Grant is found to constitute Unlawful Subsidy (or is under investigation by a Competent Authority or subject to judicial proceedings in relation to compliance with the requirements of the United Kingdom Competition Requirement) then:

20.3.1 the parties acting in good faith will promptly seek to restructure the arrangements surrounding the Firm Scheme Grant and the terms of this Agreement to the extent necessary to ensure that no Unlawful Subsidy subsequently arises from it; and/or

20.3.2 the parties shall promptly cooperate in good faith to provide evidence that the Firm Scheme Grant (or the restructured Firm Scheme Grant) does not or will not give rise to Unlawful Subsidy.

20.4 If any Firm Scheme Grant is found to constitute Unlawful Subsidy and/or is not capable of being restructured so as to be compliant then the Grant Recipient must repay any sum of Unlawful Subsidy plus such interest as is prescribed by the United Kingdom Competition Requirement within ten (10) Business Days of Homes England issuing it with a written demand for payment.

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

The Grant Recipient must comply with the terms of Schedule 6 (*Anti-Bribery and Anti-Corruption*).

22 **Information and Confidentiality**

The Grant Recipient must comply with the terms of Schedule 7 (*Information and Confidentiality*).

23 **Data Protection**

The Grant Recipient must comply with the terms of Schedule 8 (*Data Protection*).

24 **Intellectual Property**

The Grant Recipient must comply with the terms of Schedule 9 (*Intellectual Property*).

25 **Health and Safety**

- 25.1 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 Capital Bid do likewise.
- 25.2 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 Homes England.
- 25.3 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.
- 25.4 To the extent that Homes England is a 'client' for the purposes of the CDM Regulations:
- 25.4.1 where the Grant Recipient is engaging consultants and a contractor or contractors as Subcontractors to Deliver the Firm Scheme the Grant Recipient elects to be the only client in relation to such Firm Scheme; or
- 25.4.2 where the Grant Recipient is contracting with a developer as a Subcontractor to Deliver a Firm Scheme the Grant Recipient shall procure that such developer shall elect to be the only client in relation to the Firm Scheme on or before the date that such scheme becomes a Firm Scheme,
- and Homes England hereby agrees to such election.
- 25.5 The Grant Recipient shall not seek to withdraw, terminate or in any manner derogate from such election pursuant to Clause 25.4.1 (*Health and Safety*) or (if appropriate) shall procure that any developer/employer shall not withdraw, terminate or in any manner derogate from any election pursuant to Clause 25.4.1 (*Health and Safety*) without Homes England's prior written consent, which Homes England may in its absolute discretion withhold.
- 25.6 The Grant Recipient shall at all times comply with all obligations, requirements and duties arising under the HS Act and the CDM Regulations in connection with the Works.
- 25.7 The Grant Recipient shall at all times procure the compliance with all obligations, requirements and duties arising under the HS Act by any and all parties appointed in connection with the Works or allowed on the Site.
- 25.8 The Grant Recipient shall at all times maintain and procure that there is maintained an accurate record of all health, safety and environmental incidents which occur on or in connection with each Firm Scheme in the form set out in Schedule 5 (*Form of Health and Safety Report*) to this Agreement.
- 25.9 Without prejudice to any other provision of this Agreement, the Grant Recipient shall notify Homes England's Safety Health and Environmental (SHE) Team on 0300 1234 500 or

[enquiries@homesengland.gov.uk](mailto:enquiries@homesengland.gov.uk) within five (5) Business Days of the occurrence of any of the following events which arise out of or in connection with a Firm Scheme:

- 25.9.1 any specified (major) injuries, requiring reporting under RIDDOR;
- 25.9.2 a fatal accident to any worker or a member of the public;
- 25.9.3 any injury to a member of the public requiring reporting under RIDDOR;
- 25.9.4 any dangerous occurrence, as defined by RIDDOR;
- 25.9.5 any enforcement action taken by the Health and Safety Executive, Local Fire Authority, the Police and Statutory Environmental Regulators (including the serving of enforcement, warning, improvement or prohibition notices);
- 25.9.6 any incident having health, safety or environmental implications which attracts the attention of the police and/or the media;
- 25.9.7 the commencement of any criminal prosecution under health and safety or environmental legislation; and
- 25.9.8 any environmental incident that may be brought to the attention of the regulatory authorities, either directly or indirectly, which has the potential to give rise to a formal warning or prosecution, either as a single occurrence or as a contributory occurrence in a series of events.

25.10 The Grant Recipient will procure that all its Subcontractors and Professional Team comply at all times with the HS Act and the CDM Regulations and will procure that the Grant Recipient and each Subcontractor and member of the Professional Team shall at all times have due regard to the protection and safety of members of the public and their property on the Site, adjoining land owners and their property, visitors to the Site and their property and will at all times comply with the requirements of the Health and Safety Executive, the HS Act and all rules codes and regulations (including the CDM Regulations) and legislation relating to the health and safety of workers, and to the undertaking of construction works.

## 26 **Construction Industry Scheme**

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

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

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

**HMRC** means HM Revenue & Customs.

26.2 The Grant Recipient warrants to Homes England that it holds gross payment status for the purposes of the CIS (pursuant to paragraph CISR13040 of the Construction Industry Scheme Reform manual or otherwise) such that the Grant Recipient is entitled to receive payments under Construction Contracts without any deduction under the CIS. The Grant

Recipient undertakes to notify Homes England within two (2) Business Days of ceasing to hold gross payment status.

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

## 27 **Assignment and sub-contracting**

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

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

## 28 **Dispute resolution**

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

### 28.2 Negotiation

28.2.1 In the event that a party considers 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 Grant Recipient's Representative and Homes England Senior Officer (**Senior Officers**) shall use their reasonable endeavours to resolve such Dispute amicably and in good faith and in accordance with this Clause 28.2 (*Negotiation*).

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

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

### 28.3 Referral to Expert

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

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

- 28.3.3 If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this Clause 28.3 (*Referral to Expert*) then:
- (a) either party may apply to the Relevant Body to discharge the Expert and to appoint a replacement Expert with the required expertise; and
  - (b) this Clause 28.3 (*Referral to Expert*) shall apply in relation to the new Expert as if they were the first Expert appointed.
- 28.3.4 All matters under this Clause 28.3 (*Referral to Expert*) must be conducted, and the Expert's decision shall be written, in the English language.
- 28.3.5 The Parties shall be entitled to make submissions to the Expert (including oral submissions) and shall provide (or procure the provision to) the Expert with such assistance and documents as the Expert reasonably requires for the purpose of reaching a decision.
- 28.3.6 To the extent not provided for by this Clause 28.3 (*Referral to Expert*), the Expert may in their reasonable discretion determine such other procedures to assist with the conduct of the determination as they consider just or appropriate, including (to the extent they consider necessary) instructing professional advisers to assist them in reaching their determination.
- 28.3.7 Each party shall (with reasonable promptness) supply each other with all information and give each other access to all documentation and personnel as the other party reasonably requires to make a submission under this Clause 28.3 (*Referral to Expert*).
- 28.3.8 The Expert shall act as an expert and not as an arbitrator. The Expert shall determine the matter in dispute (which may include any issue involving the interpretation of any provision of this Agreement, their jurisdiction to determine the matters and issues referred to them or their terms of reference). The Expert's written decision on the matters referred to them shall be final and binding on the parties in the absence of manifest error or fraud.
- 28.3.9 Each party shall bear its own costs in relation to the reference to the Expert. The Expert's fees and any costs properly incurred by them in arriving at their determination (including any fees and costs of any advisers appointed by the Expert) shall be borne by the Parties equally or in such other proportions as the Expert shall direct.

#### 28.4 Submission to Courts

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

#### 28.5 Continued Performance

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

**29 Further assurance**

29.1 At any time upon the written request of Homes England 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 Homes England the full benefit of this Agreement and of the rights and powers herein granted; and

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

**30 No fetter on statutory functions**

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

**31 No agency**

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

31.2 The 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 Homes England 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 Homes England.

**32 Exclusion of third party rights**

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

**33 Entire Agreement**

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

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

34 **Severability**

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

35 **Cumulative rights and enforcement**

35.1 Any rights and remedies provided for in this Agreement whether in favour of Homes England or 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 Homes England 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 Homes England may have in law, in equity or otherwise Homes England shall be entitled to seek injunctive or other equitable relief compelling specific performance of and other compliance with the terms of such obligations.

36 **Waiver**

36.1 Neither the failure of any party at any one time to enforce any provision of this Agreement nor the payments by Homes England of Firm Scheme Grant under Clause 15.1 (*Payment of Grant*) in any way affects the relevant party's right thereafter to require complete performance by the other party, nor may the waiver of any breach or any provision be taken or held to be a waiver of any subsequent breach of any provision or be a waiver of the provision itself.

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

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

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

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

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

37 **VAT**

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

37.2 The Grant Recipient considers that the payment of grant funding under or in connection with this Agreement is outside the scope of VAT. In the event that Homes England is the recipient of a supply or supplies of specified services (as such term is defined in the Value Added Tax (Section 55A) (Specified Services and Excepted Supplies) Order 2019 (the

**Order**) under or in connection with this Agreement, Homes England confirms that the requirements specified in article (8)(1)(b) of the Order are satisfied in respect of the supply or supplies with the result that Section 55A(6) of the Value Added Tax Act 1994 will not apply to such supply or supplies. The Grant Recipient acknowledges that it will account for and pay any VAT on any taxable supply or supplies it makes to Homes England under or in connection with this Agreement.

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

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

37.3.2 the time of the supply for VAT purposes,

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

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

## 38 **Survival of this Agreement**

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

38.2 Insofar as any of the obligations of 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 Clauses 3 (*Acknowledgements, Representations and Warranties*), 5.3 (*Firm Schemes*), 6 (*Empty Homes Schemes, HOLD Schemes and OPSO Schemes*), 7 (*Changes to Firm Schemes*), 9.7 (*Firm Scheme substitution and additions*), 10 (*Delivery Obligations*), 11 (*Operational Obligations*), 12 (*Review, Monitoring and Reporting*), 13 (*Transparency Obligations*), 14 (*Grant Claim Procedures*), 15 (*Payment of Grant*), 16 (*Adjustments to Final Tranche*), 17 (*Withholding of Grant*), 18 (*Repayment of Grant*), 19 (*Default Events and Termination*), 20 (*Subsidy*), 21 (*Anti-Bribery and Anti-Corruption*), 22 (*Information and Confidentiality*), 23 (*Data Protection*), 24 (*Intellectual Property*), 28 (*Dispute resolution*), 35 (*Cumulative rights and enforcement*), 36 (*Waiver*), 39 (*Execution*), 40 (*Governing law*), Schedule 6 (*Anti-Bribery and Anti-Corruption*), Schedule 7 (*Information and Confidentiality*), Schedule 8 (*Data Protection*), Schedule 9 (*Intellectual Property*), and this Clause 38 (*Survival of this Agreement*) and such other provisions of this Agreement as are necessary to give effect to such Clauses and/or Schedules are expressly agreed by the parties to survive the termination or expiry of this Agreement.

39        **Execution**

39.1        This Agreement may be executed:

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

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

40        **Governing law**

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

41        **Notices**

41.1        Any notice to be given hereunder shall be in writing addressed to Homes England Senior Officer (in the case of notices to be given to Homes England) or the Grant Recipient's Representative (in the case of notices to be given to the Grant Recipient) and shall be sufficiently served if delivered by hand and receipted for by the recipient or sent by recorded delivery and addressed in the case of any party to the other party's registered office as set out at the beginning of this Agreement or to such other addresses a party may from time to time notify to the other in writing provided that such other address is within England and Wales.

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

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

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

provided that if the delivery or receipt is:

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

41.2.4      is after 4.00 pm

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

## Schedule 1

### Acknowledgements, Representations and Warranties

#### Part 1

##### Agreed Principles

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

- 10 Where the Grant Recipient applies RCGF Proceeds towards the delivery of any dwelling in any year of the AHP 2021/26:
- 10.1 the terms of this Agreement will be construed as applying to such RCGF Proceeds (*mutatis mutandis*); and
- 10.2 the Grant Recipient must comply with any applicable terms of the Capital Funding Guide with respect to such dwelling.
- 11 The Grant Recipient acknowledges that, pursuant to the programme requirements of the AHP 2021/26, where the Grant Recipient possesses or will possess a SLI (Rented Accommodation) in the form of a lease, the unexpired term of such lease must be of the longest duration that the Grant Recipient can reasonably negotiate and comply with any applicable requirements of the Capital Funding Guide.
- 12 The Grant Recipient may not upload any Nil Grant Unit onto IMS other than with Homes England's prior written approval and the provisions of this Agreement which govern Nil Grant Units shall be of no effect until the Acceptance Date has passed with respect to any Firm Scheme which Homes England has agreed on IMS may comprise one or more Nil Grant Units.

## Part 2

### Representations and Warranties

#### 1 Powers, vires and consents

- 1.1 It has the power to enter into and to exercise its rights and perform its obligations under this Agreement and has taken all necessary action to authorise the execution by it of and the performance by it of its obligations under this Agreement.
- 1.2 It is not subject and will not become subject to any other obligation, compliance with which will or is likely to, have a Material Adverse Effect in relation to the Approved Capital Bid or any Firm Scheme.
- 1.3 Its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with its terms.
- 1.4 The execution, delivery and performance by it of this Agreement do not:
- 1.4.1 insofar as it is aware contravene any applicable law or directive or any judgement, order or decree of any court having jurisdiction over it;
  - 1.4.2 conflict with, or result in any breach of any of the terms of, or constitute a default under, any agreement or other instrument to which it is a party or any licence or other authorisation to which it is subject or by which it or any of its property is bound; or
  - 1.4.3 contravene or conflict with its standing orders or other constitutional documents binding upon it (as applicable) from time to time.
- 1.5 All consents, required by it in connection with the execution, delivery, issue, validity or performance or enforceability of this Agreement have been obtained and have not been withdrawn.
- 1.6 So far as it is aware, it is not in breach of or in default under any agreement to which it is a party or which is binding on it or any of its assets which has or could have a Material Adverse Effect.
- 1.7 To the best of its knowledge, no claim is presently being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge, pending or threatened against it or any of its assets which will or might have a Material Adverse Effect in relation to the Approved Capital Bid or any Firm Scheme.
- 1.8 It has not committed any Prohibited Act.

#### 2 Deliverability

- 2.1 It has obtained or will by Firm Scheme Completion have obtained all Consents and to the extent that such Consents have been obtained they have not been withdrawn;
- 2.2 It is not aware, after due enquiry, of anything which materially threatens the success or successful completion of the intention or purpose of this Agreement;

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

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

### 3 **Application of Approved Capital Bid**

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

### 4 **Authority of 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 delivered or, disposed of pursuant to this Agreement; or

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

### 6 **Local Government Act 1999**

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

### 7 **Local Government Finance Act 1988**

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

## Schedule 2

### Empty Homes Schemes

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

2 In Clause 1.1 (*Definitions*):

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

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

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

**Lease Termination Date** means the date upon which the Grant Recipient's lease for whatever reason comes to an end;

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

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

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

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

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

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

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

"; and".

5 A new Clause 5.2.2(f) (*Firm Schemes*) shall be inserted as follows:

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

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

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

(a) a Contractual Interest shall be disregarded and of no effect; and

(b) in the case of a:

i Empty Homes Scheme (P&R), the Grant Recipient must possess a Secure Legal Interest (Empty Homes P&R)

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

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

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

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

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

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

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

RA = FSG – Utilised Grant (UG)

where

RA is the Recoverable Amount;

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

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

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

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

9 A new paragraph 2.15 of Schedule 1 Part 2 shall be inserted as follows:

" 2.15 Where the Grant Recipient is Delivering a:

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

### Schedule 3

#### HOLD Schemes and OPSO Schemes

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

2 In Clause 1.1 (*Definitions*):

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

**Agreed Client Group** means in relation to each:

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

**Eligible Purchaser** means a person who:

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

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

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

**HOLD/OPSO Standards** means that:

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

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

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

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

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

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

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

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

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

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

- i does not and will not (when developed or remodelled) fall in whole or in part within the definition of a Residential Care Home; and
- ii will comprise no dwellings which have not been procured, constructed and/or designed for use by those in the relevant Agreed Client Group."

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

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

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

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

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

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

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

9 A new Clause 11.5.5(f) (*Operational Obligations*) shall be inserted as follows:

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

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

11 At Clause 11.5.12 (*Operational Obligations*) the full stop shall be deleted and the following shall be inserted at the end of the Clause:

"; and".

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

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

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

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

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

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

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

16 Clause 18.6 (*Repayment of Grant*) shall be deleted and replaced with the following:

"18.6 The Grant Recipient acknowledges and agrees that the disposal or letting of a AHP Dwelling to any person for any purpose other than the relevant Agreed Purpose or, in the case of any HOLD Scheme and/or OPSO Scheme, to any person who does not fall within the relevant Agreed Client Group, constitutes a failure to comply with a condition attached to the making of Capital Grant for the purposes of paragraph 7(e) of the Recovery Determination."

## Schedule 4

### Development Costs

#### Part 1

### Development Costs

#### Heads of expenditure

##### 1 Acquisition

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

##### 2 Works Costs

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

##### 3 On costs

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

- 3.9 Borrowing administration charges (including associated legal and valuation fees).
- 3.10 An appropriate proportion of the 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 Firm Scheme 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

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

**Schedule 5**

**Form of Health and Safety Report**

Grant Recipient: [            ]

Firm Scheme: [            ]

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

Reporting period: [            ] to [            ]

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

## Schedule 6

### Anti-Bribery and Anti-Corruption

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

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

- 2 Where the Grant Recipient is aware that it is in breach of an obligation under this Schedule 6 (*Anti-Bribery and Anti-Corruption*) it must promptly notify Homes England of the fact and take all such steps as are appropriate in the circumstances to remedy the breach.
- 3 If the Grant Recipient has any grounds for suspecting financial irregularity in the use of any Agreement Funding, it must:
  - 3.1 notify Homes England immediately;
  - 3.2 explain to Homes England what steps are being taken to investigate the suspicion; and
  - 3.3 keep Homes England informed about the progress of the investigation.

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

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## Schedule 7

### Information and Confidentiality

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

- 5.2 is treated as confidential and not disclosed (without Homes England's prior written approval) or used by any such staff or professional advisors or consultants otherwise than for the purposes of this Agreement; and
- 5.3 where it is considered necessary in the opinion of Homes England, the Grant Recipient shall ensure that such staff, professional advisors or consultants sign a confidentiality undertaking before commencing work in connection with this Agreement.
- 6 Nothing in this Schedule 7 (*Information and Confidentiality*) shall prevent Homes England from:
- 6.1 disclosing any Confidential Information for the purpose of:
- 6.1.1 the examination and certification of Homes England's accounts; or
- 6.1.2 any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which Homes England has used its resources;
- 6.2 disclosing any Confidential Information obtained from the Grant Recipient:
- 6.2.1 to any other department, office or agency of the Crown; or
- 6.2.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- 6.2.3 on a confidential basis to a proposed successor body in connection with any assignment, novation or disposal of any of its rights obligations or liabilities under this Agreement;
- 6.2.4 to any person engaged in providing any services to Homes England for any purpose relating to or ancillary to this Agreement or any person conducting an Office of Government Commerce gateway review,
- provided that in disclosing information under any of paragraphs 6.2.1 (*Information and Confidentiality*) to 6.2.4 (*Information and Confidentiality*) of this Schedule 7 (*Information and Confidentiality*) inclusive, Homes England discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.
- 7 Nothing in this Schedule 7 (*Information and Confidentiality*) shall prevent 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.
- 8 The parties to this Agreement are FOIA Authorities and:
- 8.1 are subject to legal duties which may require the release of information under FOIA and/or EIR; and
- 8.2 FOIA Authorities may be under an obligation to provide Information subject to a Request for Information.

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

item of Confidential Information, until such earlier time as that item of Confidential Information reaches the public domain otherwise than by reason of a breach of this Agreement or of any other duty of confidentiality relating to that information.

- 15 The Grant Recipient must regularly review its security arrangements in relation to its access to and operation of IMS and in particular the Grant Recipient must:
  - 15.1 notify Homes England immediately if there is any change in the identity of the individual discharging the role of the security administrator on behalf of the Grant Recipient or if such person leaves the Grant Recipient's employment or relinquishes that role;
  - 15.2 maintain a list of those of its employees and consultants authorised to use IMS and keep such list under regular review to ensure that access to IMS is given only to appropriate persons;
  - 15.3 ensure that IMS passwords are kept confidential and not shared by or with its employees or consultants; and
  - 15.4 ensure that systems are in place to prevent any person accessing IMS under a 'User ID' other than their own.
- 16 Each party acknowledges and agrees that the other may in its absolute discretion redact all or part of the Information within a Request for Information prior to its publication. In so doing and in its absolute discretion, the Relevant FOIA Authority may take account of any EIR Exceptions and FOIA Exemptions. Each party may in its absolute discretion consult with the other regarding any redactions to the Information to be published pursuant to this Schedule 7 (*Information and Confidentiality*). The Relevant FOIA Authority will make the final decision regarding publication and/or redaction of the Information.

## Schedule 8

### Data Protection

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

## Schedule 9

### Intellectual Property

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

**Schedule 10**

**Legal Opinion**

[TO BE TYPED ON COUNCIL NOTEPAPER]

Our ref

Your ref

Date

Email address

Homes and Communities Agency  
One Friargate,  
Coventry,  
CV1 2GN

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

Dear Sirs,

**Legal Opinion re Grant Agreement and related matters**

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

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

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

I am of the opinion that, as at the date hereof, as a matter of English law, the Council has the power and authority to enter into, observe and perform the terms and obligations on its part to be observed and performed by it under the Agreement and has taken all necessary action and has obtained all relevant consents and approvals (statutory or otherwise) to authorise the execution and delivery of the Agreement and the performance and validity of the obligations under it.

Neither the execution and the delivery of, nor the performance by the Council of its obligations under the Agreement will violate any provisions of any existing application law, rule, regulation or agreement binding on the Council, and the Agreement constitutes a valid and legally binding obligation on the

Council enforceable in accordance with its terms. I have given this opinion, taking into account the common law and statutory duties applicable to the exercise of power by the Council.

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

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

Yours faithfully

Council Solicitor<sup>1</sup>

Print Name:

There follows the specimen signatures and titles of those who will or may attest the execution as a deed of the Agreement referred to above.<sup>2</sup>

Name	Title	Specimen Signature

<sup>1</sup> Council to ensure that the signatory to the Grant Agreement is different to the Council Solicitor signing the Legal Opinion

<sup>2</sup> Please note that the Legal Opinion will not be in a form satisfactory to Homes England unless the person executing the Grant Agreement is identified in this table.

**EXECUTION PAGE TO THE GRANT AGREEMENT**

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

**Homes and Communities Agency (trading as Homes England)**

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

Authorised Signatory:

Print Name:

**[Grant Recipient]**

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

.....  
Authorised Officer

Print Name: