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Homes and Communities Agency (trading as Homes England)

and

Nottingham City Council

and

Nottingham City Homes Registered Provider Limited

and

Framework Housing Association

Grant Agreement (Consortium)

in relation to the Rough Sleeping Accommodation Programme 2021 – 2024

Homes England

Housing.Contracts@homesengland.gov.uk

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THIS AGREEMENT is dated

PARTIES

- (1) **HOMES AND COMMUNITIES AGENCY** (trading as Homes England), a body corporate under Section 1 of the Housing and Regeneration Act 2008, of One Friargate, Coventry, CV1 2GN (including any statutory successor) (**Homes England**);
- (2) **NOTTINGHAM CITY COUNCIL** whose registered office is at Loxley House, Station Street, Nottingham, NG2 3NG (the **Lead Partner**); and
- (3) **NOTTINGHAM CITY HOMES REGISTERED PROVIDER LIMITED** a company (with registered number **09810057**) whose registered office is at Loxley House, Station Street, Nottingham, England, NG2 3NJ, **FRAMEWORK HOUSING ASSOCIATION** a company (with registered number **03318404**) and a charity (with registered charity number **1060941**) whose registered office is at Val Roberts House, 25, Gregory Boulevard, Nottingham, NG7 6NX (together with the Lead Partner, each an **Original Consortium Member**) (and collectively the **Original Consortium Members**).

BACKGROUND

- (A) On 24 May 2020, MHCLG (as defined below) announced that funding was being made available to deliver longer-term, move-on accommodation and support services as part of MHCLG's Rough Sleeping response to ensure rough sleepers brought into emergency accommodation do not return to sleeping rough. The first year of allocations of funding was announced on 29 October 2020 (designated the Next Steps Accommodation Programme or NSAP). Thereafter, MHCLG has announced that further capital and revenue funding may be made available to deliver additional units of longer-term, move-on accommodation and support services as part of the same programme (the **Rough Sleeping Accommodation Programme** or **RSAP**).
- (B) The latest Prospectus issued by MHCLG in connection with the Rough Sleeping Accommodation Programme invites local authorities, registered providers and their local partners to engage with the RSAP co-production process and make a bid for the funding available pursuant to RSAP.
- (C) Pursuant to a consent letter dated 1 July 2020, MHCLG has provided consent to Homes England under section 19 of the Housing and Regeneration Act 2008 to make grants available to local authorities and registered providers under NSAP and RSAP.
- (D) Pursuant to the commissioning template of 20 August 2020 (and thereafter amended and updated on an annual basis), MHCLG has commissioned Homes England to act as a delivery partner for NSAP and subsequently RSAP and therefore Homes England is responsible for the administration of RSAP and dispersal of funding made available by MHCLG under RSAP within England (other than Greater London).
- (E) The Original Consortium Members have submitted a bid to Homes England for grant funding to assist them in meeting:
 - (a) the capital costs of delivering long-term, national assets maintained in perpetuity in the form of supported move-on homes for people recovering from rough sleeping; and

(b) where applicable, the revenue costs of the provision of support services to those individuals.

- (F) Pursuant to RSAP, Homes England has agreed in response to the Original Consortium Members' bid to advance Capital Grant to the Original Consortium Members to facilitate the delivery of those housing schemes, and where applicable, to provide Revenue Grant to facilitate the provision of tenancy support to the residents of those schemes, in each case subject to and in accordance with the terms of this Agreement. Further Capital Grant and (where applicable) Revenue Grant may be made available to the Original Consortium Members pursuant to RSAP to facilitate the delivery of similar housing schemes and associated support services subject to and in accordance with the terms of this Agreement.
- (G) The grant funding provided under this Agreement is (at its date) made in compliance with the United Kingdom Competition Requirement.
- (H) The purpose of the grant provided under this Agreement is to achieve the objectives set out in the sub-paragraphs to paragraph (E) above (*Background*).
- (I) In using the Capital Grant and (where applicable) Revenue Grant provided under this Agreement, the Consortium Members 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 interpretation

1.1 Definitions

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

Acceptance Date means the date upon which Homes England accepts a scheme for:

- (a) the Delivery of RSAP Housing in IMS pursuant to Clause 4.1 (*Capital Firm Schemes*); or
- (b) the provision of Revenue Services in IMS pursuant to Clause 9.1 (*Revenue Firm Schemes*);

Acquisition Date means the date identified in IMS on which the Relevant Consortium Member has acquired the Site;

Acquisition Tranche Grant means subject to Clause 4.3 (*Capital Firm Schemes*) and Clause 5.3.1(c) (*Changes to Capital Firm Schemes*) an amount equivalent to forty-five per centum (45%) of the Capital Firm Scheme Grant (or such other per centum as is approved by Homes England on IMS as payable following achievement of the Acquisition Date with respect to the relevant Capital Firm Scheme);

Actual Development Costs means in respect of each Capital Firm Scheme the amount of Development Costs actually incurred by the Relevant Consortium Member in Delivering that Capital Firm Scheme as such amount is warranted and certified by the Lead Partner pursuant to Clause 18.2.2(b) (*Capital Grant Claim Procedures*), Clause 18.3.1 (*Capital Grant Claim Procedures*) and Clause 18.5.2 (*Capital Grant Claim Procedures*);

Additional Scheme means (as the context so requires):

- (a) a scheme for the Delivery of RSAP Housing proposed by the Lead Partner on behalf of the Consortium in addition to the RSAP Housing comprised within the Original Approved Capital Bid; or
- (b) a scheme for the provision of Revenue Services proposed by the Lead Partner on behalf of the Consortium in addition to those Revenue Services comprised within the Original Approved Revenue Bid;

Additional Scheme Acceptance Date means (as the context so requires) the date upon which Homes England confirms acceptance of an Additional Scheme pursuant to Clause 8.11 (*Capital Firm Scheme substitution and additions*) or Clause 11.5 (*Revenue Firm Scheme additions*);

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 RSAP 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 RSAP Dwellings is to be used, being for the purposes of providing supported move-on housing for people recovering from, or at immediate risk of, rough sleeping and such purposes as are further described in the Capital Firm Scheme Details;

Agreement means this grant agreement (including its Schedules);

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

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

Allocated Revenue Grant means the maximum amount of revenue grant payable by Homes England to the Consortium Members in respect of the Approved Revenue Bid and identified in IMS as the total "revenue contribution to tenancy support costs" within the latest approved version in the "Offerline Sub Product Profile" (as the same may be amended from time to time in accordance with the terms of this Agreement), such sum (in the event of any delay in the Capital Firm Scheme Completion Date (if any) to which the Approved Revenue Bid relates (if it does so relate)) to be revised to take account of the delay;

Allocation Change Notice means a notification submitted by Homes England under Clause 16.3 (*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 Capital Firm Scheme other than a Single Claim Scheme, the Tranche identified on IMS as payable once the Relevant Consortium Member(s) achieves the Acquisition Date, the Start on Site Date or the Capital Firm Scheme Completion Date;

Approved Bid means an Approved Capital Bid or Approved Revenue Bid (as the context requires);

Approved Capital Bid means the Original Approved Capital Bid and the aggregate of the Capital New Schemes and Capital 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 Revenue Bid means the Original Approved Revenue Bid and the aggregate of the Revenue New Schemes 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);

Annual Return means a certificate in the form set out in Schedule 5 (*Annual Return*) (or in such other form as MHCLG may prescribe from time to time) signed by the Lead Partner's Representative or such other person as may be agreed by MHCLG from time to time;

Auditor Guidance means the guidance for external auditors or accountants set out in Schedule 4 (*Guidance to external auditors or accountants*);

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

Bid Default means (as the context so requires):

- (a) Homes England determines (acting reasonably) that proper progress against the Consortium's projections in the Approved Capital Bid, has not been made by the Consortium in delivering the Approved Capital Bid; or
- (b) Homes England determines (acting reasonably) that proper progress against the Consortium's projections in the Approved Revenue Bid has not been made by the Consortium in delivering the Approved Revenue Bid;

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

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

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

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

Capital Firm Scheme means each scheme for the Delivery of the RSAP Dwellings as has been fully detailed in IMS and accepted by Homes England through IMS:

- (a) as a Capital Firm Scheme as at the date hereof; or
- (b) in accordance with Clause 4.1 (*Capital Firm Schemes*); or
- (c) in accordance with Clause 8.4 (*Capital Firm Scheme substitution and additions*) or Clause 8.11 (*Capital Firm Scheme substitution and additions*);

Capital Firm Scheme Completion Date means the date set out in the Capital 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;

Capital Firm Scheme Delivery Timetable means the timetable for the Delivery of each Capital Firm Scheme as agreed by Homes England through IMS (as the same may be amended from time to time in accordance with the terms of this Agreement);

Capital Firm Scheme Details means in respect of each Capital Firm Scheme (whether comprised within the Original Approved Capital Bid or otherwise) the descriptive and other details set out in IMS and as accepted by Homes England through IMS, as the same may be varied, supplemented or updated from time to time in accordance with the terms of this Agreement;

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

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 as 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;

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

Capital Indicative L&R Scheme means each prospective Capital L&R Scheme for the development of RSAP Housing (which meets the description in limb (a) of that definition) in respect of which the Lead Partner (on behalf of the Relevant Consortium Member) expects to secure Capital Firm Scheme status;

Capital Indicative P&D Scheme means each prospective Capital P&D Scheme for the development of RSAP Housing (which meets the description in limb (b) of that definition) in respect of which Lead Partner (on behalf of the Relevant Consortium Member) expects to secure Capital Firm Scheme status;

Capital Indicative Scheme means a Capital Indicative L&R Scheme or a Capital Indicative P&D Scheme;

Capital Indicative Scheme Details means in respect of each Capital Indicative Scheme (whether comprised within the Original Approved Capital Bid or otherwise) the descriptive and other details set out 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);

Capital L&R Scheme means a Capital Firm Scheme in relation to which the Relevant Consortium Member holds or will hold a Secure Legal Interest (L&R);

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

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

Capital Original Scheme means:

- (a) a Capital Original Bid Scheme; or
- (b) a named scheme for the Delivery of RSAP 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;

Capital P&D Scheme means a Capital Firm Scheme in relation to which the Relevant Consortium Member holds or will hold a Secure Legal Interest (P&D);

Capital Scheme Transition has the meaning given to such term in Clause 6.5.1 (*Capital Indicative Schemes*);

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

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

CEDR means the Centre for Effective Dispute Resolution;

Change in Control means:

- (a) in respect of a Consortium Member that is an RP Provider, a change in control, which means the power of a person (or persons acting together)

to secure that the affairs of another are conducted directly or indirectly in accordance with the wishes of that person (or those persons acting together) which in the case of a corporate body, shall include:

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

CIPFA means the Chartered Institute of Public Finance and Accountancy;

Competent Authority means (as the case may be):

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

Completed Capital Firm Scheme means (without prejudice to the operation of Clause 24.2.13 (*Repayment of grant*)) a Capital Firm Scheme in respect of which:

- (a) Practical Completion has been achieved and recorded on IMS; and
- (b) Homes England has paid the total Capital Firm Scheme Grant;

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

- (a) the Relevant Consortium Member holds a Secure Legal Interest in each RSAP Dwelling comprised within the Capital Firm Scheme; and
- (b) each RSAP Dwelling comprised within the Capital Firm Scheme is fit for beneficial occupation as a residential development in accordance with applicable NHBC, LABC or equivalent requirements current at the date

of any required inspection and meets the Submitted Standards and the terms of this Agreement,

and **Complete** shall be construed accordingly;

Compliance Audit means the procedure (in a form advised by Homes England from time to time) by which an auditor independent of the Consortium Members certifies (at the Consortium's cost) whether the Capital 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:

- (a) in respect of Homes England, all information relating to Homes England's business and affairs, its employees, suppliers including IMS systems, data and software programs and otherwise relating to the existence or terms of this Agreement in respect of which any Consortium Member becomes aware in its capacity as a Party to this Agreement or which is received by any Consortium Member in relation to this Agreement from either Homes England or any of its advisers or from any third party if the information was obtained by that third party directly or indirectly from Homes England or any of its 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);
- (b) in respect of MHCLG, all information relating to MHCLG's business and affairs, its employees and suppliers including its systems, data and software programs and otherwise relating to the existence or terms of this Agreement in respect of which any Consortium Member becomes aware in its capacity as a Party to this Agreement or which is received by any Consortium Member in relation to this Agreement from either MHCLG or any of its advisers or from any third party if the information was obtained by that third party directly or indirectly from MHCLG 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
- (c) in the case of the Consortium Members, such specific information as the Lead Partner shall have identified to Homes England in writing prior to the date hereof as confidential information for the purposes of this Agreement;

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

Consortium means the Consortium Members jointly;

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

Consortium Member Party means:

- (a) the applicable Consortium Member, the Building Contractor, any member of the Professional Team, agent, employee or Subcontractor of that Consortium Member and the Lead Partner's Representative;
- (b) where the Consortium Member is an RP Provider, any subsidiary or holding company of that Consortium Member or any subsidiary to any such holding company as subsidiary and holding company are defined in Section 1159 of the Companies Act 2006; and
- (c) where the Consortium Member is an LA Provider, any subsidiary, associate or joint venture in which the local authority has a material interest sufficient to require group financial statements to be prepared which account for these interests, in accordance with CIPFA's Code of Practice on Local Authority Accounting in the United Kingdom 2020/21 (as amended or updated) which is the Statement of Recommended Practice on local authority accounting or any code or other document which replaces it as the Statement of Recommended Practice;

Consortium Members means, subject to Clauses 12.1 (*Changes to the Consortium*), 12.2 (*Changes to the Consortium*) and Clause 25.8 (*Default Events and Termination*), the Original Consortium Members and any New Consortium Member and Consortium Member shall be construed accordingly;

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

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

- (a) the Acquisition Date has or will have occurred at the date of the expiry of the notice period referred to in Clause 25.4.2 (*Default Events and Termination*) or at the date of the expiry of the period referred to in Clause 25.6.2 (*Default Events and Termination*) (as applicable); and
- (b) the Acquisition Tranche Grant has been paid;

CORE means the national information source "Continuous Recording" that records information on new RSAP Housing occupiers and the properties they rent;

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;

Deed of Adherence means the deed referred to in Clause 12.3 (*Changes to the Consortium*) and substantially in the form set out in Schedule 11 (*Deed of Adherence*) as may be amended or supplemented by Homes England from time to time and which shall be issued by Homes England to the proposed New Consortium Member for execution;

Deed of Release means the deed referred to in Clause 12.1 (*Changes to the Consortium*) and substantially in the form set out in Schedule 12 (*Deed of Release*) as may be amended or supplemented by Homes England from time to time and which shall be issued by Homes England to the proposed Outgoing Consortium Member for execution;

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

Deficit Sum means (as the context requires) the difference (expressed as a positive sum) between:

- (a) the negative amount of the Practical Completion Tranche Grant referred to in Clause 5.5.1(b) (*Changes to Capital Firm Schemes*) and zero, or
- (b) the negative amount of the Practical Completion Tranche Grant referred to in Clause 22.2.2(b) (*Adjustments to Practical Completion Tranche Grant*) and zero;

Delivery means the acquisition, development, conversion, refurbishment, repair and/or Rehabilitation (as applicable) of the Site and/or the Firm Scheme and/or the Approved Bid and/or full delivery of the Revenue Services (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 Capital Firm Scheme incurred or to be incurred in respect of such Capital Firm Scheme by the Relevant Consortium Member in respect of the heads of expenditure set out in Part 1 to Schedule 2 (*Development Costs*) or such other heads of expenditure as Homes England may in its absolute discretion agree in respect of any Capital Firm Scheme **provided that** any costs falling within the heads of expenditure set out in Part 2 to Schedule 2 (*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 a transaction the effect of which is that the legal or beneficial interest in any RSAP Dwelling transfers to, becomes vested in, is leased to or reverts to another person;

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

Duration means in relation each Firm Scheme, the period starting from the date on which the scheme becomes a Firm Scheme and ending on the date on which the Delivery of the Firm Scheme is completed in accordance with the relevant Firm Scheme Details;

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;

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 one or more 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 one or more 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 one or more 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 Party to the other(s) that the dispute or difference is to be referred to an Expert;

Financial Period means the period from 1 April to 31 March in each year during the Revenue Funding Period;

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 Capital Firm Scheme or the Revenue Firm Scheme, as the context may require;

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 Capital Firm Scheme Details or the Revenue Firm Scheme Details, as the context may require;

Firm Scheme Grant means a Capital Firm Scheme Grant or a Revenue Firm Scheme Grant, as the context so requires;

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;

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

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

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

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

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

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

Fundamental Termination Amount means the amount calculated by deducting the aggregated amount of all Capital Firm Scheme Grant paid to the Lead Partner pursuant to Clause 20.1 (*Payment of Capital Grant*) in relation to all Completed Capital Firm Schemes prior to the Notice Date from the aggregated amount of all Capital Firm Scheme Grant paid to the Lead Partner pursuant to that Clause prior to such date;

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

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

GW1 Event means the occurrence of any of the following:

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

GW2 Event means any of the following:

- (a) the Lead Partner's Investment Partner status is lost, removed or relinquished;
- (b) the Regulator directs or recommends that Capital Grant or Revenue Grant is not to be paid to the Lead Partner or to the Relevant Consortium Member;
- (c) the Lead Partner fails to procure the delivery of all the RSAP Housing which the Consortium was committed to deliver under this Agreement available for letting by the date identified in IMS (or such other date as Homes England may in its absolute discretion agree in writing (through IMS or otherwise)); or
- (d) a Section 114 Report has been made in relation to a Consortium Member that is an LA Provider which in Homes England's opinion has or will have a Material Adverse Effect;

GW3 Event means any of the following:

- (a) an Insolvency Event occurs in relation to a Consortium Member;

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

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 (or such officer fulfilling the equivalent role from time to time);

HRA 2008 means the Housing and Regeneration Act 2008;

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

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

IMS means Homes England's on-line investment management system from time to time or any successor system utilised by Homes England (as notified by Homes England in writing to the Lead Partner on behalf of the Consortium);

Information has the meaning in relation to:

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

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

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

- (a) it is unable or admits an inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated

financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness;

- (b) the value of its assets is less than its liabilities (taking into account contingent and prospective liabilities);
- (c) a moratorium is declared in respect of any indebtedness and/or any moratorium pursuant to Section 145 of the HRA 2008;
- (d) any corporate action, legal proceedings or other procedure or step is taken in relation to:
 - i the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) other than a solvent liquidation or reorganisation on terms previously approved by Homes England (such approval not to be unreasonably withheld or delayed);
 - ii a composition, compromise, assignment or arrangement with any of its creditors;
 - iii the appointment of a liquidator (other than in respect of a solvent liquidation on terms previously approved by Homes England, such approval not to be unreasonably withheld or delayed), receiver, administrative receiver, housing administrator, administrator, compulsory manager or other similar officer;
 - iv enforcement of any Security over any of its assets;
 - v any analogous procedure or step is taken in any jurisdiction;other than any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within ten (10) Business Days of commencement; or
- (e) any expropriation, attachment, sequestration, distress or execution affects any of its assets which has a Material Adverse Effect in relation to the Approved Capital Bid or any Capital Firm Scheme or the Approved Revenue Bid or any Revenue Firm Scheme;

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

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

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

L&R means a lease and repair scheme type as further described in the Capital Funding Guide;

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

LA Scheme means a Firm Scheme in respect of which an LA Provider is to be a Landlord;

LABC means the Local Authority Building Control;

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

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

Lease Period means in relation to a Capital L&R Scheme the period set out in the "Lease Length" data field within the Capital Firm Scheme Details;

Lease Termination Date means in relation to a Capital L&R Scheme the date upon which the Relevant Consortium Member's lease for whatever reason comes to an end;

Legal Opinion means a legal opinion in the form set out in Schedule 13 (*Legal Opinion*) given:

- (a) where the Relevant Consortium Member is an LA Provider, by its solicitor and dated on or prior to the date of this Agreement (or if applicable, pursuant to Clause 35.2 (*Further assurance*), the date of any amendment to or waiver of any term of this Agreement); or
- (b) in the case of a New Consortium Member that is an LA Provider, by its solicitor and dated on or prior to the completion date of the Deed of Adherence;

Legislation means:

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

in each case in the United Kingdom; and

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

Local Housing Authority means a principal council (as defined in Section 270 of the Local Government Act 1972) or any body of government in England established as a successor to principal councils exercising the functions of a local housing authority in whose administrative area the relevant Firm Scheme is being delivered by the Relevant Consortium Member;

Material Adverse Effect means the effect of any event or circumstance which in the reasonable opinion of Homes England, is reasonably likely to be materially adverse to the ability of any Consortium Member to deliver its element of the Approved Capital Bid or a Capital Firm Scheme or a Capital Indicative Scheme or its element of the Approved Revenue Bid or a Revenue 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);

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

Milestone means each stage in the Delivery of the Capital Firm Scheme agreed by the Parties and set out in IMS (including as a minimum an Acquisition Date, a Start on Site Date and a Capital Firm Scheme Completion Date);

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 7.1 (*Time extensions*));

Milestone Extension Event means any of the following:

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

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

unless:

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

of the requirement for works or services to be completed by the date required to enable the Relevant Consortium Member to complete the Capital Firm Scheme by the Capital Firm Scheme Completion Date;

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

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

MMC Scheme means a Capital 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 18.7 (*Capital Grant Claim Procedures*) before the Lead Partner may submit a claim for Capital Firm Scheme Grant on behalf of the Consortium;

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

New Consortium Member means an RP Provider or LA Provider approved by Homes England in writing who delivers to Homes England a Deed of Adherence in accordance with Clause 12.3 (*Changes to the Consortium*);

NHBC means the National House-Building Council;

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

Notice Date means the date of the notice served in accordance with Clause 25.7 (*Default Events and Termination*);

Notification Failure means in relation to:

each of Clauses 5.3.1 (*Changes to Capital Firm Schemes*), 5.3.3 (*Changes to Capital Firm Schemes*), 5.5.1 (*Changes to Capital Firm Schemes*) and 5.5.3 (*Changes to Capital Firm Schemes*) a failure by the Lead Partner to advise Homes England within the period specified in the relevant Clause as to whether the Relevant Consortium Member wishes to proceed with a Capital Firm Scheme or to withdraw it from the Agreement; and

- (a) each of Clauses 10.3.1 (*Changes to Revenue Firm Schemes*) and 10.3.3 (*Changes to Revenue Firm Schemes*), a failure by the Lead Partner to advise Homes England within the period specified in the relevant Clause as to whether it wishes to proceed with a Revenue Firm Scheme or to withdraw it from the Agreement;

Open Book Basis means the full and transparent disclosure and declaration of all information which the Consortium Members or any Consortium Member Party is required to maintain, keep or disclose under this Agreement including all price components including profit margins, central office overheads, Site overheads, preliminaries, contingencies and

the cost of all materials, goods, equipment, work and services, apportionments of such items together with all and any books of accounts;

Outgoing Consortium Member means a Consortium Member complying with the provisions of Clause 12 (*Changes to the Consortium*);

Original Allocated Capital Grant means £137,110 being the amount of Capital Grant agreed by Homes England prior to the date of this Agreement as payable to the Lead Partner (on behalf of the Consortium) in respect of the Original Approved Capital Bid;

Original Allocated Revenue Grant means £100,500 being the amount of Revenue Grant agreed by Homes England prior to the date of this Agreement as payable to the Lead Partner in respect of the Original Approved Revenue Bid;

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

Original Approved Revenue Bid means the aggregate of the Revenue New Schemes accepted by Homes England in IMS via the "Offer" screen of IMS;

P&D means a purchase and development scheme type, being any scheme type other than L&R as further described in the Capital Funding Guide;

Party means a party to this Agreement;

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

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

Post-Start Change means a change to a Capital Firm Scheme proposed by the Lead Partner pursuant to Clause 5.1 (*Changes to Capital Firm Schemes*) in the period after the payment of the Acquisition Tranche Grant in relation to that Capital Firm Scheme but before the payment of the relevant Practical Completion Tranche Grant;

Practical Completion means that stage in the execution of a Capital 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 RSAP Dwellings comprised within the Capital Firm Scheme are fit for beneficial occupation as a residential development in accordance with applicable NHBC, LABC or equivalent requirements current at the date of inspection subject only to the existence of minor defects and/or minor omissions at the time of inspection which are capable of being made good or carried out without materially interfering with the beneficial use and enjoyment of the Capital Firm Scheme and which would be reasonable to include in a snagging list, and **Practically Complete** shall be construed accordingly;

Practical Completion Tranche Grant means subject to Clause 4.3 (*Capital Firm Schemes*) and Clause 5.3.1(c) (*Changes to Capital Firm Schemes*) an amount equivalent to five per centum (5%) of the Capital Firm Scheme Grant (or such other per centum as is approved by Homes England on IMS as payable following achievement of Practical Completion with respect to the relevant Capital Firm Scheme) together with that amount of the Acquisition

Tranche Grant and the Start on Site Tranche Grant (if any) that has not been claimed prior to Practical Completion;

Pre-Start Change means a change to a Capital Firm Scheme proposed by the Lead Partner pursuant to Clause 5.1 (*Changes to Capital Firm Schemes*) prior to the payment of the Acquisition Tranche Grant;

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

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

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

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

Prohibited Act means:

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

Projected Completion Date means the date set out in IMS by which a Capital Indicative Scheme is scheduled to reach Practical Completion (mutatis mutandis);

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

Prospectus means the prospectus published by MHCLG entitled “Rough Sleeping Accommodation Programme: Prospectus and Guidance (outside of Greater London)” on 18 March 2021 and available for online access at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/980232/RSAP_2021-24_Prospectus.pdf, as may be replaced, varied, revised or otherwise updated from time to time;

Protective Measures means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it;

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

Quarter means the period between each Quarter Date;

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

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

Recover has the meaning set out in the Recovery Determination;

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

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

Registered Provider means (as appropriate):

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

Regulator means the Regulator of Social Housing established pursuant to Chapter 2 of 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 RSAP Dwellings delivered pursuant to this Agreement or any other affairs of Homes England;

Rehabilitated or Rehabilitation or Rehabilitating shall have the meaning ascribed in sub-section 3.3 (*Rehabilitation requirements and Scheme Types*) of the section of the Capital Funding Guide entitled "Procurement and scheme issues";

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

Relevant Body means:

- (a) where a dispute or difference is on a point of law or legal drafting, the President for the time being (or the next most senior available officer) of the Law Society; or
- (b) where a matter concerns a financial dispute or difference, the President of the Institute of Chartered Accountants in England and Wales (ICAEW) or Chartered Institute of Public Finance and Accountancy (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 Consortium Member has the meaning given to it in respect of each clause as identified in Schedule 15 (*Relevant Consortium Member – Obligations Matrix*) and where not specified in Schedule 15 (*Relevant Consortium Member – Obligations Matrix*), the Consortium Member (as applicable) to which the obligation in question attaches or the Consortium Member responsible for the act, omission, event or default giving rise to Homes England's or MHCLG's rights/remedies in respect thereof or the Consortium Member seeking the relevant consent or approval;

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

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

Relevant FOIA Authority has the meaning ascribed to it in paragraph 10 of Schedule 8 (*Information and Confidentiality*);

Remediation Period means thirty (30) Business Days from the date upon which Homes England serves notice on the Lead Partner pursuant to Clause 25.7 (*Default Events and Termination*);

Removed Consortium Member means a Consortium Member of the type referred to in Clause 25.8.3 (*Default Events and Termination*);

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

Replacement Lead Partner means the Consortium Member that assumes the role of the Lead Partner under this Agreement where the provisions of Clause 25.8.2 (*Default Events and Termination*) apply;

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

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

Revenue Change means a change to a Revenue Firm Scheme proposed by the Lead Partner on behalf of the Consortium pursuant to Clause 10.1 (*Changes to Revenue Firm Schemes*);

Revenue Eligible Expenditure means the expenditure incurred in relation to the Revenue Firm Scheme which is eligible in accordance with Clause 14 (*Revenue Eligible Expenditure*);

Revenue Firm Scheme means each scheme for the Delivery of Revenue Services as has been fully detailed in IMS and accepted by Homes England through IMS:

- (a) as a Revenue Firm Scheme as at the date hereof; or
- (b) in accordance with Clause 9.1 (*Revenue Firm Schemes*); or
- (c) in accordance with Clause 11.5 (*Revenue Firm Scheme additions*);

Revenue Firm Scheme Completion Date means the date set out in the Revenue Firm Scheme Delivery Timetable by which the Delivery of Revenue Services must have been achieved;

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

Revenue Firm Scheme Details means:

- (a) in respect of each Revenue Firm Scheme comprised within the Original Approved Revenue Bid, the descriptive and other details in respect of that scheme summarised in the Original Approved Revenue Bid but as more

particularly described in IMS and as accepted by Homes England through IMS; or

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

in each case as the same may be varied, supplemented or updated from time to time in accordance with the terms of this Agreement;

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

Revenue Funding Period means the period from the date of Practical Completion until 31 March 2024 (or such later date as Homes England may in its absolute discretion agree in writing (through IMS or otherwise));

Revenue Grant means the amount of revenue grant payable by Homes England in connection with the Revenue Services, the maximum amount of which is as set out in the relevant Revenue Firm Scheme Details;

Revenue New Scheme means a named scheme for the provision of Revenue Services accepted by Homes England as part of the Original Approved Revenue Bid;

Revenue Original Bid Scheme means a named scheme for the provision of Revenue Services which forms part of the Original Approved Revenue Bid;

Revenue Original Scheme means:

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

Revenue Quarterly Payment means a payment of Revenue Grant which can be claimed by the Lead Partner (on behalf of the Relevant Consortium Member) each Quarter in arrears during the Revenue Funding Period for expenditure incurred in the previous Quarter where a claim for such payment:

- (a) may be any percentage of the Allocated Revenue Grant provided that the total Revenue Grant claimed by the Lead Partner (on behalf of the Relevant Consortium Member) during the Revenue Funding Period does not exceed the Allocated Revenue Grant; and
- (b) may be claimed a maximum of four (4) times per Financial Year during each Revenue Funding Period;

Revenue Services means the support services to be provided to Tenants of the RSAP Dwellings;

Review Meeting means a meeting held pursuant to Clause 16.7 (*Review, Monitoring and Reporting*) and Clause 16.8 (*Review, Monitoring and Reporting*);

RIDDOR means Reporting of Injuries Diseases and Dangerous Occurrences Regulations 2013 (as amended from time to time);

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

RP Scheme means a Firm Scheme in respect of which a RP Provider is or is to be the Landlord;

RSAP has the meaning given to such term in the recitals;

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

RSAP Funds means grant funding made available pursuant to RSAP;

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

- (a) permanently at an Affordable Rent; or
- (b) permanently at a Social Rent;

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

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

- (a) the Relevant Consortium Member is unable to make the representations and give the warranties set out in this Agreement (in any case in whole or in part) or is in breach of any representation or warranty set out in such Schedule and there is or is likely to be a resulting Material Adverse Effect in relation to that Firm Scheme;
- (b) the withdrawal or revocation of any Consent required to enable the Relevant Consortium Member to Deliver that Firm Scheme;
- (c) a breach of the Relevant Consortium Member's obligations under any of Clause 13 (*Delivery Obligations*) or Clause 15 (*Operational Obligations*) other than Clause 10.7 (*Changes to Revenue Firm Schemes*) in relation to that Firm Scheme;
- (d) the exercise by Homes England of its rights under Clause 22.1.2 (*Adjustments to Practical Completion Tranche Grant*) or a failure by the Relevant Consortium Member to agree any adjustment proposed by Homes England to the Capital Firm Scheme Grant pursuant to Clause 22.2 (*Adjustments to Practical Completion Tranche Grant*);

- (e) the Relevant Consortium Member has breached or otherwise failed to comply with any term of this Agreement and such breach or failure has or will have a Material Adverse Effect in relation to the Firm Scheme;
- (f) a failure or inability by the Lead Partner or the Relevant Consortium Member (as applicable) to comply with the requirements of Clauses 18.1 (*Capital Grant Claim Procedures*) to 18.5 (*Capital Grant Claim Procedures*) or Clauses 19.1 (*Revenue Grant Claim Procedures*) to 19.2 (*Revenue Grant Claim Procedures*) (as applicable);
- (g) in respect of:
 - i any Single Claim Scheme; or
 - ii the Acquisition Date and/or the Start on Site Date is not attained and, following discussions with the Lead Partner, Homes England (acting reasonably) considers that the Capital Firm Scheme is unlikely to reach Practical Completion (or in respect of the Single Claim Scheme, Completion) by such date submitted, approved and identified for Practical Completion or Completion (as appropriate) in IMS (or as Homes England may in its absolute discretion otherwise agree in writing); or
- (h) a failure by the Parties to agree a revised Capital Firm Scheme Grant figure pursuant to Clause 24.3.3(a) (*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 25.1 (*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 the Relevant Consortium Member has in respect of the Site:

- (a) in the case of a Capital P&D Scheme, a Secure Legal Interest (P&D); and
- (b) in the case of a Capital L&R Scheme, a Secure Legal Interest (L&R);

Secure Legal Interest (L&R) means the Relevant Consortium Member has in respect of the Site, a leasehold interest of the greater of:

- (a) the period set out in the "Lease Length" data field within the Capital Firm Scheme Details (and accepted by Homes England through IMS) registered with title absolute or registered with good leasehold title and in the latter case defective title indemnity insurance in favour of the Relevant

Consortium Member with a limit of indemnity to at least the Capital Firm Scheme Grant for that Site; or

- (b) five (5) years unexpired duration;

Secure Legal Interest (P&D) means the Relevant Consortium Member has in respect of the Site:

- (a) freehold title registered with title absolute;
- (b) leasehold title registered with title absolute where the lease has at least sixty (60) years unexpired duration;
- (c) either:
 - i freehold title registered with possessory title; or
 - ii leasehold title registered with good leasehold title where the lease has at least sixty (60) years unexpired duration and, in each case defective title indemnity insurance in favour of the Relevant Consortium Member with a limit of indemnity to at least the Capital Firm Scheme Grant for that Site; or
- (d) a binding contract with the owner of the legal and beneficial interest in the Site to secure one of the interests in limbs (a) to (c) and that securing that interest is conditional only upon the matters that are within the direct and unilateral control of the Relevant Consortium Member;

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

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

Shared Personal Data means Personal Data shared between Homes England and any Consortium Member for Processing pursuant to this Agreement which is currently anticipated to be limited to Personal Data relating to Homes England employees such as email addresses and contact names;

Single Claim Scheme means a Capital Firm Scheme in respect of which by the Lead Partner (on behalf of the Relevant Consortium Member) 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 Capital Firm Scheme and/or the RSAP Dwellings and common areas developed as part of such Capital Firm Scheme;

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);

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 RSAP Dwelling let or to be let at a Social Rent;

Specified Default means the occurrence of any of the following:

- (a) a failure by any Consortium Member to comply with its obligations in any of Clause 15.13 (*Operational Obligations*) or Clause 16 (*Review, Monitoring and Reporting*), Schedule 7 (*Anti-bribery and Anti-corruption*), and/or any information supplied in connection with its obligations in Clause 16 (*Review, Monitoring and Reporting*) is materially deficient, misleading or inaccurate;
- (b) any Consortium Member is unable to make the representations and give the warranties set out in this Agreement 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 or the Approved Revenue Bid;
- (c) a failure by any Consortium Member to comply with any obligation to pay or repay Homes England any amount due under this Agreement; or
- (d) any Consortium Member is in material breach of the Agreement or has otherwise breached or failed to comply with any term of this Agreement and such breach or failure has or will have a Material Adverse Effect in relation to the Approved Capital Bid or the Approved Revenue Bid;

SPEI Allowable Costs means those costs incurred by the Relevant Consortium Member in providing the RSAP Housing as specified in the Original Approved Capital Bid calculated using generally acceptable accounting principles as follows:

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

SPEI Entrustment means the entrustment information required under Article 365.1 of the EU-UK Trade and Cooperation Agreement, an example template for which is set out at Schedule 14 (*SPEI Entrustment*) of this Agreement;

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

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

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

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

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

Start on Site Date means the date identified in IMS on which:

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

Start on Site Tranche Grant means subject to Clause 4.3 (*Capital Firm Schemes*) and Clause 5.3.1(c) (*Changes to Capital Firm Schemes*) an amount equivalent to fifty per centum (50%) of the Capital Firm Scheme Grant (or such other per centum as is approved by Homes England on IMS as payable following achievement of Start on Site with respect to the relevant Capital Firm Scheme) together with that amount of the Acquisition Tranche Grant (if any) that has not been claimed prior to the Start on Site Date;

Start on Site Works means:

- (a) with respect to a Capital P&D Scheme:
 - 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 Capital Firm Scheme;
 - v such works of demolition or service diversion as are expressly and strictly contemplated in the section of the Capital Funding Guide entitled "Finance – Grant Claims and Payments"; or
- (b) with respect to a Capital L&R Scheme, the physical Works to the Site; and
- (c) such other physical Works to the Site;

Statement of Grant Usage means the document in the form set out in Schedule 3 (*Form of Statement of Grant Usage*) or where so directed by Homes England, made available on IMS, as amended by Homes England from time to time;

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

Submitted Standards means in respect of each Firm Scheme, the standards submitted by the Lead Partner and referenced in the Firm Scheme Details in IMS;

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

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

SW2 Event means the occurrence of any of the following:

- (a) the Relevant Consortium Member does not or is unable to authorise the Lead Partner to give the confirmations or certifications required by IMS or to make the representations and give the warranties referred to in Clause 18.2 (*Capital Grant Claim Procedures*), Clause 18.3.1 (*Capital Grant Claim Procedures*) or Clause 18.5 (*Capital Grant Claim Procedures*) or

Clause 19.2 (*Revenue Grant Claim Procedures*) (in any case in whole or in part);

- (b) a material breach by the Relevant Consortium Member or the Lead Partner (as applicable) of any obligation under this Agreement in relation to a Firm Scheme (other than one comprised within an SW1 Event or SW3 Event in relation to that Firm Scheme) and which:
 - i the Relevant Consortium Member or the Lead Partner (as applicable) has not taken steps to remedy it to Homes England's satisfaction (acting reasonably); or
 - ii is incapable of remedy; or
- (c) any Consent necessary to Deliver the Firm Scheme is revoked or withdrawn;

SW3 Event means a failure by the Relevant Consortium Member to Deliver a Firm Scheme in accordance with the Firm Scheme Delivery Timetable (in circumstances where Homes England did not agree revised Milestone Dates in accordance with Clause 7 (*Time extensions*));

Tenancy Standard means the tenancy standard published by the Regulator from time to time pursuant to its power under section 193 (*Standards relating to consumer matters*) of the HRA 2008;

Tenant means (as the context requires):

- (a) a tenant occupying an RSAP Rent Dwelling; or
- (b) a prospective tenant of an RSAP Rent Dwelling;

Total Grant Tranche means the total Capital Firm Scheme Grant identified on IMS as payable following 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 25.3 (*Default Events and Termination*), Clause 25.5 (*Default Events and Termination*) or Clause 25.7 (*Default Events and Termination*);

Tranche means (as the context requires) any of the Acquisition Tranche Grant, the Start on Site Tranche Grant, the Practical Completion Tranche Grant, or the 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 17 (*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 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 a Subsidy found by a Competent Authority to be in contravention of or an infringement of the United Kingdom Competition Requirement;

Uplift Amount means an amount of the type described in the Recovery Determination and calculated for the purposes of Clause 24.12 (*Repayment of grant*) in accordance with the methodology set out from time to time in the Capital Funding Guide;

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

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

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

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

Withdrawn Scheme means (as the context so requires):

- (a) a Capital Firm Scheme withdrawn by the Lead Partner pursuant to Clause 5.3.1 (*Changes to Capital Firm Schemes*) or Clause 5.3.3 (*Changes to Capital Firm Schemes*); or
- (b) a Revenue Firm Scheme withdrawn by the Lead Partner pursuant to Clause 10.3.1 (*Changes to Revenue Firm Schemes*) or Clause 10.3.3 (*Changes to Revenue Firm Schemes*);

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

Works means in relation to each Capital 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 RSAP Dwellings) (if any) to be undertaken in order to ensure that the RSAP Dwellings meet the Submitted Standards and are developed, repaired, converted, refurbished and/or Rehabilitated (as applicable) in accordance with the Capital 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 or supplement or restatement is not prohibited under the terms of this Agreement.
- 1.2.5 Any reference to any Act of Parliament, enactment, order, regulation, statutory instrument, determination, guidance or similar instrument shall (except where expressly stated otherwise) be construed as a reference to the enactment, order, regulation, determination, guidance or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted.
- 1.2.6 A reference to a person includes firms, partnerships and corporate bodies and their successors and permitted assignees or transferees.
- 1.2.7 Headings are for convenience of reference only.
- 1.2.8 The words includes or including are to be construed without limitation.
- 1.2.9 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).
- 1.2.10 A paragraph in a Schedule shall be construed as reference to a paragraph in that particular Schedule.
- 1.2.11 A deliberate act or omission of any person shall exclude acts or omissions which were within the contemplation of the Parties or which were otherwise provided for in this Agreement.
- 1.2.12 In any case where the consent or approval of Homes England (or any officer of Homes England) is required or a notice is to be given by Homes England, such consent or approval or notice shall only be validly given if it is in writing and signed by (if relevant) the officer stipulated in this Agreement or such other person as may be specified by Homes England by notice in writing to the Relevant Consortium Member.

- 1.2.13 An obligation to do anything includes an obligation to procure its being done.
- 1.2.14 Any restriction includes an obligation not to permit infringement of the restriction.
- 1.2.15 The terms "Site", "Capital Firm Scheme" and "Revenue Firm Scheme" include each and every part of it.
- 1.2.16 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.
- 1.2.17 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.
- 1.2.18 If there is any ambiguity or conflict between the implied terms and the express terms of this Agreement then the express terms shall prevail.
- 1.2.19 Each Consortium Member shall in relation to the delivery of its obligations under this Agreement be responsible as against Homes England for the acts or omissions of any of its Consortium Member Parties as if they were the acts or omissions of the Relevant Consortium Member.
- 1.2.20 Neither the giving of any approval, consent, examination, acknowledgement, knowledge of the terms of any agreement or document nor the review of any document or course of action by or on behalf of Homes England shall, unless otherwise expressly stated in this Agreement or agreed in writing by Homes England, relieve a Consortium Member of any of its obligations under this Agreement or of any duty which it may have hereunder to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, examination, acknowledgement or knowledge nor confer impose or imply any liability or responsibility on or on behalf of Homes England in respect of or in connection with the matter to or in relation to which such approval, consent, examination or acknowledgement was given or review made.
- 1.2.21 In the event of any conflict between the Capital Firm Scheme Details summarised in the Original Approved Capital Bid and the Capital Firm Scheme Details set out in IMS (and accepted by Homes England through IMS), the Capital Firm Scheme Details in IMS shall prevail.
- 1.2.22 In the event of any conflict between the Revenue Firm Scheme Details summarised in the Original Approved Revenue Bid and the Revenue Firm Scheme Details set out in IMS (and accepted by Homes England through IMS), the Revenue Firm Scheme Details in IMS shall prevail.
- 1.2.23 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.

- 1.2.24 In the event of any conflict between the Original Allocated Revenue Grant figure set out in IMS (and accepted by Homes England through IMS) and the Original Allocated Revenue Grant figure set out in the definition of Original Allocated Revenue Grant in this Agreement, the Original Allocated Revenue Grant figure set out in IMS shall prevail.
- 1.2.25 Where this Agreement refers to information set out in IMS, this Agreement shall be construed as incorporating such information into its terms.
- 1.2.26 The terms "Allocated Capital Grant", "Original Allocated Capital Grant" and "Capital Firm Scheme Grant" shall (unless the context precludes such interpretation) include every Tranche thereof.
- 1.2.27 The terms "Allocated Revenue Grant", "Original Allocated Revenue Grant" and "Revenue Firm Scheme Grant" shall (unless the context precludes such interpretation) include every payment of grant funding in relation to that Revenue Firm Scheme.
- 1.2.28 Any reference to a Section and/or a Chapter of the Capital Funding Guide in this Agreement shall refer to any successor, replacement or amendment of such Section or Chapter from time to time.
- 1.2.29 Save where an obligation in this Agreement is expressed to be an obligation of the Consortium (in which case the Consortium Members shall be jointly liable for its discharge) liability for the discharge of such obligation will rest with each individual Consortium Member to whom the relevant obligation applies.
- 1.2.30 All confirmations, acknowledgements, submissions and representations made by the Lead Partner to Homes England are (unless made by the Lead Partner in relation to any Firm Scheme in respect of which it is or will be the Landlord) are deemed to be made on behalf of the Relevant Consortium Member or the Consortium as the context requires.
- 1.2.31 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 EU-UK Trade and Cooperation Agreement.

2 Purpose

- 2.1 MHCLG has agreed to make the Allocated Capital Grant available to Homes England and Homes England has agreed to make the Allocated Capital Grant available to the Consortium to provide the RSAP Dwellings subject to and in accordance with the terms and conditions of this Agreement.
- 2.2 MHCLG has agreed to make the Allocated Revenue Grant available to Homes England and Homes England has agreed to make the Allocated Revenue Grant available to the Consortium to help reimburse revenue costs incurred by the Consortium in providing and/or securing the provision of Revenue Services subject to and in accordance with the terms and conditions of this Agreement.
- 2.3 Under no circumstances may the Revenue Grant be applied towards the purchase or acquisition of equipment or other assets or expended for other capital purposes.

- 2.4 Each Party undertakes to co-operate with the other to facilitate the proper performance of this Agreement and the Delivery of the Capital Indicative Schemes, the Capital Firm Schemes and the Revenue Firm Schemes.
- 2.5 Each Consortium Member acknowledges the content of the Original Approved Capital Bid and (if applicable) the Original Approved Revenue Bid and shall:
- 2.5.1 use all reasonable endeavours to Deliver that element of the RSAP Housing comprised in the Approved Bid for which it is to be the Landlord; and
- 2.5.2 co-operate with the Lead Partner in order to facilitate the Lead Partner's compliance with its obligations under this Agreement in relation to the Delivery of the Approved Bid.
- 2.6 The Lead Partner shall use:
- 2.6.1 all reasonable endeavours to procure the Delivery of the Approved Bid by the Consortium in accordance with the requirements of this Agreement; and
- 2.6.2 ensure that each Consortium Member is provided with (and continues to be provided with) complete and accurate Capital Indicative Scheme Details and Firm Scheme Details in respect of any Capital Indicative Schemes or Firm Schemes of which they are or will be the Landlord.

3 **Acknowledgements, Representations and Warranties**

- 3.1 Without prejudice to any other term of this Agreement, the Parties acknowledge for the purposes of the record that Homes England agreed in response to the Consortium's initial bid under RSAP to advance grant funding to the Lead Partner in an initial amount equal to:
- 3.1.1 the Original Allocated Capital Grant to facilitate the Delivery of the Original Approved Capital Bid; and
- 3.1.2 the Original Allocated Revenue Grant to facilitate the Delivery of the Original Approved Revenue Bid.
- 3.2 Without prejudice to any other term of this Agreement, each Consortium Member:
- 3.2.1 expressly acknowledges the Agreed Principles and agrees to observe them and to be bound by them;
- 3.2.2 represents and warrants in the terms set out in Part 2 of Schedule 1 (*Representations and Warranties – RP Providers*) to Homes England and MHCLG on the date hereof and on each day during the currency of this Agreement; and
- 3.2.3 acknowledges and agrees that each of Homes England and MHCLG is relying on such representations and warranties and that each of such warranties and representations shall be separate and independent and, save as expressly provided to the contrary, shall not be limited by reference to any of them or by any other provisions of this Agreement.

3.3 Homes England has no obligation to make any payment of Funding to the Lead Partner in relation to anything other than a Capital Firm Scheme or a Revenue Firm Scheme.

4 **Capital Firm Schemes**

4.1 The Lead Partner must:

4.1.1 not less than five (5) Business Days prior to the projected Acquisition Date, ensure that such details of each Capital Original Scheme (other than a Capital Indicative Scheme) as are required by Homes England have been accurately uploaded onto IMS; and

4.1.2 (subject to Clauses 6.4.1 (*Capital Indicative Schemes*) to 6.7 (*Capital Indicative Schemes*)) (inclusive) upload onto IMS (or amend through IMS) such details of each Capital Indicative Scheme as are required in order for Homes England to consider the conversion of such Capital Indicative Scheme to a Capital Firm Scheme for the Delivery of RSAP Housing,

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

4.2 In permitting the Lead Partner to submit the details referred to in Clause 4.1 (*Capital Firm Schemes*), the Relevant Consortium Member is deemed to represent and warrant to Homes England that:

4.2.1 the Capital Firm Scheme:

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

4.2.2 it:

- (a) possesses or, in the case of a Capital L&R Scheme, will possess a Secure Legal Interest which:
 - i with respect to a Capital P&D Scheme, is a Secure Legal Interest (P&D); or
 - ii with respect to a Capital L&R Scheme, is a Secure Legal Interest (L&R) where the 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;
- (b) has obtained all Planning Permissions necessary for the lawful Delivery of the Capital Firm Scheme to the Submitted Standards and for the Delivery of the Capital Firm Scheme in accordance with the Capital Firm Scheme Details as are then required;

- (c) has obtained all Consents necessary for the lawful development and/or Rehabilitation of the Capital Firm Scheme to the Submitted Standards and for the Delivery of the Capital Firm Scheme in accordance with the Capital Firm Scheme Details as are then required;
- (d) has complied with all applicable requirements of the Capital Funding Guide in relation to the Capital Firm Scheme;
- (e) is not subject to any Section 15 Direction nor do any circumstances exist which would permit such a direction to be issued;
- (f) 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; and
- (g) no Site comprised in any Capital L&R Scheme is a Social Housing Dwelling or already owned by a Consortium Member or a Consortium Member Affiliate.

4.3 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 any Tranche which has already been paid.

4.4 Under no circumstances shall Homes England be obliged to accept any Capital 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 RSAP or other programme commitments) to provide Capital Firm Scheme Grant in relation to the relevant scheme.

5 **Changes to Capital Firm Schemes**

5.1 The Lead Partner may propose changes to any Capital Firm Scheme at any time prior to the Capital Firm Scheme Completion Date. Any such changes must be proposed via IMS and must take account of any Tranche already received by the Lead Partner.

5.2 Where a Pre-Start 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 procedure set out in Clause 5.3 (*Changes to Capital Firm Schemes*) below.

5.3 If Homes England:

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

- (a) the Capital Firm Scheme is withdrawn by the Lead Partner (on behalf of the Relevant Consortium Member), Homes England will (subject to any invocation by the Relevant Consortium Member and Lead Partner of Clause 8.1 (*Capital Firm Scheme substitution and additions*) and any resulting operation of Clause 8 (*Capital Firm Scheme substitution and additions*)) withdraw the Capital Firm Scheme Grant allocated to such scheme and the Allocated Capital Grant figure will be reduced commensurately and the Lead Partner must repay Homes England a sum equivalent to the Acquisition Tranche Grant received by it, such payment to be made within fifteen (15) Business Days of receipt of Homes England's written demand for the same;
 - (b) the proposed Pre-Start Change is withdrawn by the Lead Partner (on behalf of the Relevant Consortium Member), the Lead Partner shall reinstate in IMS the Capital Firm Scheme Details ante the date of the Pre-Start Change and, following Homes England's approval of such reinstated details in IMS, the Capital Firm Scheme shall proceed on the basis of those reinstated Capital Firm Scheme Details;
 - (c) the Lead Partner wishes to proceed with the Capital Firm Scheme, it must immediately amend the Capital Firm Scheme Details in IMS to reflect the Pre-Start Change, the recalculated Capital Firm Scheme Grant figure and any Acquisition Tranche Grant already received. The amended Capital Firm Scheme Details (together with any adjustments to the sum and percentages of the subsequent Tranches due as a result of the recalculated Capital Firm Scheme Grant figure being lower than the original Capital Firm Scheme Grant figure) will be deemed to be effective from the date of their acceptance by Homes England (through IMS); and
 - (d) a Notification Failure occurs, Homes England shall be entitled (but not obliged) to treat such failure as a decision by the Lead Partner to withdraw the Capital Firm Scheme from this Agreement;
- 5.3.2 accepts the Pre-Start Change (including any change to the Capital Firm Scheme Grant figure) as proposed by the Lead Partner, it will accept the change through IMS and the relevant Capital Firm Scheme Details will be deemed to have been amended with effect from the date of such acceptance;
- 5.3.3 rejects the Pre-Start Change, Homes England will notify the Lead Partner and the Lead Partner will have twenty (20) Business Days from the date of Homes England's notification to advise Homes England as to whether the Relevant Consortium Member wishes to proceed with the Capital Firm Scheme on the original basis or to withdraw it. If:
- (a) the Capital Firm Scheme is withdrawn by the Lead Partner (on behalf of the Relevant Consortium Member), Homes England will permanently withdraw the Capital Firm Scheme Grant allocated to such scheme and the Allocated Capital Grant figure will be reduced commensurately and the Lead Partner must repay Homes England a sum equivalent to the Acquisition Tranche Grant received by it, such payment to be made within

fifteen (15) Business Days of receipt of Homes England's written demand for the same; or

- (b) a Notification Failure occurs, Homes England shall be entitled (but not obliged) to treat such failure as a decision by the Relevant Consortium Member to withdraw the Capital Firm Scheme from this Agreement.

5.4 Where a Post-Start 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 procedure set out in Clause 5.5 (*Changes to Capital Firm Schemes*) below.

5.5 If Homes England:

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

- (a) the Capital Firm Scheme is withdrawn by the Lead Partner (on behalf of the Relevant Consortium Member), Homes England will permanently withdraw the balance of the Capital Firm Scheme Grant allocated to such scheme and the Relevant Consortium Member must repay Homes England a sum equivalent to such part of the Capital 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;
- (b) the Relevant Consortium Member wishes to proceed with the Capital Firm Scheme, the Lead Partner must immediately amend the Capital Firm Scheme Details in IMS to reflect both the Post-Start Change and the recalculated Capital Firm Scheme Grant figure and the amended Capital 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 Relevant Consortium Member in respect of the Firm Scheme (each a **Remaining Tranche**) will be adjusted 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 Relevant Consortium Member must pay Homes England a sum equivalent to the difference (expressed as a positive sum) between the negative figure and zero within fifteen (15) Business Days of receipt of Homes England's written demand for the same;
- (c) the Lead Partner (on behalf of the Relevant Consortium Member) wishes to retract the Post-Start Change, the Lead Partner must do so

immediately via IMS and the Capital Firm Scheme will proceed as contemplated ante the Lead Partner's submission of the Post-Start Change; and

- (d) a Notification Failure occurs, Homes England shall be entitled (but not obliged) to treat such failure as a decision by the Relevant Consortium Member to withdraw the Capital Firm Scheme from this Agreement;

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

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

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

5.6 Homes England will not be obliged to pay any Tranche to the Lead Partner in relation to any Capital Firm Scheme unless any changes required to the Capital Firm Scheme Details by Clause 5.3 (*Changes to Capital Firm Schemes*) or Clause 5.5 (*Changes to Capital Firm Schemes*) have been made and have been accepted by Homes England in IMS.

5.7 Homes England will take reasonable steps to contact the Lead Partner during the period specified in each of Clauses 5.3.1 (*Changes to Capital Firm Schemes*), 5.3.3 (*Changes to Capital Firm Schemes*), 5.5.1 (*Changes to Capital Firm Schemes*) and 5.5.3 (*Changes to Capital Firm Schemes*) to remind the Lead Partner of the need for the appropriate notification, but any failure on Homes England's part to do so will not preclude Homes England from treating a Capital Firm Scheme as withdrawn where there has been a Notification Failure under any of those Clauses.

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

5.9 Where pursuant to Clause 5.5.1(b) (*Changes to Capital Firm Schemes*) any Tranche must be adjusted to take account of the recalculated Capital 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.

- 5.10 Any change to the Capital Firm Scheme Details and/or the Approved Capital Bid resulting from the application of this Clause 5 (*Changes to Capital Firm Schemes*) shall be implemented by the Lead Partner amending the Capital Firm Scheme Details in IMS and confirmed by Homes England's electronic acceptance of that amendment through IMS and in default of agreement the Parties will be bound by the Capital Firm Scheme Details as they existed prior to the change proposed.

6 Capital Indicative Schemes

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

- 6.2 The Lead Partner shall be entitled to submit Proposed Capital 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 Capital Indicative Schemes as Homes England may require.

- 6.3 Homes England shall be entitled to accept or reject the details submitted for any Proposed Capital Indicative Scheme. Where Homes England accepts a Proposed Capital Indicative Scheme into the Approved Capital Bid pursuant to Clause 6.2 (*Capital Indicative Schemes*), it shall confirm its acceptance to the Lead Partner through IMS.

- 6.4 If a Proposed Capital Indicative Scheme is accepted by Homes England in IMS, pursuant to Clause 6.3 (*Capital Indicative Schemes*) then with effect from the date of that acceptance:

6.4.1 such scheme shall be deemed to be a Capital Indicative Scheme and becomes subject to the processes set out in Clauses 6.4 to 6.10 (inclusive) (*Capital Indicative Schemes*) and Clause 4.1.2 (*Capital Firm Schemes*);

6.4.2 any details set out by the Lead Partner with respect to such Capital Indicative Scheme in IMS and as confirmed by Homes England in IMS shall be deemed to be the relevant Capital Indicative Scheme Details for the purposes of this Agreement; and

6.4.3 the Allocated Capital Grant shall be deemed to be adjusted by the amount of the Capital Indicative Allocation agreed by Homes England in IMS in relation to the new Capital Indicative Scheme.

- 6.5 The Lead Partner must use all reasonable endeavours to ensure that each Capital Indicative Scheme:

6.5.1 is worked up so that it is capable of being brought forward as a Capital Firm Scheme in line with any requirements, deadlines and/or timescales set out by Homes England (acting in its absolute discretion) (*Capital Scheme Transition*); and

6.5.2 is uploaded onto IMS in accordance with the procedure and timescale set out in Clause 4.1 (*Capital Firm Schemes*).

6.6 The Relevant Consortium Member or the Lead Partner (as applicable) must notify Homes England in writing immediately upon becoming aware of any matter or circumstance which is likely to prejudice its ability to comply with its obligations under Clause 6.4.1 (*Capital Indicative Schemes*).

6.7 On receipt of a notice under Clause 6.6 (*Capital Indicative Schemes*) or on otherwise becoming aware of any likely delay to bringing forward a Capital Indicative Scheme as a Capital Firm Scheme, Homes England (acting reasonably) shall be entitled either:

6.7.1 to extend or modify any relevant dates, deadlines or other requirements mandated by Homes England (acting in its absolute discretion), as it considers to be appropriate for bringing forward such Capital Indicative Scheme having regard to the circumstance giving rise to the anticipated delay; or

6.7.2 to withdraw the Capital Indicative Allocation,

and in determining which option to pursue Homes England shall be entitled to take into account such factors as it considers appropriate including:

(a) the likely availability of Homes England resources in relation to any delayed Delivery of the Proposed Capital Firm Scheme resulting from any extension to the relevant timescales mandated by Homes England (acting in its absolute discretion); and

(b) the adequacy of the Relevant Consortium Member's performance to date in respect of other Capital Indicative Schemes and Capital Firm Schemes.

6.8 The Lead Partner shall be entitled to propose changes to any Capital Indicative Scheme at any point prior to any relevant date (if applicable) determined by Homes England (acting in its absolute discretion) as the date by which the relevant Capital Scheme Transition must occur. Any such changes must be communicated to Homes England in writing or by the Lead Partner proposing changes to the Capital Indicative Scheme Details through IMS. Homes England shall consider the proposal and respond to the Lead Partner. Homes England shall be entitled at its discretion to:

6.8.1 accept the proposed changes, in which case the Lead Partner must ensure that the accepted changes are correctly logged in IMS. The changes shall be deemed to be effective from the point at which they are formally accepted by Homes England in IMS; or

6.8.2 reject the proposed changes, in which case the Lead Partner shall have a period of twenty (20) Business Days (from the point of notification of Homes England's rejection of the proposed changes) to notify Homes England as to whether the Relevant Consortium Member wishes to proceed with the Capital Indicative Scheme on the basis originally submitted or to withdraw the Capital Indicative Scheme from the Approved Capital Bid.

6.9 If the Lead Partner:

6.9.1 withdraws the Capital Indicative Scheme from the Approved Capital Bid; or

6.9.2 fails to notify Homes England within the period prescribed in Clause 6.8.2 (*Capital Indicative Schemes*) as to which option it wishes to pursue,

Homes England shall be entitled permanently to withdraw the Capital Indicative Allocation and the Allocated Capital Grant figure shall be reduced commensurately.

6.10 Notwithstanding any other term of this Agreement, all Capital Indicative Schemes must (unless otherwise agreed) either have achieved Capital Firm Scheme status or have been withdrawn from the Approved Capital Bid by any date or deadline determined by Homes England (acting in its absolute discretion) as the date by which the relevant Capital Scheme Transition must occur. If a Capital Indicative Scheme has failed to achieve Capital Firm Scheme status by such date Homes England shall be entitled permanently to withdraw the Capital Indicative Allocation and the Allocated Capital Grant figure shall be reduced commensurately.

7 **Time extensions**

7.1 Where a Milestone Failure occurs or is in the opinion of Homes England reasonably likely to occur (having regard to the information pursuant to Clause 15.3 (*Operational Obligations*) or Clause 16 (*Review, Monitoring and Reporting*) and such failure is directly caused by a Milestone Extension Event, Homes England may at its sole discretion elect to, subject always to Clause 7.3 (*Time extensions*), extend the relevant Milestone Date and associated Capital Firm Scheme Completion Date by such period as it (acting reasonably) considers appropriate to take account of the delay caused or likely to be caused by the Milestone Extension Event.

7.2 Homes England shall not be obliged to consider an extension to a Milestone Date:

7.2.1 unless a Milestone Extension Event exists; or

7.2.2 in circumstances where such extension would (when taken individually or together with other extensions in relation to the Consortium or the Relevant Consortium Member) 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 Consortium or Relevant Consortium Member or other grant recipients of RSAP) materially and adversely affect Homes England's projected expenditure profile in relation to any year of RSAP and in particular (but without limitation) such expenditure profile in relation to the last Quarter of the relevant Financial Year.

7.3 Homes England shall not under any circumstances be required or obliged to extend a Capital Firm Scheme Completion Date beyond the date so specified in IMS within the latest approved version in the "Offer Line Sub Product Profile" upon the "Scheme Forecast" tab but may at its sole discretion elect to do so in writing (through IMS or otherwise).

7.4 Homes England shall not under any circumstances be required or obliged to extend a Revenue Firm Scheme Completion Date beyond 31 March 2024 but may at its sole discretion elect to do so in writing (through IMS or otherwise).

8 **Capital Firm Scheme substitution and additions**

8.1 A Consortium Member may instruct the Lead Partner to request that Homes England accepts the substitution of a different scheme (a **Capital Substitute Scheme**) in place of an Undeliverable Scheme or a Withdrawn Scheme.

8.2 Where Clause 8.1 (*Capital Firm Scheme substitution and additions*) applies, if the Lead Partner wishes to submit a Capital Substitute Scheme, it must submit to Homes England through IMS such details of the relevant Capital Substitute Scheme as Homes England may require. In permitting the submission of or in submitting the details of the Capital Substitute Scheme, the Relevant Consortium Member or Lead Partner (as applicable) is deemed to make and give the same representations and warranties in relation to the Capital Substitute Scheme as are given pursuant to Clause 4.2 (*Capital Firm Schemes*) in relation to a Capital Firm Scheme.

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

8.3.1 the Capital Substitute Scheme is consistent with the Agreed Purposes;

8.3.2 the Capital Substitute Scheme offers value for money;

8.3.3 the Capital Substitute Scheme is consistent with the Approved Capital Bid (including the scheme cost information and information in relation to the level of the Relevant Consortium Member's contribution or that of the Consortium to the Capital Substitute Scheme);

8.3.4 the Relevant Consortium Member's performance in respect of other Capital Firm Schemes has satisfied the terms of this Agreement;

8.3.5 the Acquisition Date for the Capital Substitute Scheme will occur on or before the date submitted, approved and identified in IMS and the Capital Substitute Scheme can be fully delivered by such date as may be agreed by Homes England and set out in IMS;

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

8.3.7 the Submitted Standards submitted in respect of such scheme by the Lead Partner are satisfactory.

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

8.4 Where Homes England accepts a Capital Substitute Scheme into the Approved Capital Bid pursuant to Clause 8.3 (*Capital Firm Scheme substitution and additions*) it will confirm its acceptance of such scheme to the Lead Partner through IMS.

8.5 With effect from the Substitute Scheme Acceptance Date:

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

- 8.5.2 the details set out by the Lead Partner in respect of the Capital Substitute Scheme in IMS and as confirmed by Homes England through IMS shall be deemed to be Capital Firm Scheme Details for the purposes of this Agreement; and
- 8.5.3 the Relevant Consortium Member must ensure that it complies with all of its obligations under this Agreement as they apply to such Capital Substitute Scheme.
- 8.6 It is agreed by the Parties that any Capital Firm Scheme Grant received by the Relevant Consortium Member in relation to the Undeliverable Scheme shall be deemed to have been received by the Relevant Consortium Member in relation to the Capital Substitute Scheme.
- 8.7 The Relevant Consortium Member acknowledges and agrees that an Undeliverable Scheme constitutes a "project" for the purposes of and falls within Paragraph 7(e) of the Recovery Determination.
- 8.8 The Parties shall be entitled from time to time to agree to add Additional Schemes to those comprised within the Original Approved Capital Bid.
- 8.9 Where Clause 8.8 (*Capital Firm Scheme substitution and additions*) applies, the Lead Partner shall submit to Homes England through IMS such details of the proposed Additional Scheme as Homes England may require. In permitting the submission of or in submitting the details of the Additional Scheme, the Relevant Consortium Member or Lead Partner (as applicable) is deemed to make and give the same representations and warranties in relation to the proposed Additional Scheme as are given to Homes England pursuant to Clause 5.2 (*Changes to Capital Firm Schemes*).
- 8.10 Homes England shall consider the Additional Scheme and if Homes England is satisfied that:
 - 8.10.1 the Additional Scheme is consistent with the Agreed Purposes;
 - 8.10.2 the Additional Scheme offers value for money;
 - 8.10.3 the Relevant Consortium Member's performance in respect of other Capital Firm Schemes comprised within the Approved Capital Bid has been of an acceptable standard and has satisfied the terms of this Agreement;
 - 8.10.4 the Acquisition Date for the Additional Scheme will occur on or before the date submitted, approved and identified in IMS and the Additional Scheme can be fully delivered by such date as may be agreed by Homes England and set out in IMS;
 - 8.10.5 no Bid Default, Fundamental Default nor Specified Default subsists; and
 - 8.10.6 the Submitted Standards submitted in respect of such scheme by the Lead Partner are satisfactory.

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

- 8.11 Where Homes England accepts an Additional Scheme into the Approved Capital Bid pursuant to Clause 8.10 (*Capital Firm Scheme substitution and additions*) it shall confirm such acceptance to the Lead Partner through IMS.
- 8.12 With effect from the Additional Scheme Acceptance Date:
- 8.12.1 the Additional Scheme shall be deemed to be a Capital Firm Scheme for the purposes of this Agreement and immediately subject to its whole terms and conditions;
 - 8.12.2 the details set out by the Lead Partner in respect of the Additional Scheme in IMS and as confirmed by Homes England through IMS shall be deemed to be Capital Firm Scheme Details for the purposes of this Agreement; and
 - 8.12.3 each of the Lead Partner and the Relevant Consortium Member must ensure that it complies with all of its obligations under this Agreement as they apply to such new Capital Firm Scheme.
- 8.13 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 8.6 (*Capital Firm Scheme substitution and additions*)) be deemed to be increased or decreased (as appropriate) by the Capital Firm Scheme Grant agreed by Homes England in IMS in relation to the relevant Capital Firm Scheme.

9 Revenue Firm Schemes

- 9.1 The Lead Partner must not less than five (5) Business Days prior to Practical Completion upload such details of each Revenue New Scheme comprised within the Approved Revenue Bid as are required onto Homes England's IMS, and if the relevant scheme is accepted by Homes England through IMS, it will become a Revenue Firm Scheme for the purposes of this Agreement with effect from the Acceptance Date.
- 9.2 In permitting the Lead Partner to submit the details referred to in Clause 9.1 (*Revenue Firm Schemes*), the Relevant Consortium Member is deemed to represent and warrant to Homes England that:
- 9.2.1 the Revenue Firm Scheme:
 - (a) is in its opinion (acting reasonably) deliverable in accordance with the Revenue Firm Scheme Delivery Timetable and is consistent with the Submitted Standards; and
 - (b) comprises no Public Sector Funding beyond that identified in the Revenue Firm Scheme Details; and
 - 9.2.2 it:
 - (a) has obtained all Consents necessary for the Delivery of the Revenue Firm Scheme in accordance with the Revenue Firm Scheme Details as are then required;
 - (b) is not subject to any Section 15 Direction nor do any circumstances exist which would permit such a direction to be issued; and

- (c) 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.

9.3 Under no circumstances shall Homes England be obliged to accept any Revenue 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 RSAP or other programme commitments) to provide Revenue Firm Scheme Grant in relation to the relevant scheme.

10 **Changes to Revenue Firm Schemes**

10.1 The Lead Partner may propose changes to any Revenue Firm Scheme at any time prior to the Revenue Firm Scheme Completion Date. Any such changes must be proposed via IMS and must take account of any Revenue Firm Scheme Grant already received by the Lead Partner.

10.2 Where a Revenue 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 procedure set out in Clause 10.3 (*Changes to Revenue Firm Schemes*) below.

10.3 If Homes England:

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

- (a) the Revenue Firm Scheme is withdrawn by the Lead Partner (on behalf of the Relevant Consortium Member), Homes England will withdraw the Revenue Firm Scheme Grant allocated to such scheme and the Allocated Revenue Grant figure will be reduced commensurately and the Lead Partner must repay Homes England a sum equivalent to the Revenue Firm Scheme Grant received by it, such payment to be made within fifteen (15) Business Days of receipt of Homes England's written demand for the same;
- (b) the proposed Revenue Change is withdrawn by the Lead Partner (on behalf of the Relevant Consortium Member), the Lead Partner shall reinstate in IMS the Revenue Firm Scheme Details ante the date of the Revenue Change and, following Homes England's approval of such reinstated details in IMS, the Revenue Firm Scheme shall proceed on the basis of those reinstated Revenue Firm Scheme Details;
- (c) the Relevant Consortium Member wishes to proceed with the Revenue Firm Scheme, it must immediately amend the Revenue Firm Scheme

Details in IMS to reflect the Revenue Change, the recalculated Revenue Firm Scheme Grant figure and any Revenue Firm Scheme Grant already received. The amended Revenue Firm Scheme Details (together with any adjustments due as a result of the recalculated Revenue Firm Scheme Grant figure being lower than the original Revenue Firm Scheme Grant figure) will be deemed to be effective from the date of their acceptance by Homes England (through IMS); and

- (d) a Notification Failure occurs, Homes England shall be entitled (but not obliged) to treat such failure as a decision by the Relevant Consortium Member to withdraw the Revenue Firm Scheme from this Agreement;

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

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

- (a) the Relevant Consortium Member wishes to withdraw the Revenue Firm Scheme, Homes England will permanently withdraw the Revenue Firm Scheme Grant allocated to such scheme and the Allocated Revenue Grant figure will be reduced commensurately and the Lead Partner must repay Homes England a sum equivalent to the Revenue Firm Scheme Grant received by it, such payment to be made within fifteen (15) Business Days of receipt of Homes England's written demand for the same; or

- (b) a Notification Failure occurs, Homes England shall be entitled (but not obliged) to treat such failure as a decision by the Relevant Consortium Member to withdraw the Revenue Firm Scheme from this Agreement.

10.4 Homes England will not be obliged to pay any Revenue Firm Scheme Grant to the Lead Partner in relation to any Revenue Firm Scheme unless any changes required to the Revenue Firm Scheme Details by Clause 10.3 (*Changes to Revenue Firm Schemes*) have been made and have been accepted by Homes England in IMS.

10.5 Homes England will take reasonable steps to contact the Lead Partner during the period specified in each of Clauses 10.3.1 (*Changes to Revenue Firm Schemes*) and 10.3.3 (*Changes to Revenue Firm Schemes*) to remind the Lead Partner of the need for the appropriate notification, but any failure on Homes England's part to do so will not preclude Homes England from treating a Revenue Firm Scheme as withdrawn where there has been a Notification Failure under any of those Clauses.

10.6 Under no circumstances will Homes England be required to accept any Revenue Change which would have the result of increasing the amount of the Allocated Revenue Grant or the Revenue Firm Scheme Grant in relation to the relevant Revenue Firm Scheme.

10.7 Any change to the Revenue Firm Scheme Details and/or the Approved Revenue Bid resulting from the application of this Clause 10 (*Changes to Revenue Firm Schemes*) shall be implemented by the Lead Partner amending the Revenue Firm Scheme Details in IMS and confirmed by Homes England's electronic acceptance of that amendment through IMS and in default of agreement the Parties will be bound by the Revenue Firm Scheme Details as they existed prior to the change proposed.

11 Revenue Firm Scheme additions

11.1 The Lead Partner confirms that such details of each Revenue Original Scheme comprised within the Original Approved Revenue Bid as Homes England requires have been uploaded onto IMS by the date of this Agreement.

11.2 The Parties shall be entitled from time to time to agree to add Additional Schemes to those comprised within the Original Approved Revenue Bid.

11.3 Where Clause 11.1 (*Revenue Firm Scheme additions*) applies, the Lead Partner shall submit to Homes England through IMS such details of the proposed Additional Scheme as Homes England may require. In permitting the submission of or in submitting the details of the Additional Scheme, the Relevant Consortium Member or Lead Partner (as applicable) is deemed to make and give the same representations and warranties in relation to the proposed Additional Scheme as are given to Homes England pursuant to Clause 9.2 (*Revenue Firm Schemes*).

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

11.4.1 the Additional Scheme is consistent with the Agreed Purposes;

11.4.2 the Additional Scheme offers value for money;

11.4.3 the Relevant Consortium Member's performance in respect of other Revenue Firm Schemes comprised within the Approved Revenue Bid has been of an acceptable standard and has satisfied the terms of this Agreement;

11.4.4 the Additional Scheme can be fully delivered by the date submitted, approved and identified in IMS;

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

11.4.6 the Submitted Standards submitted in respect of such scheme by the Lead Partner are satisfactory.

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

11.5 Where Homes England accepts an Additional Scheme into the Approved Revenue Bid pursuant to Clause 11.4 (*Revenue Firm Scheme additions*) it shall confirm such acceptance to the Lead Partner through IMS.

11.6 With effect from the Additional Scheme Acceptance Date:

- 11.6.1 the Additional Scheme shall be deemed to be a Revenue Firm Scheme for the purposes of this Agreement and immediately subject to its whole terms and conditions;
 - 11.6.2 the details set out by the Lead Partner in respect of the Additional Scheme in IMS and as confirmed by Homes England through IMS shall be deemed to be Revenue Firm Scheme Details for the purposes of this Agreement; and
 - 11.6.3 each of the Lead Partner and the Relevant Consortium Member must ensure that it complies with all of its obligations under this Agreement as they apply to such new Revenue Firm Scheme.
- 11.7 If Homes England agrees to make available any grant funding in relation to an Additional Scheme, the Allocated Revenue Grant will (subject to Clause 11.1 (*Revenue Firm Scheme additions*)) be deemed to be increased or decreased (as appropriate) by the Revenue Firm Scheme Grant agreed by Homes England in IMS in relation to the relevant Revenue Firm Scheme.

12 Changes to the Consortium

- 12.1 A Consortium Member shall be released as a Party to this Agreement where:
- 12.1.1 a Deed of Release has been completed in accordance with the provisions of Clause 12.2 (*Changes to the Consortium*) below; and
 - 12.1.2 either:
 - (a) following information supplied and/or representations made by the Consortium, Homes England is satisfied (acting reasonably) that the Consortium is capable of delivering the Capital Approved Bid and (if applicable) Revenue Approved Bid without the need for a change to it; or
 - (b) any change to the Capital Approved Bid and (if applicable) Revenue Approved Bid as a result of the proposed withdrawal of the Outgoing Consortium Member requested by the Lead Partner does not materially and adversely affect the delivery of the Capital Approved Bid and (if applicable) Revenue Approved Bid and Homes England has given its prior written consent to such change,

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

- 12.2 Subject to the proviso in Clause 12.1.2 (*Changes to the Consortium*), on and from the date that the Outgoing Consortium Member provides to Homes England the Completion Authority and the Deed of Release duly executed by it and all other Consortium Members, the Outgoing Consortium Member shall no longer be a Party to this Agreement and for the avoidance of doubt, the Outgoing Consortium Member shall no longer be eligible to make a claim for or receive (via the Lead Partner or otherwise) any Funding.
- 12.3 On and from the date that a New Consortium Member provides to Homes England the Completion Authority and the Deed of Adherence, duly executed by it and the other

Consortium Members, the New Consortium Member shall become a Party to this Agreement and be bound by the obligations of a Consortium Member as herein provided.

12.4 Where a New Consortium Member is an LA Provider, it must also provide a Legal Opinion to Homes England with the documents provided pursuant to Clause 12.3 (*Changes to the Consortium*) above.

13 **Delivery Obligations**

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

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

- (a) the Capital Firm Scheme is (subject to Clause 7.1 (*Time extensions*)) constructed, delivered and/or Rehabilitated (as applicable) in accordance with the Capital Firm Scheme Delivery Timetable;
- (b) when delivered, the Capital Firm Scheme fully complies with the Capital Firm Scheme Details and meets the Submitted Standards; and
- (c) any applicable requirements of Procurement Law and of the Consents are satisfied; and

13.1.2 promptly notify Homes England in writing of any failure or likely failure to comply with Clause 13.1.1(a) (*Delivery Obligations*);

13.1.3 procure that prior to any RSAP Dwelling comprised in such Capital Firm Scheme being occupied, a "building assurance certificate" is obtained where such is required in respect of the Capital Firm Scheme (or any part thereof) under any building safety legislation arising out of the draft Building Safety Bill 2021 (when that Bill comes into force); and

13.1.4 where any RSAP Dwelling forms part of a building that is above either 18 metres or 6 floors in height (whichever is the lower), register as a signatory to the Building a Safer Future Charter.

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

13.2.1 deliver the Revenue Services so that:

- (a) the Revenue Firm Scheme is delivered in accordance with the Revenue Firm Scheme Delivery Timetable;
- (b) when delivered, the Revenue Firm Scheme fully complies with the Revenue Firm Scheme Details and meets the Submitted Standards; and
- (c) any applicable requirements of Procurement Law and of the Consents are satisfied;

13.2.2 promptly notify Homes England in writing of any failure or likely failure to comply with Clause 13.2.1(a) (*Delivery Obligations*); and

13.2.3 comply with Clause 16.23 (*Review, Monitoring and Reporting*) to submit a Statement of Grant Usage in order to provide Homes England with satisfactory evidence that the Revenue Grant will reimburse expenditure incurred in providing the Revenue Services.

14 **Revenue Eligible Expenditure**

14.1 Subject to Clause 14.2 (*Revenue Eligible Expenditure*) below, Revenue Eligible Expenditure consists of payments made by the Relevant Consortium Member during the Revenue Funding Period in providing and/or securing the provision of Revenue Services.

14.2 The following costs shall not be regarded as Revenue Eligible Expenditure for the purposes of this Agreement:

14.2.1 activities of a political or exclusively religious nature;

14.2.2 services that the Relevant Consortium Member has a statutory duty to provide;

14.2.3 payments reimbursed or to be reimbursed by other public or private sector grants;

14.2.4 depreciation, amortisation or impairment of fixed assets owned by the Relevant Consortium Member;

14.2.5 the acquisition or improvement of fixed assets by the Relevant Consortium Member;

14.2.6 interest payments (including service charge payments for finance leases);

14.2.7 gifts to individuals other than promotional items with a value no more than £10 a year to any one individual;

14.2.8 entertaining (entertaining for this purpose means anything that would be a taxable benefit to the person being entertained, according to current UK tax regulations);

14.2.9 statutory fines, criminal fines or penalties;

14.2.10 any goods or other assets;

14.2.11 costs of building, land acquisition or other costs of development itself; and

14.2.12 costs related to non-residential elements of the Revenue Services.

14.3 For the purpose of this Agreement, a payment shall be regarded as made by the Relevant Consortium Member when and only when, money passes out of the Relevant Consortium Member's control. Money will be assumed to have passed out of the Relevant Consortium Member's control at the moment when a letter is posted to a supplier, contractor or consultant containing a cheque, or an electronic instruction is sent to a bank to make a payment to such person by direct credit or bank transfer.

14.4 The Lead Partner on behalf of the Relevant Consortium Member may claim for a Revenue Grant pursuant to this Agreement against Revenue Eligible Expenditure incurred in making payments to a subcontractor under a contract which secures the provision of the Revenue Services in accordance with this Agreement.

14.5 No Consortium Member shall deliberately incur liabilities for Revenue Eligible Expenditure before there is an operational need for it to do so and nor shall it pay for Revenue Eligible Expenditure sooner than the due date for payment.

14.6 Each Consortium Member acknowledges that Revenue Eligible Expenditure may only be claimed in accordance with Clause 19 (*Revenue Grant Claim Procedures*).

15 **Operational Obligations**

15.1 In Delivering the Capital Firm Scheme and in operating and administering the Capital Firm Scheme after Practical Completion, the Relevant Consortium Member must observe and comply with Legislation, the applicable terms of the Capital Funding Guide and the Recovery Determination (to the extent applicable) and the Consents.

15.2 The Relevant Consortium Member shall procure that Homes England's Representative (or any person nominated by them) shall have at all reasonable times and upon giving reasonable notice the right to enter onto the Site and to take such action as he considers appropriate to inspect the progress of the Capital Firm Scheme and to monitor compliance by the Relevant Consortium Member with its obligations under this Agreement.

15.3 The Relevant Consortium Member must agree in advance with Homes England any significant changes to the Approved Capital Bid or the Approved Revenue Bid or to any of the outputs, activities, targets and/or indicative dates as set out in the Approved Capital Bid or the Approved Revenue Bid.

15.4 The Relevant Consortium Member shall provide such evidence as Homes England may reasonably require to enable Homes England to satisfy itself:

15.4.1 with the progress against the Approved Capital Bid and the Approved Revenue Bid (if any) including, without limitation, progress against the delivery Milestones agreed in relation to such Approved Capital Bid or Approved Revenue Bid (as applicable); and

15.4.2 that the Relevant Consortium Member's compliance with the terms and conditions of this Agreement.

15.5 The Relevant Consortium Member must notify Homes England in writing (save in respect of Clause 15.5.1 (*Operational Obligations*) and Clause 15.5.2 (*Operational Obligations*) where, in each case, notification is required to be given through IMS):

15.5.1 immediately once the Acquisition Date has occurred;

15.5.2 immediately once the Start on Site Date has occurred;

15.5.3 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 Capital Firm Scheme (or any part of it) beyond any amount of Public Sector Funding notified to Homes England by the Lead Partner pursuant to Clause 4.1 (*Capital Firm Schemes*), Clause 8.2 (*Capital Firm Scheme substitution and additions*) or Clause 8.9 (*Capital Firm Scheme substitution and additions*) or in respect of the Revenue Firm Scheme (or any part of it) beyond any amount of Public Sector Funding notified to Homes England by the Relevant Consortium Member

pursuant to Clause 9.1 (*Revenue Firm Schemes*), Clause 11.1 (*Revenue Firm Scheme additions*) or Clause 11.3 (*Revenue Firm Scheme additions*);

- 15.5.4 immediately upon becoming aware of any event or circumstance which may have a Material Adverse Effect; and
 - 15.5.5 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.
- 15.6 Without prejudice to Clause 15.1 (*Operational Obligations*), the Relevant Consortium Member must in operating and administering the Capital Firm Scheme after Practical Completion:
- 15.6.1 subject to Clause 24.1 (*Repayment of grant*) not use the RSAP Dwellings for any purpose other than the Agreed Purposes without Homes England's prior written consent;
 - 15.6.2 not charge a higher initial rent in relation to a RSAP Rent Dwelling than set out in the relevant Capital Firm Scheme Details;
 - 15.6.3 subject to any contrary requirement of Legislation comply with the Rent Standard in respect of the RSAP Rent Dwellings;
 - 15.6.4 comply with the Tenancy Standard in respect of the RSAP Rent Dwellings;
 - 15.6.5 observe and comply with the requirements of the Capital Funding Guide in relation to:
 - (a) the letting, management or Disposal of RSAP Rent Dwellings; and
 - (b) the nature of the housing and/or housing product (as described in the Capital Funding Guide) being funded pursuant to this Agreement;
 - 15.6.6 comply at its own cost with Homes England's requirements in relation to Compliance Audit;
 - 15.6.7 in relation to RSAP Housing, participate in the CORE system from time to time (including recording any lettings made);
 - 15.6.8 in relation to each RSAP Rent Dwelling use the most appropriate form of tenancy (as set out in the Capital Funding Guide) having regard to the terms of the Tenancy Standard and the efficient use of public funds;
 - 15.6.9 ensure that each RSAP Rent Dwelling which is not a new-build development is made available as an RSAP Rent Dwelling for a period of not less than thirty (30) years from the point at which it first becomes available for letting;
 - 15.6.10 ensure that each RSAP Rent Dwelling which is a new-build development is made available as an RSAP Rent Dwelling for a period of not less than sixty (60) years from the point at which it first becomes available for letting;

- 15.6.11 provide Homes England with a completed Disposal Notification no less than ten (10) Business Days prior to a Disposal taking place in accordance with any applicable requirements of the Capital Funding Guide, and procure on any Disposal a written acknowledgement from the disponent in favour of Homes England that may be required by Homes England; and
 - 15.6.12 provide Homes England or MHCLG (as applicable) with such information (and within such timescales) as Homes England or MHCLG (as applicable) may reasonably require to enable Homes England or MHCLG (as applicable) to monitor compliance by the Relevant Consortium Member with its obligations under this Agreement.
- 15.7 The Lead Partner will:
- 15.7.1 ensure that that any Disposal Notification, Constitutional Change Notification or any other notifications or certificates from the Lead Partner (on behalf of the Consortium Members) to Homes England (the **Grant Recipient Notifications**) are provided by the Lead Partner's Representative and must further ensure that such Lead Partner Representative has access to the information and knowledge needed accurately to give the information required; and
 - 15.7.2 notify Homes England if it becomes aware that the Grant Recipient Notifications are erroneous in any material respect.
- 15.8 Without prejudice to Clause 15.1 (*Operational Obligations*), the Relevant Consortium Member must in operating and administering the Revenue Firm Scheme, secure the best value for money in all purchases of services where the costs of such purchases is or would be paid for by the Revenue Grant.
- 15.9 Subject to Clause 15.8 (*Operational Obligations*), the Relevant Consortium Member must obtain quotes for the provision of all services with a cost of £500 or more, and where the cost is £5,000 or more, it must, obtain at least 3 written tenders (unless otherwise agreed by Homes England in its absolute discretion). If required to do so by Homes England, it must produce documentary evidence of compliance with this Clause 15.9 (*Operational Obligations*).
- 15.10 If:
- 15.10.1 the Relevant Consortium Member follows a single tender procedure, for example, where the value of a contract is very low; or
 - 15.10.2 the Relevant Consortium Member has an existing panel of service providers in place who have previously been through a tendering process; or
 - 15.10.3 where there is only one supplier capable of providing to the Relevant Consortium Member the goods or services concerned,
- the Relevant Consortium Member must keep a record of the reasons why that procedure was thought to be appropriate.
- 15.11 Each Consortium Member shall comply with all relevant Legislation in relation to the supply of goods and services including Procurement Law.

- 15.12 The Relevant Consortium Member shall ensure that Homes England's requirements from time to time in relation to public relations and publicity for capital projects (including Site signage) as notified to the Lead Partner from time to time or otherwise as included in the Capital Funding Guide are observed and implemented in respect of each Firm Scheme.
- 15.13 In discharging its obligations or making any representation or warranty under this Agreement, each Consortium Member must act at all times with the utmost good faith, with the intent to deliver the Approved Capital Bid and (if applicable) the Approved Revenue Bid and with proper regard to the need for efficiency in the use of public funds.
- 15.14 Where any Consortium Member is aware that it is in breach of an obligation under this Clause 15 (*Operational Obligations*), it must promptly notify Homes England of the fact and take all such steps as are appropriate in the circumstances to remedy the breach.
- 15.15 If any Consortium Member has any grounds for suspecting financial irregularity in the use of any Funding, it must notify Homes England immediately, explain what steps are being taken to investigate the suspicion and keep Homes England informed about the progress of the investigation. For these purposes "financial irregularity" includes fraud or other impropriety, mismanagement, and the use of Capital or Revenue Grant for purposes other than the purposes permitted under this Agreement.
- 15.16 Each Consortium Member shall comply with the notifications regime set out in the Recovery Determination and promptly inform Homes England if any change is made to its constitution or structure which causes or is reasonably likely to cause a Relevant Event and provide a copy to Homes England of any document relating to such change.

16 **Review, Monitoring and Reporting**

- 16.1 Each Consortium Member must comply fully with the contract management and reporting obligations set out in this Agreement.
- 16.2 Each Consortium Member acknowledges the high importance to Homes England of it being promptly advised when any circumstance occurs which may:
- 16.2.1 impact on its ability to Deliver any Capital Firm Scheme or Revenue Firm Scheme in accordance with the terms of this Agreement;
 - 16.2.2 change any assumptions in relation to the Approved Capital Bid or any Capital Firm Scheme which would provide an opportunity for the Consortium or any Consortium Member to deliver more RSAP Dwellings with the Allocated Capital Grant or with the Capital Firm Scheme Grant (as applicable);
 - 16.2.3 change any assumptions in relation to the Approved Revenue Bid or any Revenue Firm Scheme which would provide an opportunity for the Relevant Consortium Member to provide more Revenue Services with the Allocated Revenue Grant or with the Revenue Firm Scheme Grant (as applicable);
 - 16.2.4 indicate that Homes England is making available more grant than is required to Deliver the Approved Capital Bid, a Capital Firm Scheme, the Approved Revenue Bid or Revenue Firm Scheme;

- 16.2.5 in the case of an LA Provider, give rise to the making of a Section 114 Report or the issue of a Section 15 Direction;
- 16.2.6 constitute a breach of Clause 13 (*Delivery Obligations*) or Clause 15 (*Operational Obligations*); or
- 16.2.7 constitute a Default Event,

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

16.3 Where Homes England becomes aware either via the Contract Monitoring Outputs or through other monitoring, that the Delivery of the Approved Capital Bid or the Approved Revenue 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:

- 16.3.1 a reduction, increase or other change to the number of RSAP Dwellings to be delivered;
- 16.3.2 a reduction or other adjustment to the Allocated Capital Grant or to any Capital Firm Scheme Grant or the Allocated Revenue Grant or to any Revenue Firm Scheme Grant; and/or
- 16.3.3 any other change to the Approved Capital Bid or the Approved Revenue Bid that Homes England deems reasonably necessary,

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

16.4 Nothing in Clause 16.3 (*Review, Monitoring and Reporting*) shall preclude Homes England and the Lead Partner from agreeing an alternative means of dealing with the Delivery Failure to that set out in the Allocation Change Notice **save that** unless such alternative is agreed and reflected in IMS by the end of the then current Financial Year, the change required by Homes England in the Allocation Change Notice shall take effect on the next following 1 April and Homes England shall be entitled to make all such changes to IMS as are necessary to reflect the contents of the Allocation Change Notice.

16.5 The Lead Partner shall submit such:

- 16.5.1 information as is specified in the RSAP chapter of the Capital Funding Guide entitled "Letting Accommodation Guidance" at least once every calendar month (or such other frequency as Homes England may in its absolute discretion agree) beginning on the date of this Agreement; and
- 16.5.2 other information in relation to this Agreement, the Approved Bid and/or Delivery of the Firm Schemes as may be requested on reasonable notice by Homes England from time to time.

16.6 The Lead Partner's Representative (or, where agreed with Homes England in advance, such other member of the Lead Partner's executive management team) and (where agreed by Homes England in advance) a senior officer of one or more other Consortium Members shall

attend a review meeting when requested to do so by Homes England with reasonable prior written notice.

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

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

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

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

16.8.1 all changes made to any Capital Firm Scheme, any Revenue Firm Scheme or to the Approved Capital Bid or the Approved Revenue Bid in the period since the immediately preceding Review Meeting or anticipated by the Lead Partner to be requested during the current Financial Year;

16.8.2 all withdrawals and reductions of Capital Indicative Schemes;

16.8.3 the capacity of each Consortium Member to bring forward additional housing supply under RSAP;

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

16.8.5 progress in relation to each Capital Indicative Scheme and Capital Firm Scheme including Delivery forecasts, lettings forecasts and progress against previous such forecasts;

16.8.6 progress in relation to each Revenue Firm Scheme;

16.8.7 the Contract Monitoring Outputs;

16.8.8 the position in relation to each RP Scheme on agreeing nomination arrangements in respect of RSAP Rent Dwellings with relevant Local Housing Authorities;

16.8.9 save where Clauses 16.29.1 (*Review, Monitoring and Reporting*) or 16.29.2 (*Review, Monitoring and Reporting*) apply, any Change in Control or Restructure which is anticipated in the then current or upcoming Financial Year;

16.8.10 any Pre-Start Changes or Post-Start Changes made during the immediately preceding Quarter or anticipated by the Lead Partner to be requested during the current Quarter; and

16.8.11 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.

- 16.9 Homes England's Representative and Lead Partner's Representative (or, where agreed with Homes England in advance, such other member of the Lead Partner's executive management team) shall attend all Review Meetings until the date of Practical Completion. The Parties agree that MHCLG's Representative shall also be entitled to attend such meetings.
- 16.10 The Parties agree that the Regulator shall also be entitled to send a representative to attend any Review Meeting.
- 16.11 Save as otherwise agreed between the Parties, any meeting under this Clause 16 (*Review, Monitoring and Reporting*) shall be minuted by the Lead Partner and such minutes shall be distributed within ten (10) Business Days following the meeting to Homes England, MHCLG and any other attendee.
- 16.12 The Lead Partner shall:
- 16.12.1 provide Homes England and MHCLG with such information as Homes England and/or MHCLG shall reasonably require to support or facilitate the discussions and monitoring referred to in this Clause 16 (*Review, Monitoring and Reporting*); and
 - 16.12.2 take all reasonable steps to ensure that any information provided to Homes England and MHCLG pursuant to this Clause 16 (*Review, Monitoring and Reporting*) is accurate in all material aspects.
- 16.13 The Consortium Members:
- 16.13.1 acknowledge and accept that the success of RSAP depends upon the Consortium Members working collaboratively with local authorities; and
 - 16.13.2 agree that (where any Consortium Members are requested to do so by MHCLG), they will supply such information referred to in Clause 16.12 (*Review, Monitoring and Reporting*) above to the local authorities in their area.
- 16.14 The Lead Partner shall, as and when requested by Homes England and/or MHCLG (as required in connection with this Agreement, the Approved Capital Bid, the Approved Revenue Bid or any Capital Indicative Scheme or Capital Firm Scheme or Revenue Firm Scheme) promptly provide to Homes England and MHCLG hard and/or electronic copies of:
- 16.14.1 any and all data, materials, documents and accounts of any nature created, acquired or brought into existence in any manner whatsoever by or on behalf of each Consortium Member (including where the source was created by and/or is held by any Consortium Member Party (or its consultants)) for the purposes of or in connection with this Agreement; and
 - 16.14.2 the elemental breakdown of the construction costs in relation to each Capital Firm Scheme.

and each Consortium Member shall co-operate with any request made by the Lead Partner for such data, materials, documents and accounts in order to facilitate the Lead Partner's compliance under this obligation.

- 16.15 On the expiry of this Agreement or (if earlier) upon its termination, each Consortium Member shall if requested to do so deliver up to Homes England or MHCLG (as directed) of all the data, materials, documents and accounts referred to in this Clause 16 (*Review, Monitoring and Reporting*).
- 16.16 Each Consortium Member must for a period of ten (10) years from the date upon which it receives the Capital Firm Scheme Grant retain all of the data, documents, materials and accounts referred to in this Clause 16 (*Review, Monitoring and Reporting*) and each Consortium Member may retain such data, documents, materials and accounts in electronic form only.
- 16.17 Each Consortium Member agrees that each of MHCLG's and 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 or MHCLG (as applicable) is entitled under this Agreement or to which each of MHCLG's and Homes England's auditors are entitled pursuant to the National Audit Act 1983 and the Government Resources and Accounts Act 2000 or otherwise.
- 16.18 Each Consortium Member shall promptly and fully co-operate with any request for information or evidence from time to time of:
- 16.18.1 any auditor (whether internal or external) of Homes England and/or MHCLG;
 - 16.18.2 MHCLG; and/or
 - 16.18.3 Homes England, to the extent such request relates to this Agreement (or any matter associated with it), or to SPEI Information and which Homes England is required to provide to any third party pursuant to Legislation or by any Competent Authority.
- 16.19 Each Consortium Member shall ensure that for each Firm Scheme it and each Consortium Member Affiliate keeps on an Open Book Basis (in accordance with generally accepted accounting practice) separate books of account for items relating to the RSAP Housing which identify items of SPEI Revenue, the Capital Firm Scheme Grant, the Revenue Firm Scheme Grant and SPEI Allowable Costs and such other items required under this Clause 16 (*Review, Monitoring and Reporting*).
- 16.20 Each Consortium Member shall upon Homes England's or MHCLG's written request:
- 16.20.1 make available upon reasonable notice for Homes England's inspection (and that of any person referred to in this Clause 16 (*Review, Monitoring and Reporting*) or in Clause 28 (*Information and Confidentiality*) or any person appointed pursuant to Clause 34 (*Dispute resolution*) the books of account referred to in Clause 16.19 (*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 MHCLG (as applicable) as and when requested to do so; and
 - 16.20.2 procure that a representative of Homes England or MHCLG (as applicable) (or any of each of its auditors or advisors) may on reasonable notice visit any place where any records or information of the type described in this Clause 16

(Review, Monitoring and Reporting) are held or maintained and examine such records or information.

- 16.21 Each Consortium Member shall ensure that it and any Consortium Member Affiliate (at its or their cost) co-operates with Homes England during an SPEI Review and it shall if requested promptly provide Homes England with SPEI Information and such other information, evidence and/or explanation as Homes England may reasonably require.
- 16.22 Each Consortium Member shall with effect from and including Practical Completion submit a signed and dated Annual Return to MHCLG within five (5) Business Days of the date falling annually (or such other frequency as MCHLG may otherwise agree in its full discretion) from Practical Completion together with such other information as may have been requested on reasonable notice by MHCLG.
- 16.23 Within thirty (30) Business Days of the end of any Financial Period (or such other frequency as Homes England may otherwise agree in its full discretion) in which the Relevant Consortium Member requests any payment of Revenue Grant, the Relevant Consortium Member must complete and submit a Statement of Grant Usage to Homes England in respect of such Financial Period. The Statement of Grant Usage must be, signed by either a company secretary or director of the Relevant Consortium Member or a person occupying an equivalent post and certified by its external auditor or accountant including whether the entries in the statement are in accordance with the Relevant Consortium Member's underlying records.
- 16.24 Any manuscript alterations to the Statement of Grant Usage must be initialled by the original signatories/y.
- 16.25 The Relevant Consortium Member must ensure that their external auditor or accountant for the purposes of certification under Clause 16.23 *(Review, Monitoring and Reporting)* above complies with Auditor Guidance including (but without limitation) entering into a tripartite letter of engagement as referred to therein.
- 16.26 The Relevant Consortium Member must:
- 16.26.1 maintain and operate effective monitoring and financial management systems in order to control expenditure and to ensure that the costs of achieving the objectives and activities as set out in any Approved Capital Bid or Approved Revenue Bid can be clearly identified; and
 - 16.26.2 keep a record of Revenue Eligible Expenditure and retain all accounting records relating to that expenditure and income for a period of at least ten (10) years after the end of Revenue Grant funding; and
 - 16.26.3 make the accounting records available at any reasonable time for inspection by Homes England's Representative and MHCLG's Representative.
- 16.27 For the purposes of Clause 16.26 *(Review, Monitoring and Reporting)*, the accounting records shall include original invoices, receipts, accounts and deeds, whether in writing or electronic form.

- 16.28 The Lead Partner shall promptly, accurately update IMS with such information as may be requested by Homes England from time to time (acting reasonably) in connection with the terms of this Agreement.
- 16.29 Save where:
- 16.29.1 the Relevant Consortium Member or its holding company is a public limited company and is prohibited by listing rules from doing so; or
- 16.29.2 a Change in Control occurs automatically by operation of Legislation and without the Relevant Consortium Member being able to notify in advance,
- the Relevant Consortium Member shall provide Homes England with a completed Constitutional Change Notification at least ten (10) Business Days prior to any Change in Control or Restructure. Where the circumstances contemplated in Clause 16.29.1 (*Review, Monitoring and Reporting*) or Clause 16.29.2 (*Review, Monitoring and Reporting*) apply, the Relevant Consortium Member shall provide Homes England with a completed Constitutional Change Notification within ten (10) Business Days after the relevant Change in Control or Restructure has occurred.
- 16.30 The Relevant Consortium Member 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.
- 16.31 The Parties acknowledge and agree that Homes England may review whether the Relevant Consortium Member continues to meet the requirements for Investment Partner status (pursuant to Clauses 16.28 (*Review, Monitoring and Reporting*) or 16.30 (*Review, Monitoring and Reporting*) or otherwise) and the Relevant Consortium Member will cooperate 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.

17 **Transparency Obligations**

- 17.1 Subject to Clause 17.2 (*Transparency Obligations*) below, each Consortium Member acknowledges that:
- 17.1.1 where the Allocated Capital Grant (itself or if aggregated with other RSAP Funds or funds made available under (i) any subsequent Homes England capital funding programme or (ii) any Previous Programme) exceeds £3,000,000, that Consortium Member must publish details quarterly of all expenditure in excess of £500 incurred by it in delivering Capital Firm Schemes by such means as ensures that such details can be accessed by the general public; and
- 17.1.2 except for any information which is exempt from disclosure in accordance with the FOIA, and notwithstanding any other term of this Agreement, each Consortium Member hereby consents for each of Homes England and MHCLG to publish such information as it considers appropriate in relation to RSAP, including, but not limited to, details of the Approved Capital Bid, Development Costs, other costs and funding for Capital Firm Schemes, details of the Approved Revenue Bid, Revenue Eligible Expenditure, other costs and funding

for Revenue Firm Schemes, including from time to time agreed changes to this information.

17.2 Each Consortium Member that is an LA Provider:

17.2.1 must comply with the Transparency Code; and

17.2.2 agrees that if the Transparency Code is not binding upon it, it will be bound by the terms of Clause 17.1 (*Transparency Obligations*) (*mutatis mutandis*).

17.3 Homes England or MHCLG (as applicable) 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:

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

17.3.2 without consulting the Lead Partner.

17.4 The Lead Partner shall assist and co-operate (and procure that the other Consortium Members assist and co-operate) with Homes England or MHCLG (as applicable) to enable Homes England or MHCLG (as applicable) to publish the information referred to in Clause 17.1.2 (*Transparency Obligations*).

18 **Capital Grant Claim Procedures**

18.1 Subject to the Acceptance Date having passed, the Lead Partner may apply to Homes England for the Acquisition Tranche Grant payable in respect of that Capital Firm Scheme to be paid to it (the **AT Claim**). The Lead Partner must make its AT Claim through IMS in accordance with the requirements of IMS from time to time and in compliance with the applicable procedures relating to grant claims and payments set out in the Capital Funding Guide.

18.2 In permitting the Lead Partner to submit an AT Claim pursuant to Clause 18.1 (*Capital Grant Claim Procedures*), the Relevant Consortium Member:

18.2.1 is deemed to repeat the representations and warranties set out in Clause 4.2 (*Capital Firm Schemes*) other than Clause 4.2.2(b) (*Capital Firm Schemes*) and for the purposes of this Clause 18.2.1 (*Capital Grant Claim Procedures*) the Parties acknowledge and agree that:

(a) limb (d) of the definition of Secure Legal Interest (P&D) shall be disregarded and of no effect; and

(b) in the case of a Capital L&R Scheme, the Relevant Consortium Member must possess a Secure Legal Interest (L&R) in relation to the Site where the lease granted to it 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;

18.2.2 represents and warrants to Homes England that:

- (a) prior to submitting its AT Claim, the Relevant Consortium Member has incurred capital expenditure in acquiring the Site at least to the value of the Acquisition Tranche Grant claimed;
- (b) all confirmations and certifications made or to be made by the Lead Partner on the Relevant Consortium Member's behalf (and has authorised the Lead Partner to make such confirmations and certifications) in IMS in relation to the Capital Firm Scheme have been, are or will be correct in all material respects;
- (c) it is a Registered Provider and retains its status as an Investment Partner;
- (d) no Withholding Event or Default Event has occurred or arisen (excluding any 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);
- (e) it has provided Homes England with a Disposal Notification in accordance with the requirements of Clause 15.6.11 (*Operational Obligations*) in respect of any Disposal of the relevant Site;
- (f) any Change in Control or Restructure for a Consortium Member that is an RP Provider, which has taken place in relation to it since the date of the Agreement has been notified to Homes England pursuant to Clause 16.28 (*Review, Monitoring and Reporting*);
- (g) the Acquisition Date is scheduled to occur on or before the date submitted in IMS;
- (h) all information provided to Homes England pursuant to Clause 16 (*Review, Monitoring and Reporting*) and/or set out on IMS in relation to progress of the Delivery of the Approved Bid and each applicable Firm Scheme Delivery Timetable remains accurate and correct in all material respects;
- (i) it has obtained all Consents necessary for the lawful Delivery of the Capital Firm Scheme in accordance with the Capital Firm Scheme Details as are then required;
- (j) the Capital Firm Scheme will be or has been acquired, procured, designed, constructed and/or delivered (as applicable) in accordance with the Submitted Standards, the Capital Firm Scheme Details and the requirements of this Agreement; and
- (k) it is not in breach of any term of this Agreement and that the amounts claimed in the AT Claim, if paid, will not result in any breach of this Agreement.

18.2.3 where the Relevant Consortium Member is an LA Provider, represents and warrants to Homes England that:

- (a) it is not subject to any Section 15 Direction nor do any circumstances exist which would permit such a direction to be issued; and
- (b) that no Section 114 Report has been made nor is it aware of any circumstances that would give rise to the making or any such report.

18.3 Subject to a Capital Firm Scheme having reached the Start on Site Date, the Lead Partner may apply to Homes England for the Start on Site Tranche Grant payable in respect of that Capital Firm Scheme to be paid to it (the **SS Claim**). The Lead Partner must make its SS Claim through IMS in accordance with the requirements of IMS from time to time and in compliance with the applicable procedures relating to grant claims and payments set out in the Capital Funding Guide.

18.3.1 In permitting the Lead Partner to submit an SS Claim pursuant to Clause 18.3 (*Capital Grant Claim Procedures*), the Relevant Consortium Member is deemed to repeat the representations and warranties set out in Clause 4.2 (*Capital Firm Schemes*) and Clause 18.2.2(b) (*Capital Grant Claim Procedures*) and for the purposes of this Clause 18.3.1 (*Capital Grant Claim Procedures*) the Parties acknowledge and agree that:

- (a) limb (d) of the definition of Secure Legal Interest shall be disregarded and of no effect; and
- (b) in the case of a Capital L&R Scheme, the Relevant Consortium Member must possess a Secure Legal Interest (L&R) in relation to the Site where the lease granted to it 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;

18.3.2 represent and warrant to Homes England that:

- (a) the Start on Site Date has been reached and that such date is no later than that submitted in IMS;
- (b) all confirmations and certifications made or to be made by the Lead Partner on the Relevant Consortium Member's behalf (and has authorised the Lead Partner to make such confirmations and certifications) in IMS in relation to the Capital Firm Scheme have been, are or will be correct in all material respects;
- (c) it is a Registered Provider and retains its status as an Investment Partner;
- (d) no Withholding Event or Default Event has occurred or arisen (excluding any 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);
- (e) it has provided Homes England with a Disposal Notification in accordance with the requirements of Clause 15.6.11 (*Operational Obligations*) in respect of any Disposal of the relevant Site;

- (f) any Change in Control which has taken place since the date of the Agreement has been notified to Homes England pursuant to Clause 16.29 (*Review, Monitoring and Reporting*);
- (g) all information provided to Homes England pursuant to Clause 16 (*Review, Monitoring and Reporting*) and/or set out on IMS in relation to progress of the Delivery of the Approved Bid and each applicable Firm Scheme Delivery Timetable remains accurate and correct in all material respects;
- (h) it has obtained all Consents necessary for the Delivery of the Capital Firm Scheme in accordance with the Capital Firm Scheme Details and the Submitted Standards as are then required or to the extent that they are not obtained that it 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;
- (i) the Capital Firm Scheme will be or has been acquired, procured, designed, constructed and/or delivered (as applicable) in accordance with the Submitted Standards, the Capital Firm Scheme Details and the requirements of this Agreement; and
- (j) it is not in breach of any term of this Agreement and that the amounts claimed in the SS Claim will not, if paid, result in any breach of this Agreement.

18.3.3 where the Consortium Member is an LA Provider:

- (a) represent and warrant to Homes England that it is not subject to any Section 15 Direction nor do any circumstances exist which would permit such a direction to be issued; and
- (b) represent and warrant to Homes England that no Section 114 Report has been made nor is it aware of any circumstances that would give rise to the making of any such report.

18.4 Subject to a Capital Firm Scheme having reached Practical Completion (or in respect of a Single Claim Scheme, having reached Completion) by the Capital Firm Scheme Completion Date, the Lead Partner may apply to Homes England for the Practical Completion Tranche Grant (or in respect of a Single Claim Scheme the Total Grant Tranche) payable in respect of that Capital Firm Scheme to be paid to it (the **PC Claim**). The Lead Partner must make its PC Claim through IMS in accordance with the requirements of IMS from time to time and in compliance with the applicable procedures relating to grant claims and payments set out in the Capital Funding Guide.

18.5 In permitting the Lead Partner to submit an application pursuant to Clause 18.4 (*Capital Grant Claim Procedures*), the Relevant Consortium Member is deemed to represent and warrant to Homes England that:

18.5.1 the Capital Firm Scheme has reached Practical Completion (or in respect of a Single Claim Scheme, Completion);

- 18.5.2 all confirmations and certifications made or to be made by the Lead Partner on the Relevant Consortium Member's behalf (and has authorised the Lead Partner to make such confirmations and certifications) in IMS in relation to the Capital Firm Scheme and such confirmation and certifications have been or will be correct in all material respects;
- 18.5.3 it is a Registered Provider and retains its status as an Investment Partner;
- 18.5.4 no Withholding Event or Default Event has occurred or arisen (excluding any 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);
- 18.5.5 it has provided Homes England with a Disposal Notification in accordance with the requirements of Clause 15.6.11 (*Operational Obligations*) in respect of any Disposal of the relevant Site
- 18.5.6 any Change in Control or Restructure which has taken place since the date of the Agreement has been notified to Homes England pursuant to Clause 16.28 (*Review, Monitoring and Reporting*);
- 18.5.7 all information provided to Homes England pursuant to Clause 16 (*Review, Monitoring and Reporting*) and/or set out on IMS in relation to progress of the Delivery of the Approved Bid and each applicable Firm Scheme Delivery Timetable remains accurate and correct in all material respects;
- 18.5.8 it has obtained all Consents necessary for the Delivery of the Capital Firm Scheme in accordance with the Capital Firm Scheme Details and the Submitted Standards as are then required or to the extent that they are not obtained that it 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;
- 18.5.9 the Capital Firm Scheme has been procured, designed, constructed and delivered in accordance with the Submitted Standards, the Capital Firm Scheme Details and the requirements of this Agreement;
- 18.5.10 it is not in breach of any term of this Agreement and that the amounts claimed in the PC Claim will not, if paid, result in any breach of this Agreement;
- 18.5.11 where revenue funding (in addition to the Revenue Firm Scheme Grant) is required to permit the Relevant Consortium Member to provide the Revenue Services, such funding is and will remain available to support the provision of the Revenue Services in accordance with the terms of the Approved Capital Bid; and
- 18.5.12 where the Consortium Member is an LA Provider:
- (a) it is not subject to any Section 15 Direction nor do any circumstances exist which would permit such a direction to be issued; and
 - (b) no Section 114 Report has been made nor is it aware of any circumstances that would give rise to the making of any such report.

18.6 In submitting an application pursuant to this Clause 18 (*Capital Grant Claim Procedures*) on its own behalf, the Lead Partner is deemed to represent and warrant to Homes England that it retains its status as an Investment Partner.

18.7 Where any Capital 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 18.7 (*Capital Grant Claim Procedures*) applies Homes England reserves the right to require that the Relevant Consortium Member makes additional representations and warranties as a condition of any claim for Capital Firm Scheme Grant.

19 Revenue Grant Claim Procedures

19.1 Subject to Practical Completion having passed, the Lead Partner may make a claim to draw down a Revenue Quarterly Payment in respect of a Revenue Firm Scheme. The Lead Partner must make its claim through IMS in accordance with the requirements of IMS from time to time and in compliance with the applicable procedures relating to grant claims and payments set out in the Capital Funding Guide.

19.2 In permitting the Lead Partner to submit a claim pursuant to Clause 19.1 (*Revenue Grant Claim Procedures*), the Relevant Consortium Member:

19.2.1 is deemed to repeat the representations and warranties set out in Clause 9.2 (*Revenue Firm Schemes*);

19.2.2 represents and warrants to Homes England that:

- (a) the related Capital Firm Scheme has reached Practical Completion;
- (b) prior to submitting its claim, all amounts claimed have been incurred by the Relevant Consortium Member in respect of the Revenue Services;
- (c) all amounts claimed consists of Revenue Eligible Expenditure only;
- (d) all confirmations and certifications made or to be made by the Lead Partner on the Relevant Consortium Member's behalf (and has authorised the Lead Partner to make such confirmations and certifications) in IMS in relation to the Revenue Firm Scheme and such confirmation and certifications have been, are or will be correct in all material respects;
- (e) it 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 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 obtained all Consents necessary for the Delivery of the Revenue Firm Scheme in accordance with the Revenue Firm Scheme Details as are then required;

- (h) any Change in Control or Restructure which has taken place since the date of the Agreement has been notified to Homes England pursuant to Clause 16.28 (*Review, Monitoring and Reporting*); and
 - (i) it is not in breach of any term of this Agreement and that the amount claimed will not, if paid, result in any breach of this Agreement;
- 19.2.3 where the Relevant Consortium Member is an LA Provider, represents and warrants to Homes England:
 - (a) that it is not subject to any Section 15 Direction nor do any circumstances exist which would permit such a direction to be issued; and
 - (b) that no Section 114 Report has been made nor is it aware of any circumstances that would give rise to the making of any such report.
- 19.3 In submitting an application pursuant to this Clause 19.3 (*Revenue Grant Claim Procedures*) on its own behalf, the Lead Partner is deemed to represent and warrant to Homes England:
 - 19.3.1 in the terms set out in Clauses 19.2.1 to 19.2.2(c) and 19.2.2(e) to 19.2.3 (*Revenue Grant Claim Procedures*) (inclusive) for the purposes of an application made pursuant to Clause 19.1 (*Revenue Grant Claim Procedures*); and
 - 19.3.2 that all confirmations and certifications made or to be made by it in IMS in relation to the Revenue Firm Scheme have been and will be correct in all material respects.
- 19.4 In submitting an application pursuant to this Clause 19 (*Revenue Grant Claim Procedures*), the Lead Partner is deemed to represent and warrant to Homes England that it retains its status as an Investment Partner.
- 20 **Payment of Capital Grant**
- 20.1 Subject to:
 - 20.1.1 Homes England (acting reasonably) being satisfied with the Lead Partner's application for payment including the information warranted pursuant to Clauses 18.2 (*Capital Grant Claim Procedures*), 18.3.1 (*Capital Grant Claim Procedures*) and 18.5 (*Capital Grant Claim Procedures*); and
 - 20.1.2 Clause 5.6 (*Changes to Capital Firm Schemes*), Clause 20.3 (*Payment of Capital Grant*), Clause 22 (*Adjustments to Practical Completion Tranche Grant*) and Clause 23 (*Withholding of grant*); and
 - 20.1.3 the Condition Precedent having been satisfied in relation to an LA Scheme,

Homes England shall (resources permitting) pay the Acquisition Tranche Grant, Start on Site Tranche Grant or the Practical Completion Tranche Grant (as applicable) to the Lead Partner within fifteen (15) Business Days of receipt of a relevant satisfactory application.
- 20.2 If Homes England is not satisfied with the Lead Partner's application for payment, it must notify the Lead Partner in writing as soon as reasonably practicable and in any event within ten (10) Business Days of receipt of the application for payment identifying the reason for

its dissatisfaction. Homes England must allow the Lead Partner a period of up to ten (10) Business Days to address the issues identified in the notification and to resubmit or amend its application accordingly in which case the provisions of Clause 18 (*Capital Grant Claim Procedures*) and this Clause 20 (*Payment of Capital Grant*) (as applicable) will be reapplied to the Lead Partner's resubmitted or amended application for payment.

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

20.3.1 the Acquisition Tranche Grant before the Acquisition Date (and the actions contemplated thereby) (as confirmed by Homes England through IMS) has occurred;

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

20.3.3 the Practical Completion Tranche Grant before the Capital Firm Scheme Completion Date (as confirmed by Homes England through IMS) has occurred;

20.3.4 the Total Grant Tranche before the Completion Date (as confirmed by Homes England through IMS) has occurred; and/or

20.3.5 any Tranche if the Capital Firm Scheme has not been accepted by Homes England through IMS.

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

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

20.6 The payment of Capital Firm Scheme Grant or any part thereof hereunder by Homes England shall be regarded as inclusive of any VAT chargeable thereon.

21 **Payment of Revenue Grant**

21.1 Subject to:

21.1.1 Homes England (acting reasonably) being satisfied with the Lead Partner's claim for payment including the information warranted pursuant to Clause 19.2 (*Revenue Grant Claim Procedures*); and

21.1.2 Clause 10.4 (*Changes to Revenue Firm Schemes*), Clause 21.3 (*Payment of Revenue Grant*), Clause 21.4 (*Payment of Revenue Grant*) and Clause 23 (*Withholding of grant*),

Homes England shall (resources permitting) pay a Revenue Quarterly Payment to the Lead Partner within fifteen (15) Business Days of receipt of a relevant satisfactory claim.

- 21.2 If Homes England is not satisfied with the Lead Partner's claim for payment, it must notify the Lead Partner in writing as soon as reasonably practicable and in any event within ten (10) Business Days of receipt of the claim for payment identifying the reason for its dissatisfaction. Homes England must allow the Lead Partner a period of up to ten (10) Business Days to address the issues identified in the notification and to resubmit or amend its claim accordingly in which case the provisions of Clause 18.7 (*Capital Grant Claim Procedures*) and this Clause 21 (*Payment of Revenue Grant*) (as applicable) will be reapplied to the Lead Partner's resubmitted or amended claim for payment.
- 21.3 Homes England shall not be obliged to pay the Lead Partner a Revenue Quarterly Payment:
- 21.3.1 unless the related Capital Firm Scheme has reached Practical Completion;
 - 21.3.2 if the Revenue Firm Scheme has not been accepted by Homes England through IMS; and
 - 21.3.3 beyond the end of the Revenue Funding Period.
- 21.4 Homes England shall not be obliged to make any payment by way of a Revenue Quarterly Payment or otherwise in respect of any Revenue Firm Scheme:
- 21.4.1 where the related Capital Firm Scheme has not reached Practical Completion by the date so specified in IMS (and in any event by 31 March 2024 (subject to any extension to such date pursuant to Clause 7.4 (*Time extensions*)); or
 - 21.4.2 where a Scheme Default, a Specified Default, a Bid Default and/or a Fundamental Default has occurred in respect of the related Capital Firm Scheme irrespective of whether or not Homes England or MHCLG has exercised its rights under Clause 25 (*Default Events and Termination*).
- 21.5 Where Homes England pays a Revenue Firm Scheme Grant to the Lead Partner, the Allocated Revenue Grant shall be reduced by a commensurate amount.
- 21.6 The payment of Revenue Firm Scheme Grant or any part thereof hereunder by Homes England to the Lead Partner shall be regarded as inclusive of any VAT chargeable thereon.

22 **Adjustments to Practical Completion Tranche Grant**

- 22.1 If Homes England becomes aware (whether prior to or following receipt of the Lead Partner's application for payment pursuant to Clause 18.4 (*Capital Grant Claim Procedures*)) that the Relevant Consortium Member has failed to Deliver the relevant Capital Firm Scheme in accordance with the agreed Capital Firm Scheme Details (including the Submitted Standards), Homes England shall be entitled (at its discretion) either:
- 22.1.1 to recalculate the Capital Firm Scheme Grant allocated to the Capital Firm Scheme by reference to the Capital Firm Scheme that has actually been delivered; or
 - 22.1.2 to:
 - (a) withhold and cancel the Practical Completion Tranche Grant payment in relation to the relevant Capital Firm Scheme;

- (b) reallocate or redirect an amount equivalent to such Practical Completion Tranche Grant to such other person or purpose as Homes England in its discretion considers appropriate; and
- (c) recover from the Relevant Consortium Member a sum equivalent to any Capital Firm Scheme Grant already paid to it in relation to the relevant Capital Firm Scheme.

22.2 If Homes England exercises its right under Clause 22.1.1 (*Adjustments to Practical Completion Tranche Grant*), Homes England will notify the Lead Partner and the Lead Partner will have ten (10) Business Days from the date of receipt of Homes England's notification to advise Homes England as to whether it wishes to withdraw the Capital Firm Scheme from this Agreement or to proceed with the Capital Firm Scheme on the basis of the recalculated Capital Firm Scheme Grant figure. If:

22.2.1 the Relevant Consortium Member wishes to withdraw the Capital Firm Scheme, Homes England will permanently withdraw the Practical Completion Tranche Grant allocated to such scheme and the Relevant Consortium Member must repay Homes England a sum equivalent to such part of the Capital 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;

22.2.2 the Relevant Consortium Member wishes to proceed with the Capital Firm Scheme:

- (a) it must immediately amend the Capital Firm Scheme Details in IMS to the recalculated Capital Firm Scheme Grant figure and any Tranche already received. The amended Capital Firm Scheme Details will be deemed to be effective from the date of their acceptance by Homes England (through IMS); and
- (b) the Practical Completion Tranche Grant figure will be deemed to have been adjusted to take account of the recalculated Capital Firm Scheme Grant figure and of any change to the sum and percentage amount necessitated by the recalculated Capital Firm Scheme Grant figure being lower than the original Capital Firm Scheme Grant figure. If such adjustment would result in Practical Completion Tranche Grant being a negative figure, the Relevant Consortium Member must pay Homes England the Deficit Sum 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 Lead Partner within fifteen (15) Business Days of the date of Homes England's acceptance of the Lead Partner's amendments to the Capital Firm Scheme Details referred to in Clause 22.2.2(a) (*Adjustments to Practical Completion Tranche Grant*).

22.3 If the Lead Partner fails to provide a definitive response to Homes England within the period prescribed in Clause 22.2 (*Adjustments to Practical Completion Tranche Grant*), Homes England shall be entitled (but not obliged) to treat such failure as a decision by the Relevant

Consortium Member to withdraw the Capital Firm Scheme from this Agreement and the provisions of Clause 22.2.1 (*Adjustments to Practical Completion Tranche Grant*) shall take effect.

22.4 Under no circumstances will Homes England be required to accept or implement any recalculation pursuant to Clause 22.2 (*Adjustments to Practical Completion Tranche Grant*) which would have the result of increasing the amount of the Allocated Capital Grant or the Capital Firm Scheme Grant in relation to the relevant Capital Firm Scheme as reflected in the Capital Firm Scheme Details ante the amendments referred to in Clause 22.2.2(a) (*Adjustments to Practical Completion Tranche Grant*).

22.5 If Homes England exercises its rights under Clause 22.1.2 (*Adjustments to Practical Completion Tranche Grant*), the Relevant Consortium Member must repay Homes England all sums due thereunder in accordance with the provisions of Clause 24.6 (*Repayment of grant*).

23 **Withholding of grant**

23.1 Notwithstanding any other term of this Agreement:

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

- (a) shall be entitled to suspend any payment due to the Lead Partner (whether by way of Acquisition Tranche Grant, Start on Site Tranche Grant, Practical Completion Tranche Grant, Revenue Quarterly Payment or otherwise);
- (b) shall, as soon as reasonably practicable, notify the Lead Partner of such suspension and the period within which it (acting reasonably) requires the failure or breach giving rise to the GW1 Event (the **GW1 Failure**) to be remedied;
- (c) shall, if it is satisfied (acting reasonably) that the GW1 Failure has been remedied, notify the Lead Partner to that effect and shall (subject to Clause 23.3 (*Withholding of grant*)) make such payment of Acquisition Tranche Grant, Start on Site Tranche Grant, Practical Completion Tranche Grant or Revenue Quarterly Payment as may then be due to the Lead Partner (assuming no other General Withholding Event subsists). Such payment shall be made within ten (10) Business Days of the date of Homes England's notification under this Clause 23.1.1(c) (*Withholding of grant*); and
- (d) shall be entitled, if the GW1 Failure has not been remedied within the period prescribed pursuant to Clause 23.1.1(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 23.1.2(a) (*Withholding of grant*) to Clauses 23.1.2(c) (*Withholding of grant*) (inclusive);

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

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

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

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

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

- (a) shall not be obliged to make any payment to the Lead Partner in relation to the relevant Revenue Firm Scheme;
- (b) shall not be obliged to make any payment to the Lead Partner in relation to the relevant Capital Firm Scheme pending the outcome of the procedure described in Clause 21 (*Payment of Revenue Grant*);
- (c) shall be entitled to exercise its rights under Clause 21 (*Payment of Revenue Grant*); and
- (d) shall where the provisions of Clause 22.2.1 (*Adjustments to Practical Completion Tranche Grant*) have effect, be entitled to reallocate or redirect such part of the Capital Firm Scheme Grant (which has not yet been paid to the Lead Partner) to such other person or for such purpose as Homes England in its discretion considers appropriate;

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

- (a) shall be entitled to suspend any payment due to the Lead Partner (whether by way of Acquisition Tranche Grant, Start on Site Tranche Grant, Practical Completion Tranche Grant, Revenue Quarterly Payment or otherwise) in relation to the relevant Capital Firm Scheme or Revenue Firm Scheme;
- (b) shall, as soon as reasonably practicable, notify the Lead Partner of such suspension and the period within which it (acting reasonably) requires the failure or breach giving rise to the SW2 Event (the **SW2 Failure**) to be remedied;
- (c) shall, if it is satisfied (acting reasonably) that the SW2 Failure has been remedied, notify the Lead Partner to that effect and shall (subject to Clause 23.3 (*Withholding of grant*) and Clause 23.4 (*Withholding of grant*)) make such payment of Acquisition Tranche Grant, Start on Site Tranche Grant, Practical Completion Tranche Grant or Revenue Quarterly Payment as may then be due to the Lead Partner (assuming no other General Withholding Event or Scheme Withholding Event (in relation to that Capital Firm Scheme) subsists). Such payment shall be made within ten (10) Business Days of the date of Homes England's notification under this Clause (c) (*Withholding of grant*); and
- (d) shall be entitled, if the SW2 Failure has not been remedied within the period prescribed pursuant to Clause 23.1.5(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 23.1.6(a) to 23.1.6(c) (*Withholding of grant*) (inclusive);

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

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

23.2 Homes England shall incur no liability of any description to any Consortium Member in or as a result of exercising its rights under this Clause 23 (*Withholding of grant*).

23.3 Homes England shall not be obliged to make any payment of Acquisition Tranche Grant, Start on Site Tranche Grant or Practical Completion Tranche Grant or otherwise to the Lead Partner where the due date for such payment falls after the date so specified in IMS.

23.4 Homes England shall not be obliged to make any payment of Revenue Quarterly Payment or otherwise to the Lead Partner where the due date for such payment falls after 31 March 2024 unless Homes England has in its absolute discretion permitted an extension to that date pursuant to Clause 7.4 (*Time extensions*).

24 **Repayment of grant**

24.1 The Parties acknowledge and agree that notwithstanding any other term of this Agreement:

24.1.1 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;

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

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

24.2 Without prejudice to any other term of this Agreement, Homes England reserves the right whether following termination of this Agreement or otherwise (which right each Consortium Member expressly acknowledges and agrees) at its discretion to recover from the Relevant Consortium Member the Capital Firm Scheme Grant or such part or aggregation thereof as is determined in accordance with Clause 24.3 (*Repayment of grant*) (the **Recoverable Amount**) in circumstances where:

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

24.2.2 the relevant Tranche has been paid to the Lead Partner on the basis of a misrepresentation made by or on behalf of the Relevant Consortium Member other than in the circumstances specified in Clause 24.2.5 (*Repayment of grant*);

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

24.2.4 a Balancing Sum has arisen;

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

- 24.2.6 the Relevant Consortium Member has breached its obligations under any of Clauses 13 (*Delivery Obligations*), Clause 15 (*Operational Obligations*) or Clause 16 (*Review, Monitoring and Reporting*);
- 24.2.7 a Scheme Termination Event has occurred;
- 24.2.8 a Total Termination Event has occurred;
- 24.2.9 Homes England has exercised its rights under:
 - (a) Clause 23.1.1 (*Withholding of grant*) (and the GW1 Failure has not been remedied within the period prescribed in Clause 23.1.1(b) (*Withholding of grant*)); or
 - (b) Clause 23.1.2 (*Withholding of grant*);
- 24.2.10 Homes England has exercised its rights under or Clause 23.1.3 (*Withholding of grant*);
- 24.2.11 Homes England has exercised its rights under:
 - (a) Clause 23.1.5 (*Withholding of grant*) (and the SW2 Failure has not been remedied within the period prescribed in Clause 23.1.5(b) (*Withholding of grant*)); or
 - (b) under Clause 23.1.6 (*Withholding of grant*);
- 24.2.12 Homes England has exercised its rights under Clause 22.1.2 (*Adjustments to Practical Completion Tranche Grant*) or Clause 22.3 (*Adjustments to Practical Completion Tranche Grant*);
- 24.2.13 the Acquisition Date (including the actions contemplated thereby) for the relevant Capital Firm Scheme has not been achieved by the date identified in the Capital Firm Scheme Details as the forecast Acquisition Date;
- 24.2.14 revenue funding (in addition to the Revenue Firm Scheme Grant) is required to permit the Relevant Consortium Member to provide the Revenue Services in accordance with the terms of the Approved Capital Bid and/or the Capital Firm Scheme Details and such revenue funding ceases or becomes unavailable such that any RSAP Dwellings are prevented from being used as RSAP Housing; or
- 24.2.15 in relation to a Capital L&R Scheme, the Relevant Consortium Member's lease is terminated or otherwise comes to an end prior to the date set out in the Capital Firm Scheme Details for lease expiry.

24.3 In the circumstances set out in:

- 24.3.1 Clauses 24.2.1 (*Repayment of grant*), 24.2.2 (*Repayment of grant*), 24.2.6 (*Repayment of grant*), 24.2.7 (*Repayment of grant*) or 24.2.14 (*Repayment of grant*), the Recoverable Amount shall be a sum equivalent to the Capital Firm Scheme Grant for any affected Capital Firm Scheme;

24.3.2 Clauses 24.2.3 (*Repayment of grant*) and 24.2.4 (*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;

24.3.3 Clause 24.2.5 (*Repayment of grant*), subject always to Clause 24.4 (*Repayment of grant*) the Recoverable Amount shall be determined in accordance with the following procedure:

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

(b) where a revised figure for Capital 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 Capital Firm Scheme Grant paid pursuant to Clause 20.1 (*Payment of Capital Grant*) in respect of the relevant Capital Firm Scheme; and

RFSG is the revised Capital Firm Scheme Grant figure agreed pursuant to Clause 24.3.3(a) (*Repayment of grant*);

(c) the Relevant Consortium Member must notify the Lead Partner of the revised figure for the Firm Scheme Grant and the Lead Partner shall immediately amend the relevant information on IMS to reflect any agreement reached made pursuant to Clause 24.3.3(a) (*Repayment of grant*);

(d) where Relevant Consortium Member and Homes England are unable to agree a revised Capital Firm Scheme Grant figure in accordance with Clause 24.3.3(a) (*Repayment of grant*) Homes England shall be entitled to terminate this Agreement in accordance with Clause 25.1 (*Default Events and Termination*) and the Recoverable Amount shall be an amount equal to the Capital Firm Scheme Grant paid pursuant to Clause 20.1 (*Payment of Capital Grant*) in respect of the relevant Capital Firm Scheme.

Under no circumstances will Homes England be required to make any payment to the Lead Partner if the application of the calculation in Clause 24.3.3(b) (*Repayment of grant*) results in RA being a negative figure;

24.3.4 Clause 24.2.8 (*Repayment of grant*), the Recoverable Amount shall:

- (a) where termination has arisen pursuant to a Fundamental (A) Default, be a sum equal to the aggregated amount of all Capital Firm Scheme Grant already paid by Homes England to the Lead Partner under this Agreement; and
 - (b) where the termination has arisen pursuant to a Specified Default, a Bid Default or a Fundamental (B) Default, be a sum equal to the Fundamental Termination Amount;
- 24.3.5 Clause 24.2.9 (*Repayment of grant*), the Recoverable Amount shall be a sum equal to the Fundamental Termination Amount;
- 24.3.6 Clause 24.2.10 (*Repayment of grant*), the Recoverable Amount shall be a sum equal to the aggregated amount of all Capital Firm Scheme Grant already paid by Homes England to the Lead Partner under this Agreement;
- 24.3.7 Clause 24.2.11 (*Repayment of grant*), the Recoverable Amount shall be a sum equal to any Capital Firm Scheme Grant already paid to the Lead Partner in relation to the relevant Capital Firm Scheme;
- 24.3.8 Clause 24.2.12 (*Repayment of grant*), the Recoverable Amount shall be a sum equivalent to any Capital Firm Scheme Grant already paid in relation to the relevant Capital Firm Scheme;
- 24.3.9 Clause 24.2.13 (*Repayment of grant*), the Recoverable Amount shall be a sum equivalent to the Acquisition Tranche Grant; and
- 24.3.10 Clause 24.2.15 (*Repayment of grant*), the Recoverable Amount shall:
- (a) where the Minimum Lease Duration has not been reached, be an amount equal to the Capital Firm Scheme Grant paid pursuant to Clause 20.1 (*Payment of Capital Grant*) in respect of the relevant Capital Firm Scheme; or
 - (b) where the Minimum Lease Duration has been achieved, be an amount equal to the product of the following calculation:

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

where:

RA is the Recoverable Amount;

FSG is the Capital Firm Scheme Grant paid pursuant to Clause 20.1 (*Payment of Capital Grant*) in respect of the relevant Capital 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 Start on Site Date and the Lease Termination Date.

24.4 In the circumstances contemplated in Clauses 24.2.8 (*Repayment of grant*) and 24.3.4 (*Repayment of grant*), the Parties agree that Homes England is entitled to recover the Recoverable Amount from:

24.4.1 any single Consortium Member;

24.4.2 all Consortium Members in such proportions as Homes England (acting reasonably) shall determine; or

24.4.3 such Consortium Members and in such proportions as Homes England (acting reasonably) shall determine,

provided that nothing in this Clause 24.4 (*Repayment of grant*) shall entitle Homes England to recover (in aggregate) more than the sum of the Recoverable Amount determined in accordance with Clause 24.3.4 (*Repayment of grant*).

24.5 Where Homes England (acting reasonably) considers that the Relevant Consortium Member acted fraudulently or dishonestly in claiming (or permitting the Lead Partner to claim) the Capital Firm Scheme Grant for the relevant Capital Firm Scheme, such claim shall be deemed to be a Prohibited Act and Homes England will not be bound by the terms of Clause 24.3.3 (*Repayment of grant*).

24.6 The Relevant Consortium Member must pay the Recoverable Amount to Homes England within ten (10) Business Days of demand together with interest at two per centum (2%) above the base rate from time to time of the Royal Bank of Scotland plc such interest to run from the date upon which the Capital Firm Scheme Grant (or relevant part thereof) overpayment or payment in error was paid to the Lead Partner until the date upon which Homes England receives the repayment required from the Relevant Consortium Member under this Clause 24 (*Repayment of grant*).

24.7 Each Consortium Member acknowledges and agrees for the benefit of Homes England and MHCLG that the Disposal or letting of an RSAP 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.

24.8 The Parties acknowledge that the Late Payment of Commercial Debts (Interest) Act 1998 does not apply to this Agreement.

24.9 Notwithstanding any other term of this Clause 24 (*Repayment of grant*), where a payment has been made following an administrative error by Homes England, the Relevant Consortium Member shall not be liable for interest on the amount repayable under Clause 24.6 (*Repayment of grant*).

24.10 The Relevant Consortium Member will:

24.10.1 provide to Homes England a projection of the anticipated income and costs in relation to the Revenue Services for each Financial Period:

(a) within twenty (20) Business Days of entering into this Agreement in relation to the first Financial Period in which the Relevant Consortium Member will receive Revenue Grant;

- (b) within ten (10) Business Days of each claim of Practical Completion; and
- (c) within ten (10) Business Days of the end of each Quarter prior to the first day of each subsequent Financial Period; and

24.10.2 reconcile the projected costs referred to in Clause 24.10.1 (*Repayment of grant*) above with the actual income and costs for the applicable Financial Period and provide details of the same to Homes England within thirty (30) days of the end of the applicable Financial Period.

24.11 Without prejudice to the generality of Clause 24 (*Repayment of grant*), if as a result of the reconciliation referred to in Clause 24.10.2 (*Repayment of grant*) above the income in relation to the Revenue Services exceeds the costs in relation to the same by more than six per centum (6%) then the Relevant Consortium Member will be deemed to have received too much Revenue Grant and:

24.11.1 the Relevant Consortium Member must notify Homes England; and

24.11.2 Homes England will be entitled to either:

- (a) recover any such overpayment; or
- (b) set off any such overpayment against any Revenue Grant payable to the Relevant Consortium Member over the subsequent Financial Period.

24.12 Save where Homes England agrees (in writing) to the contrary, Homes England hereby directs the Relevant Consortium Member to pay the Uplift Amount to Homes England within ten (10) Business Days of the occurrence of a Relevant Event.

24.13 Where in respect of any Capital Firm Scheme the Relevant Consortium Member has already repaid a sum equivalent to the Acquisition Tranche Grant pursuant to Clause 24.2.13 (*Repayment of grant*) (the **ATG Sum**) the Relevant Consortium Member shall (subject to Clause 24.14 (*Repayment of grant*)) be entitled to net off the ATG Sum against any amount it is subsequently required to repay in relation to that Capital Firm Scheme under any of Clauses 24.3.1, 24.3.3(d) (*Repayment of grant*) and Clauses 24.3.5 to 24.3.8 (inclusive) (*Repayment of grant*);

24.14 The Parties agree that:

24.14.1 the Relevant Consortium Member's entitlement to net off the ATG Sum may only be invoked once in respect of the Capital Firm Scheme in relation to which it arose; and

24.14.2 under no circumstances will Homes England be required to make any payment to the Relevant Consortium Member if the application of Clause 24.10 (*Repayment of grant*) would result in the Recoverable Amount being a negative figure.

24.15 Where Homes England has required the Relevant Consortium Member to repay any amount, Homes England may recover that amount by withholding, or deducting the amount from, any sum due to the Relevant Consortium Member from Homes England under this Agreement or any other arrangement, scheme or programme.

25 **Default Events and Termination**

25.1 On the occurrence of a Scheme Default, Homes England and/or MHCLG shall (subject to Clause 25.2 (*Default Events and Termination*)) be entitled (without any liability to the Relevant Consortium Member) immediately upon serving written notice to:

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

25.1.2 withhold and cancel any further payment of Capital Firm Scheme Grant or Revenue Scheme Grant (as applicable) due to the Lead Partner in relation to the Firm Scheme; and

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

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

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

25.2.2 shall be entitled, if the Scheme Default has not been remedied within the period prescribed pursuant to Clause 25.2.1 (*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 25.1 (*Default Events and Termination*).

25.3 On the occurrence of a Specified Default, Homes England and/or MHCLG shall (subject to Clause 25.4 (*Default Events and Termination*)) and Clause 25.8 (*Default Events and Termination*)) be entitled and without any liability to the Consortium to:

25.3.1 terminate this Agreement in its entirety;

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

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

25.4 Homes England and/or MHCLG's entitlement to exercise the rights set out in Clause 25.3 (*Default Events and Termination*) shall be suspended pending completion of the following procedure within the timescales prescribed below:

25.4.1 Homes England or MHCLG (as applicable) must serve written notice on the Lead Partner requiring the Lead Partner to procure the remedy of the Specified Default;

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

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

Homes England or MHCLG (as applicable) shall be entitled immediately and without any liability to the Consortium to exercise its rights under Clause 25.3 (*Default Events and Termination*).

25.5 On the occurrence of a Bid Default, Homes England and/or MHCLG shall (subject to Clause 25.6 (*Default Events and Termination*) and Clause 25.8 (*Default Events and Termination*)) be entitled and without any liability to the Consortium to:

25.5.1 terminate this Agreement in its entirety;

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

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

25.6 Homes England and/or MHCLG's entitlement to exercise the rights set out in Clause 25.5 (*Default Events and Termination*) shall be suspended pending completion of the following procedure within the timescales prescribed below:

25.6.1 Homes England or MHCLG (as applicable) must notify the Lead Partner in writing of its intention to call a Bid Default and to exercise its rights under Clause 25.5 (*Default Events and Termination*);

25.6.2 the Lead Partner and Homes England (both acting in good faith) shall meet within ten (10) Business Days of the date of the notice referred to in Clause 25.6.1 (*Default Events and Termination*) to seek to agree adjustments to the Approved Capital Bid and/or the Allocated Capital Grant or the Approved Revenue Bid and/or the Allocated Revenue Grant to reflect any demonstrable underperformance by the Consortium Members against their Delivery

projections as set out in the Approved Capital Bid or the Approved Revenue Bid (as applicable);

25.6.3 where adjustments are agreed, the Lead Partner shall promptly (and in any event within fifteen (15) Business Days of the date of the above meeting) make all such amendments to the information contained in IMS in respect of the Approved Capital Bid or the Approved Revenue Bid (as applicable) as are necessary to reflect the agreement made pursuant to Clause 25.6.2 (*Default Events and Termination*) and in that case Homes England's rights under Clause 25.5 (*Default Events and Termination*) shall lapse in respect of that Bid Default which gave rise to the implementation of the procedure under this Clause 25.6 (*Default Events and Termination*); and

25.6.4 if the Lead Partner and Homes England are unable to agree adjustments to the Approved Capital Bid or the Approved Revenue Bid (as applicable) pursuant to Clause 25.6.2 (*Default Events and Termination*) within fifteen (15) Business Days of the date of the meeting or the Lead Partner fails correctly to amend the information contained in IMS in accordance with Clause 25.6.3 (*Default Events and Termination*), Homes England shall be entitled immediately and without any liability to any Consortium Member to exercise its rights under Clause 25.5 (*Default Events and Termination*).

25.7 On the occurrence of a Fundamental Default, Homes England or MHCLG (as applicable) shall on the service of written notice be entitled forthwith and without any liability to any Consortium Member to:

25.7.1 terminate this Agreement in its entirety;

25.7.2 withhold and cancel any further payment of Allocated Capital Grant or Allocated Revenue Grant due to the Lead Partner under this Agreement; and

25.7.3 reallocate or redirect such part of the Allocated Capital Grant or Allocated Revenue Grant (which has not yet been paid to the Lead Partner) to such other person or for such purpose as Homes England in its discretion considers appropriate.

25.8 Homes England's right to terminate this Agreement pursuant to Clause 25.7 (*Default Events and Termination*) shall be suspended for the duration of the Remediation Period. Where on or before the expiry of the Remediation Period:

25.8.1 the Fundamental Default related to or was committed or caused by a Consortium Member other than the Lead Partner, the Relevant Consortium Member has been removed from the Consortium;

25.8.2 the Fundamental Default related to or was committed or caused by the Lead Partner and:

(a) the Lead Partner has (save where the Fundamental Default relates to the loss or removal of the Lead Partner's Investment Partner status) been removed from the Consortium; and

- (b) the remaining Consortium Members have agreed with Homes England (acting reasonably (taking account of the requirement that the Replacement Lead Partner must have Investment Partner status) the identity of the Replacement Lead Partner; and
- 25.8.3 the Removed Consortium Member has provided to Homes England a Deed of Release duly executed by it and the other Consortium Members together with the Completion Authority; and
- 25.8.4 either:
- (a) following information supplied and/or representations made by the Consortium (excluding the Removed Consortium Member) Homes England is satisfied (acting reasonably) that the Consortium is capable of delivering the Approved Bid without the need for a change to it; or
 - (b) any change to the Approved Bid requested by the then Lead Partner as a result of the withdrawal of the Removed Consortium Member does not materially and adversely affect the delivery of the Approved Bid and Homes England has agreed such change in advance in writing.

Homes England's right under Clause 25.7 (*Default Events and Termination*) shall lapse in respect of the particular Fundamental Default which gave rise to the implementation of the Remediation Period.

25.9 Where Clause 25.3 (*Default Events and Termination*) or Clause 25.5 (*Default Events and Termination*) applies and:

25.9.1 there are no Continuing Capital Firm Schemes, Homes England or MHCLG (as applicable) may terminate this Agreement in its entirety in accordance with the terms of Clause 25.3 (*Default Events and Termination*) or Clause 25.5 (*Default Events and Termination*) (as applicable);

25.9.2 there are Continuing Capital Firm Schemes, Homes England or MHCLG (as applicable) may terminate this Agreement in relation to all but the Continuing Capital Firm Schemes, such termination to take effect in accordance with the timescales specified in Clause 25.4 (*Default Events and Termination*) or Clause 25.6 (*Default Events and Termination*) as applicable.

25.10 Without prejudice to the other provisions of this Clause 25 (*Default Events and Termination*), where Homes England or MHCLG (acting reasonably) considers that the Relevant Consortium Member acted fraudulently or dishonestly in claiming (or permitting the Lead Partner to claim) the Revenue Grant for the relevant Capital Firm Scheme, such claim shall be deemed to be a Prohibited Act and Homes England or MHCLG (as applicable) shall on the service of written notice be entitled forthwith and without any liability to the Consortium to:

25.10.1 terminate this Agreement in its entirety; and

25.10.2 require repayment in full of any Allocated Revenue Grant which has been paid to the Lead Partner.

25.11 Each Consortium Member agrees that neither Homes England nor MHCLG shall be liable for any costs, claims, expenses, demands or losses suffered or incurred by any of them as a result of the exercise of the exercise of their rights under Clause 24 (*Repayment of grant*) or Clause 25 (*Default Events and Termination*).

26 **Subsidy**

26.1 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.

26.2 Where the Lead Partner is an RP Provider:

26.2.1 the Lead Partner acknowledges and accepts the SPEI Entrustment;

26.2.2 if any Agreement Funding gives rise to an SPEI Overpayment then Homes England shall be entitled to recover the amount of such SPEI Overpayment and/or Unlawful Subsidy together with such interest as it is required by Legislation to recover within ten (10) Business Days of Homes England requesting repayment; and

26.2.3 the Lead Partner shall promptly give written notice to Homes England of any Public Sector Funding it and any other Relevant Consortium Member receives from a third party in relation to any RSAP Housing.

26.3 Where the Lead Partner is an LA Provider:

26.3.1 the Parties acknowledge the initial transfer of the Firm Scheme Grant from Homes England to the Lead Partner shall not constitute a Subsidy as a public to public non-economic award.

26.3.2 when the Lead Partner directs the Firm Scheme Grant towards its delivery of the RSAP Housing activity then it:

(a) shall assess whether a Subsidy arises and if so, shall meet the relevant requirements for a Service of Public Economic Interest under the United Kingdom Competition Requirement, including but not limited to putting in place an appropriate SPEI Entrustment;

(b) agrees to allow Homes England to conduct an SPEI Review and to recover any SPEI Overpayment within ten (10) Business Days of notice being served; and

(c) shall collect and retain documents which record that an appropriate assessment has been made.

26.4 Where the Lead Partner directs the Firm Scheme Grant towards RSAP Housing activity undertaken by any third party (including a Relevant Consortium Member), then it:

26.4.1 shall assess whether a Subsidy arises and if so, shall apply the relevant requirements for a Service of Public Economic Interest under the United Kingdom Competition Requirement, including but not limited to putting in place an appropriate SPEI Entrustment;

- 26.4.2 agree appropriate conditions to allow Homes England to conduct a SPEI Review and recover any SPEI Overpayment within ten (10) Business Days of notice being served; and
- 26.4.3 ensure the collection and retention of documents which record that an appropriate assessment has been made.
- 26.5 If, following the date of this Agreement, Legislation requires Homes England to amend this Agreement to comply with a United Kingdom Competition Requirement then Homes England may, acting reasonably, provide written notice to the Consortium to vary this Agreement to the extent necessary to comply with such change in Legislation.
- 26.6 Notwithstanding anything in this Agreement:
- 26.6.1 Homes England shall only provide Firm Scheme Grant to the extent that such does not give rise to Unlawful Subsidy; and
- 26.6.2 the Consortium Members must comply with the requirements of the United Kingdom Competition Requirement (where applicable) in respect of any Firm Scheme Grant paid.
- 26.7 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 Lead Partner or Consortium Member (as applicable) must repay the Unlawful Subsidy plus such interest as is prescribed by the United Kingdom Competition Requirement to Homes England within ten (10) Business Days of Homes England issuing it with a written demand for payment.
- 27 **Anti-Bribery and Anti-Corruption**
- The Consortium Members must comply with the terms of Schedule 7 (*Anti-bribery and Anti-corruption*).
- 28 **Information and Confidentiality**
- The Consortium Members must comply with the terms of Schedule 8 (*Information and Confidentiality*).
- 29 **Data Protection**
- The Consortium Members must comply with the terms of Schedule 9 (*Data Protection*).
- 30 **Intellectual Property**
- The Consortium Members must comply with the terms of Schedule 10 (*Intellectual Property*).
- 31 **Health and Safety**
- 31.1 The Consortium 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 Consortium Member Parties engaged in the Delivery of the Approved Capital Bid and the Revenue Services do likewise.

- 31.2 Each Consortium Member confirms that it has, and is in full compliance with, a policy covering equal opportunities designed to ensure that discrimination prohibited by the Equality Act 2010 or which is made on any other unjustifiable basis is avoided at all times and will provide a copy of that policy and evidence of the actual implementation of that policy upon request by Homes England.
- 31.3 Each Consortium Member shall have due regard to the public sector equality duty under Part 11 of the Equality Act 2010 insofar as its activities under this Agreement could reasonably be deemed to be functions of a public nature for the purposes of that Part.
- 31.4 To the extent that Homes England is a 'client' for the purposes of the CDM Regulations:
- 31.4.1 where the Relevant Consortium Member is engaging consultants and a contractor or contractors as Subcontractors to Deliver the Capital Firm Scheme the Relevant Consortium Member elects to be the only client in relation to such Capital Firm Scheme; or
- 31.4.2 where the Relevant Consortium Member is contracting with a developer as a Subcontractor to Deliver a Capital Firm Scheme the Relevant Consortium Member shall procure that such developer shall elect to be the only client in relation to the Capital Firm Scheme on or before the date that such scheme becomes a Capital Firm Scheme,
- and Homes England hereby agrees to such election.
- 31.5 The Relevant Consortium Member shall not seek to withdraw, terminate or in any manner derogate from such election pursuant to Clause 31.4.1 (*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 31.4.2 (*Health and Safety*) without Homes England's prior written consent, which Homes England may in its absolute discretion withhold.
- 31.6 Each Consortium Member shall at all times comply with all obligations, requirements and duties arising under the HS Act and the CDM Regulations in connection with the Works.
- 31.7 Each Consortium Member shall at all times procure the compliance with all obligations, requirements and duties arising under the HS Act by any and all parties appointed in connection with the Works or allowed on the Site.
- 31.8 Each Consortium Member shall at all times maintain and procure that there is maintained an accurate record of all health, safety and environmental incidents which occur on or in connection with each Capital Firm Scheme or Revenue Firm Scheme in the form set out in Schedule 6 (*Form of Health and Safety Report*) to this Agreement.
- 31.9 Without prejudice to any other provision of this Agreement, the Relevant Consortium Member shall notify Homes England's Safety Health and Environmental (SHE) Team on 0300 1234 500 or 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 Capital Firm Scheme or Revenue Firm Scheme:
- 31.9.1 any specified (major) injuries, requiring reporting under RIDDOR;

- 31.9.2 a fatal accident to any worker or a member of the public;
 - 31.9.3 any injury to a member of the public requiring reporting under RIDDOR;
 - 31.9.4 any dangerous occurrence, as defined by RIDDOR;
 - 31.9.5 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);
 - 31.9.6 any incident having health, safety or environmental implications which attracts the attention of the police and/or the media;
 - 31.9.7 the commencement of any criminal prosecution under health and safety or environmental legislation; and
 - 31.9.1 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.
- 31.10 Each Consortium Member will procure that all its Subcontractors and Professional Team comply at all times with the HS Act and the CDM Regulations and will procure that the Relevant Consortium Member and each Subcontractor and member of the Professional Team shall at all times have due regard to the protection and safety of members of the public and their property on the Site, adjoining land owners and their property, visitors to the Site and their property and will at all times comply with the requirements of the Health and Safety Executive, the HS Act and all rules codes and regulations (including the CDM Regulations) and legislation relating to the health and safety of workers, and to the undertaking of construction works.

32 **Construction Industry Scheme**

32.1 In this Clause 32 (*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.

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

32.3 The Relevant Consortium Member will, on demand, pay to Homes England an amount equal to any tax liability, interest or penalties imposed on Homes England under the CIS as a

result of, or in connection with, any payments made by Homes England pursuant to this Agreement, together with any reasonable costs incurred by Homes England in connection with such tax liability, interest or penalty.

33 **Assignment and sub-contracting**

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

33.2 This Agreement is personal to each Consortium and no Consortium Member shall be entitled to transfer, assign, mortgage, charge, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under this Agreement without the prior written consent of Homes England.

34 **Dispute resolution**

34.1 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 34 (*Dispute resolution*).

34.2 Negotiation

34.2.1 In the event that a Consortium Member (the Disputing Member) or Homes England considers that a Dispute exists between them in relation to this Agreement, such Party shall serve a notice upon the other Party (a Notice of Dispute) giving brief details of the Dispute and in the first instance a senior officer (or nominated deputies) of the Disputing Member and Homes England Senior Officer (Senior Officers) shall use their reasonable endeavours to resolve such Dispute amicably and in good faith and in accordance with this Clause 34.2 (*Negotiation*).

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

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

34.3 Referral to Expert

34.3.1 If there has been no resolution of the Dispute within twenty (20) days of the referral to Chief Executives either the Disputing Member or Homes England may give to the other written notice referring the dispute to a suitably qualified independent Expert for determination in accordance with Clause 34.3 (*Referral to Expert*).

- 34.3.2 The Expert shall be required to prepare a written decision and give notice (including a copy) of the decision to the Disputing Member and Homes England within a maximum of three (3) months of the matter being referred to the Expert.
- 34.3.3 If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this Clause 34.3 (*Referral to Expert*) then:
- (a) either the Disputing Member or Homes England may apply to the Relevant Body to discharge the Expert and to appoint a replacement Expert with the required expertise; and
 - (b) this Clause 34.3 (*Referral to Expert*) shall apply in relation to the new Expert as if they were the first Expert appointed.
- 34.3.4 All matters under this Clause 34.3 (*Referral to Expert*) must be conducted, and the Expert's decision shall be written, in the English language.
- 34.3.5 The Disputing Member and Homes England shall be entitled to make submissions to the Expert (including oral submissions) and shall provide (or procure the provision to) the Expert with such assistance and documents as the Expert reasonably requires for the purpose of reaching a decision.
- 34.3.6 To the extent not provided for by this Clause 34.3 (*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.
- 34.3.7 The Disputing Member and Homes England shall (with reasonable promptness) supply each other with all information and give each other access to all documentation and personnel as the other reasonably requires to make a submission under this Clause 34.3 (*Referral to Expert*).
- 34.3.8 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.
- 34.3.9 The Disputing Member and Homes England shall bear its own costs in relation to the reference to the Expert. The Expert's fees and any costs properly incurred by them in arriving at their determination (including any fees and costs of any advisers appointed by the Expert) shall be borne by the Disputing Member and Homes England equally or in such other proportions as the Expert shall direct.

34.4 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 34.2 (*Negotiation*) and/or 34.3 (*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 and Wales.

34.5 Continued Performance

No reference of any dispute to an Expert pursuant to this Clause 34 (*Dispute resolution*) shall relieve the Disputing Member and Homes England from any liability for the due and punctual performance of its obligations under this Agreement.

35 **Further assurance**

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

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

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

35.1.2 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.

35.2 If Homes England (in its absolute discretion) so requires, where a Consortium Member is an LA Provider, it must also provide a Legal Opinion to Homes England upon any amendment to or waiver of any term of this Agreement.

36 **No fetter on statutory functions**

36.1 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.

37 **No agency**

37.1 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.

37.2 The Consortium Members shall at all times be independent and nothing in this Agreement shall be construed as creating the relationship of employer and employee between Homes

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

38 Publicity

38.1 Each Consortium Member shall ensure that Homes England's requirements in relation to public relations as notified to the Consortium Members from time to time are observed and implemented in respect of any funding provided under this Agreement.

39 Exclusion of third party rights

39.1 Save as specified in Clause 39.2 (*Exclusion of third party rights*):

39.1.1 nothing in this Agreement will confer any rights or obligations on any person who has not executed this Agreement nor will the consent of any person who has not so executed this Agreement be needed to make any modification, amendment, variation or release of its terms; and

39.1.2 the Parties agree for the purposes of the Contracts (Rights of Third Parties) Act 1999 that they do not intend any person other than a Party to be able to enforce any term of this Agreement.

39.2 The Parties acknowledge that MHCLG may in its own right enforce the following provisions of this Agreement as a beneficiary of its terms in accordance with the Contracts (Rights of Third Parties Act) 1999:

39.2.1 Clause 3 (*Acknowledgements, Representations and Warranties*);

39.2.2 Clause 16 (*Review, Monitoring and Reporting*);

39.2.3 Clause 17 (*Transparency Obligations*)

39.2.4 Clause 24 (*Repayment of grant*);

39.2.5 Clause 25 (*Default Events and Termination*);

39.2.6 Clause 28 (*Information and Confidentiality*);

39.2.7 Clause 29 (*Data Protection*); and

39.2.8 Clause 30 (*Intellectual Property*).

40 Entire agreement

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

40.2 Each Consortium Member hereby acknowledges that, save as set out or referred to in the Agreement, there are and have been no representations made by or on behalf of Homes England of whatsoever nature on the faith of which it is entering into this Agreement.

41 **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.

42 **Cumulative rights and enforcement**

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

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

43 **Waiver**

43.1 Neither the failure of any Party at any one time to enforce any provision of this Agreement nor the payments by Homes England of Capital Firm Scheme Grant under Clause 20.1 (*Payment of Capital Grant*) nor the payments by Homes England of Revenue Firm Scheme Grant under Clause 21.1 (*Payment of Revenue 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.

43.2 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.

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

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

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

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

44 **VAT**

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

44.2 Each Consortium Member considers that the payment of grant funding under or in connection with this Agreement is outside the scope of VAT. In the event that Homes England is the recipient of a supply or supplies of specified services (as such term is defined

in the Value Added Tax (Section 55A) (Specified Services and Excepted Supplies) Order 2019 (the **Order**) under or in connection with this Agreement, Homes England confirms that the requirements specified in article (8)(1)(b) of the Order are satisfied in respect of the supply or supplies with the result that section 55A(6) of the Value Added Tax Act 1994 will not apply to such supply or supplies. Each Consortium Member acknowledges that it will account for and pay any VAT on any taxable supply or supplies it makes to Homes England under or in connection with this Agreement.

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

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

44.3.2 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.

44.4 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.

45 **Survival of this Agreement**

45.1 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.

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

45.3 Without limitation the provisions of Clauses 2 (*Purpose*), 3 (*Acknowledgements, Representations and Warranties*), 4 (*Capital Firm Schemes*), 5 (*Changes to Capital Firm Schemes*), 8.7 (*Capital Firm Scheme substitution and additions*), 9 (*Revenue Firm Schemes*), 10 (*Changes to Revenue Firm Schemes*), 11 (*Revenue Firm Scheme additions*), 13 (*Delivery Obligations*), 15 (*Operational Obligations*), 16 (*Review, Monitoring and Reporting*), 17 (*Transparency Obligations*), 18 (*Capital Grant Claim Procedures*), 19 (*Revenue Grant Claim Procedures*), 20 (*Payment of Capital Grant*), 21 (*Payment of Capital Grant*), 22 (*Payment of Capital Grant*), 23 (*Withholding of grant*), 24 (*Repayment of grant*), 25 (*Default Events and Termination*), 26 (*Anti-Bribery and Anti-Corruption*), 28 (*Information and Confidentiality*), 29 (*Data Protection*), 30 (*Intellectual Property*), 34 (*Dispute resolution*), 42 (*Cumulative rights and enforcement*), 43 (*Waiver*), 48 (*Governing law*), Schedule 7 (*Anti-bribery and Anti-corruption*), Schedule 8 (*Information and Confidentiality*), Schedule 9 (*Data Protection*), Schedule 10 (*Intellectual Property*) and this Clause 45 (*Survival of this Agreement*) and such other provisions of this Agreement as are necessary to give effect to

such Clauses are expressly agreed by the Parties to survive the termination or expiry of this Agreement.

46 **Notices**

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

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

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

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

provided that if the delivery or receipt is:

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

46.2.4 is after 4.00pm,

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

47 **Execution**

This Agreement may be executed:

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

47.2 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.

48 **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 34 (*Dispute resolution*) the Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

Schedule 1

Acknowledgements, Representations and Warranties

Part 1

Agreed Principles

- 1 The provisions of this Agreement represent the conditions upon which Homes England makes the Allocated Capital Grant and the Allocated Revenue Grant available to the Consortium Members for the purposes of Section 19 (*Financial assistance*) and Section 31 (*Duties in relation to social housing*) of 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 RSAP Dwellings which are to be let to individuals as RSAP Housing to be used for the Agreed Purposes.
- 3 All Fund Proceeds identified in the Capital Firm Scheme Details must be applied solely for the purposes of funding the Development Costs in respect of the relevant Capital Firm Scheme.
- 4 The Public Sector Funding in respect of a Capital Firm Scheme may not exceed an amount equal to the Actual Development Costs incurred by the Relevant Consortium Member in respect of the Delivery of that Capital 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 incurred by the Consortium in respect of the Delivery of the Approved Capital Bid.
- 5 All Capital Firm Scheme Grant paid under this Agreement is:
 - a. social housing assistance as defined in Section 32(13) (Recovery etc. of social housing assistance) of the HRA 2008; and
 - b. subject to the provisions of the HRA 2008 and any applicable determinations made under such provisions.
- 6 The provisions of Clause 24 (*Repayment of grant*) represent events and principles determined by Homes England for the purposes of Sections 32-34 of the HRA 2008.
- 7 All Fund Proceeds used for the purposes of funding (in whole or in part) the Development Costs constitute social housing assistance for the purposes of Section 32 (Recovery etc. of social housing assistance) of the HRA 2008 and are subject to the terms of the Recovery Determination.
- 8 Any failure by a Consortium Member to comply with the terms of this Agreement or the occurrence of a Default Event or Withholding Event constitutes a failure to comply with a condition attached to the making of Capital Grant for the purposes of paragraph 7(e) of the Recovery Determination.
- 9 The terms of the Capital Funding Guide are incorporated within this Agreement (*mutatis mutandis*).
- 10 Each Consortium Member must hold Registered Provider status at the point at which any RSAP Rent Dwelling provided pursuant to this Agreement is made available for rent.

- 11 The RSAP Rent Dwellings provided pursuant to a Capital P&D Scheme with the benefit of the Allocated Capital Grant shall be deemed to have been provided with public money for the purposes of Section 180 (Right to acquire) of HRA 2008.
- 12 Without prejudice to any other terms of this Agreement, the Lease Period in relation to each Capital L&R Scheme must equal or exceed the Minimum Lease Duration.

Part 2

Representations and Warranties – RP Providers

1. Powers, vires and consents

- (a) It is duly incorporated under the law of England and Wales and has the corporate power to own its assets and to carry on the business which it conducts or proposes to conduct.
- (b) 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.
- (c) 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 Capital Firm Scheme or the Approved Revenue Bid or any Revenue Firm Scheme.
- (d) Its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with its terms.
- (e) The execution, delivery and performance by it of this Agreement do not:
 - i. insofar as it is aware contravene any applicable law or directive or any judgement, order or decree of any court having jurisdiction over it;
 - ii. 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
 - iii. contravene or conflict with its memorandum and articles of association or rules (as applicable) from time to time.
- (f) Every authorisation of, or registration with, governmental or public bodies or courts required by it in connection with the execution, delivery, performance, validity, enforceability or admissibility in evidence of this Agreement has been obtained or made and is in full force and effect and there has been no default in the observance of any conditions imposed in connection therewith.
- (g) 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.
- (h) 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, the Approved Revenue Bid or any Firm Scheme.
- (i) To the best of its knowledge, no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator or similar officer in relation to any of its assets or revenues and without limitation no Insolvency Event has occurred in relation to it.
- (j) It has not committed any Prohibited Act.

2. Deliverability

- (a) No person having any Security over its property or any of its other assets has enforced or given notice of its intention to enforce such Security.
- (b) It has obtained or will by Practical Completion of a Capital Firm Scheme obtained all Consents and to the extent that such Consents have been obtained they have not been withdrawn.
- (c) 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.
- (d) No Default Event has occurred and is continuing.
- (e) All information supplied by or on behalf of it to Homes England or its agents or employees in connection with the Consortium's initial application for grant funding or in the course of the subsequent discussions was at the time of submission and as far as it was aware (or ought to have been aware) having made all reasonable and proper enquiries true, complete and accurate in all respects.
- (f) It has informed Homes England of any material change that has occurred since:
 - i. the date of submission of the Approved Capital Bid and (if any) the Approved Revenue Bid prior to the date of this Agreement; and
 - ii. the Approved Capital Bid and (if any) the Approved Revenue Bid, as each of 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.
- (g) 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.
- (h) All data or other information submitted on IMS in respect of the Approved Bid, any Indicative Scheme, Substitute Scheme, Additional Scheme and each Firm Scheme is accurate and the Relevant Consortium Member is not aware (having made all reasonable enquiries) of any circumstances which would give rise to that information becoming inaccurate.
- (i) All data or other information supplied to Homes England in connection with, or related to the Approved Bid, any Firm Scheme (including that submitted pursuant to Clause 16 (*Review, Monitoring and Reporting*)) any Disposal Notification and/or Constitutional Change Notification is complete and accurate;
- (j) It is not in breach of its Transparency Obligations.
- (k) It has issued any Disposal Notification and/or Constitutional Change Notification in accordance with the requirements of this Agreement where required to do so under this Agreement.
- (l) It will not advance or on-lend any Firm Scheme Grant to a third party (in whole or in part).

3. Application of Approved Capital Bid Capacity

- (a) All financial capacity generated by it through the terms of the Approved Capital Bid is being and will be applied by it to the Delivery of new RSAP Rent Dwellings under this Agreement.
- (b) None of the RSAP Dwellings to be provided pursuant to this Agreement have received or are intended to receive funding from Homes England nor have they been included amongst the projected units to be delivered under any Previous Programme.

4. Application of Revenue Firm Scheme Grant

- (a) All financial capacity generated by the Relevant Consortium Member through the terms of the Approved Revenue Bid is being and will be applied by the Relevant Consortium Member to the provision of Revenue Services under this Agreement.
- (b) None of the Revenue Services to be provided pursuant to this Agreement have received or are intended to receive funding from Homes England under any Previous Programme.

5. Authority of Lead Partner's Representative

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

6. Propriety

- (a) No member, employee, agent or consultant of the Consortium Member or of any partner organisation of the Consortium Member has any personal, proprietary or pecuniary interest in:
 - i. any person from whom the Consortium Member is purchasing land or property for the purposes of or in connection with this Agreement;
 - ii. any contractor engaged or to be engaged by the Consortium Member in connection with this Agreement; or
 - iii. any land or other property to be acquired or developed refurbished or improved by the Consortium Member for the purposes of or in connection with this Agreement.
- (b) No member, employee, agent or consultant of the Consortium Member or any partner organisation of the Consortium Member is, has or will be entitled to any preferential treatment by virtue of their position or associations whether in terms of:
 - i. access to properties Delivered or disposed of pursuant to this Agreement; or
 - ii. the prices at which such properties are let or disposed of.

Part 2B

Representations and Warranties – LA Providers

1. Powers, vires and consents

- (a) 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.
- (b) 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 Capital Approved Bid or any Capital Firm Scheme or the Revenue Approved Bid or any Revenue Firm Scheme.
- (c) Its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with its terms.
- (d) The execution, delivery and performance by it of this Agreement do not:
 - i. insofar as it is aware contravene any applicable law or directive or any judgement, order or decree of any court having jurisdiction over it;
 - ii. 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
 - iii. contravene or conflict with its standing orders or other constitutional documents binding upon it (as applicable) from time to time.
- (e) Every authorisation of, or registration with, governmental or public bodies or courts required by it in connection with the execution, delivery, performance, validity, enforceability or admissibility in evidence of this Agreement has been obtained or made and is in full force and effect and there has been no default in the observance of any conditions imposed in connection therewith.
- (f) 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.
- (g) 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 Capital Approved Bid, the Revenue Approved Bid or any Firm Scheme.
- (h) It has not committed any Prohibited Act.

2. Deliverability

- (a) It has obtained or will by Practical Completion of a Capital Firm Scheme obtained all Consents and to the extent that such Consents have been obtained they have not been withdrawn.
- (b) 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.
- (c) No Default Event has occurred and is continuing.

- (d) All information supplied by or on behalf of it to Homes England or its agents or employees in connection with its 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.
- (e) It has informed Homes England of any material change that has occurred since:
- i. the date of submission of the Capital Approved Bid and (if any) the Revenue Approved Bid prior to the date of this Agreement; and
 - ii. the Capital Approved Bid and (if any) the Revenue Approved Bid, as each of the same may be amended, added to, supplemented, substituted or varied in accordance with this Agreement, on each occasion of its amendment, addition, supplementation, substitution or variation of which it is aware (or ought to be aware) having made all reasonable and proper enquiries which would render such information untrue, incomplete or inaccurate in any material respect including without limitation the provision or offer of any additional Public Sector Subsidy.
- (f) 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.
- (g) All data or other information submitted on IMS in respect of the Approved Capital Bid, any Capital Indicative Scheme, Capital Substitute Scheme, Additional Scheme and each Firm Scheme is accurate and the Relevant Consortium Member is not aware (having made all reasonable enquiries) of any circumstances which would give rise to that information becoming inaccurate.
- (h) 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 16 (*Review, Monitoring and Reporting*)) any Disposal Notification and/or Constitutional Change Notification is complete and accurate.
- (i) It is not in breach of its Transparency Obligations.
- (j) It has issued any Disposal Notification and/or Constitutional Change Notification in accordance with the requirements of this Agreement where required to do so under this Agreement.
- (k) It will not advance or on-lend any Firm Scheme Grant to a third party (in whole or in part).

3. Application of Capital Approved Bid Capacity

- (a) All financial capacity generated by it through the terms of the Capital Approved Bid is being and will be applied by it to the delivery of new RSAP Rent Dwellings under this Agreement.
- (b) None of the RSAP Dwellings to be provided pursuant to this Agreement have received or are intended to receive funding from Homes England nor have they been included amongst the projected units to be delivered under any Previous Programme.

4. Application of Revenue Firm Scheme Grant

- (a) All financial capacity generated by it through the terms of the Revenue Approved Bid is being and will be applied by it to the provision of Revenue Services under this Agreement.

- (b) None of the Revenue Services to be provided pursuant to this Agreement have received or are intended to receive funding from Homes England under any Previous Programme.

5. Authority of Lead Partner's Representative

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

6. Propriety

- (a) None of its members, employees, agents or consultants or those of any of its partner organisation has any personal, proprietary or pecuniary interest in:
- i. any person from whom it is purchasing land or property for the purposes of or in connection with this Agreement;
 - ii. any contractor engaged or to be engaged by it in connection with this Agreement; or
 - iii. any land or other property to be acquired or developed refurbished or improved by it for the purposes of or in connection with this Agreement.
- (b) None of its members, employees, agents or consultants or those of any of its partner organisation has or will be entitled to any preferential treatment by virtue of their position or associations whether in terms of:
- i. access to properties developed, Rehabilitated or, disposed of pursuant to this Agreement; or
 - ii. the prices at which such properties are let or disposed of.

7. Local Government Act 1999

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

8. Local Government Finance Act 1988

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

Schedule 2

Development Costs

Part 1

Development Costs

Heads of expenditure

1. Acquisition

- (a) Purchase price of land/Site/buildings.
- (b) Stamp Duty Land Tax on the purchase price of land/Site.

2. Works Costs

- (a) Main works contract costs (excluding any costs defined as on costs).
- (b) Major Site development works (where applicable). These include piling, soil stabilisation, road/sewer construction, major demolition.
- (c) Statutory agreements, associated bonds and party wall agreements (including all fees and charges directly attributable to such works) where applicable.
- (d) 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.
- (e) Irrecoverable VAT on the above (where applicable).

3. On costs

- (a) Legal fees and disbursements.
- (b) Net gains/losses via interest charges on development period loans.
- (c) Building society or other valuation and administration fees.
- (d) Fees for building control and Planning Permission.
- (e) 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.
- (f) In-house or external consultants' fees, disbursements and expenses (where the development contract is a design and build contract) (see note below).
- (g) Insurance premiums including building warranty and defects/liability insurance (except contract insurance included in Works costs).
- (h) Contract performance bond premiums.
- (i) Borrowing administration charges (including associated legal and valuation fees).

(j) An appropriate proportion of the Relevant Consortium Member's development and administration costs.

(k) Irrecoverable VAT on the above.

4. Other costs

White goods and furnishings for use in the RSAP Dwelling.

Note 1

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

Note 2

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

Examples of these are as follows:

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

Note 3

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

Part 2

Costs which are not Development Costs

Capital costs incurred:

- (a) which are not eligible for social housing assistance as defined in Section 32(13) of the HRA 2008;
- (b) on land (forming part of the total site acquired) which will not be used exclusively for housing provision purposes directly related to the Capital Firm Scheme;
- (c) on estate offices, factories, letting offices;
- (d) on stores;
- (e) on medical or dental surgeries, clinics;
- (f) on police stations, public libraries, bus shelters;
- (g) on shops, restaurants, public houses, offices;
- (h) on transformer and other related buildings;
- (i) on maintenance depots, tools, plant and vehicles;
- (j) on garages (other than integral garages on market purchase scheme types) and greenhouses; and
- (k) on separate commercial laundry blocks and related equipment.

Schedule 3

Form of Statement of Grant Usage

[Insert name of Relevant Consortium Member]

STATEMENT OF GRANT USAGE Year ended 31 March [XXXX]

All figures in £s

ELIGIBLE EXPENDITURE	AMOUNT & SUPPORTING DETAILS
Details and amount of expenditure	
What has this expenditure procured?	
Total	
SOURCES OF FUNDING	
Received from this grant	
This organisation's own contribution	
Other	
Total	

To: **[Insert contact name or post]**.

To the best of my knowledge and belief:

The Eligible Expenditure shown in this Statement of Grant Usage is a complete and accurate record of the payments made exclusively for the purposes set out in the grant offer, and does not include any amounts described as ineligible in the grant offer.

Signed on behalf of the organisation's accountant.

.....

Name

Address

.....

Qualifications

Date

Telephone number

Email:

Schedule 4

Guidance to external auditors or accountants

Definition of reporting accountant

A reporting accountant is an accountant or firm of accountants appointed by the Relevant Consortium Member who is/are independent of the Relevant Consortium Member and (except for the Comptroller and Auditor General or the National Audit Office) holding a current practising certificate, or equivalent, issued by one of the following:

- The Institute of Chartered Accountant in England & Wales;
- The Association of Chartered Certified Accountants;
- The Chartered Institute of Public Finance and Accountancy;
- The Chartered Institute of Management Accountants;
- The Institute of Chartered Accountants of Scotland;
- The Institute of Chartered Accountants in Ireland;
- The Association of International Accountants; and/or
- The Association of Authorised Public Accountants.

Letter of engagement

In the interests of a streamlined process, Homes England does not require to be party to an engagement letter between the Provider and the reporting accountant, provided the reporting accountant is procured directly by the provider in accordance with the grant agreement terms and conditions. Homes England will however sign a tripartite letter of engagement, if reporting accountants require this, setting out matters in addition to this guidance.

In the letter of engagement, reporting accountants may explain that their work consists of an examination of internal controls and tests carried out on a sample basis, and there can be no guarantee that fraud, misrepresentation or errors will be detected. They may also state that their work is not an audit and is not carried out in accordance with all Auditing Standards.

The letter of engagement should not say that accountants will carry out procedures solely to be able to report on whether the information has been accurately extracted from the underlying records of the Relevant Consortium Member nor that their work will be carried out on the assumption that all of the information provided to them by the Relevant Consortium Member is reliable and complete.

An example of a Model Tripartite engagement letter is available in the AAF 01/10 Guidance, Appendix E on the ICAEW website.

Reporting accountants' reports

Reporting accountants' reports should be addressed to the Homes England Senior Officer and sent via RSAP@homesengland.gov.uk. A copy of any signed tripartite letter of engagement should be attached to each report. Accountants' reports that give an unqualified opinion should contain, as a minimum, an opinion on the reliability of the Statement of Grant Usage.

Example:

"We have read the funding agreement between [insert Relevant Consortium Member's name] and Homes England dated [insert date].

In accordance with our engagement letter dated [insert date] ('the engagement letter'), a copy of which is attached, we have examined the attached Statement of Grant Usage, each page of which we have initialled for identification purposes only, in relation to the grant, reference [insert reference], for the period [insert date] to [insert date].

The Statement of Grant Usage has been prepared by, and is the sole responsibility of, the management of [insert Relevant Consortium Member's name]. Our responsibility, under the terms of our engagement letter is to form an opinion on the basis of the work performed, and report our opinion to [insert Relevant Consortium Member's name] and Homes England.

Our work was directed to those matters which in our view materially affect the Statement of Grant Usage, and was not directed to the discovery of errors or misstatements that we consider to be immaterial. Whilst we perform our work with reasonable skill and care, it should not be relied upon to disclose all misstatements, fraud or errors that might exist.

We have also examined the records of [insert Relevant Consortium Member's name], carried out such tests as we consider necessary and received such explanations from the management of [insert Relevant Consortium Member's name] as we consider necessary to enable us to form our opinion.

Opinions:

(1) On the basis of the work performed, in our opinion we have obtained sufficient and appropriate evidence that the Statement of Grant Usage, in all material respects, fairly presents [or reflects] the Eligible Expenditure in accordance with the definition of Eligible Expenditure set out in the funding agreement between [insert Relevant Consortium Member's name] and Homes England, during the period [insert date] to [insert date].

(2) In the course of our work nothing came to our attention that is inconsistent with the statements made in the certificate signed on behalf of [insert Relevant Consortium Member's name], which forms part of the Statement of Grant Usage.

This report is provided for the purpose of allowing [insert Relevant Consortium Member's name] to meet its reporting obligations in respect of grants receivable from Homes England and on the basis that it is for use by [insert Relevant Consortium Member's name] and Homes England only."

In the case of reports that give unqualified opinions, any significantly different form of words in the opinion paragraphs should be agreed by the reporting accountants with Homes England. Changes will only be acceptable as long as they do not amount to a significant restriction in the ability of Homes England to reply on the reporting accountant's opinions, beyond that described in this guidance. Any qualification to the opinions, any added emphasis, any limitation of scope that the reporting accountants encounter or any disclaimer of opinion should be supported by as complete an explanation as possible; for example, if there is any uncertainty, the reporting accountants should state what amount is uncertain or in dispute, and the facts relating to it.

Signing reports

With their signature, reporting accountants should write their name or give a reference that can be quoted if there are any queries. In addition, they should give their postal address, telephone number and, their email address.

Materiality

For the purposes of the work carried out by reporting accountants, amounts should be considered material if it is thought likely that they affect total eligibility for grant in the Revenue Funding Period by an amount exceeding 1% of the grant received in the year, or exceeding £1,000, whichever is the greatest. Notwithstanding this, all errors found by the reporting accountants, of whatever amount, must be corrected on the Statement of Grant Usage, by the Relevant Consortium Member.

Disputed amounts

Reporting accountants need not seek to exclude all items from the Statement of Grant Usage where the eligibility is disputed but should report the facts in their report for consideration by Homes England.

However, wherever possible, reporting accountants should give unqualified opinions, rather than opinions that are "subject to" or "except for".

Limit of liability

We do not expect the reporting accountants to assume any liability to pay damages for losses arising as a result of breach of contract or professional negligence on their part in respect of their opinion on the Statement of Grant Usage, to any person other than Homes England.

In any case, reporting accountants' liability, in respect of damages resulting from professional negligence may be limited to the lower of:

- (a) the amount of Revenue Grant received by the Relevant Consortium Member for the Revenue Funding Period plus any recovery costs incurred by Homes England, and
- (b) £1,000,000.

Duty of care

In accepting the assignment described in this guidance, reporting accountants accept that they owe a duty of care to Homes England.

Reporting accountants should note that:

- (c) the nature and extent of their tests is solely a matter for their professional judgement, and
- (d) their work will not be monitored by Homes England (but see below, under National Audit Office).

National Audit Office

In certain circumstances, the National Audit Office may ask to visit reporting accountants to discuss their methodology and findings. Reporting accountants are asked to co-operate with the National Audit Office as far as reasonably possible. Information gained by the National Audit Office in this way will not be used, without the reporting accountants' permission, for any purpose other than their audit of Homes England's annual accounts.

Access to government information

Homes England will not ask for anyone's permission before showing grant documents including reports from reporting accountants.

In addition to the above, the Freedom of Information Act obliges Homes England to disclose certain information, on request, to any member of the public.

Other guidance

Technical Release 03/03 *Public Sector Special Reporting Engagements - Grant Claims*, issued by the Institute of Chartered Accountants in England & Wales is applicable to this work. There is also a practice note issued by the Auditing Practices Board: *The Audit of Central Government Financial Statements (revised)*. This is not intended to apply to grants, but it contains definitions and explanations that reporting accountants might find useful.

If the reporting accountants need further advice or clarification, they can email: RSAP@homesengland.gov.uk

Schedule 5
Annual Return

To: RSAP@communities.gov.uk

Rough Sleeping Accommodation Programme 2021/24
Annual Return for Year 20[XX]

Local authority	Scheme name	Breakdown of units funded, beds per unit, & Location	Capital funding received in 20[XX]
[e.g. "Anytown LA"]	[e.g. "High Street Move-On Programme, Anytown"]	[e.g. 5 High Street, Anytown – 6 beds 12 High Street, Anytown – 2 beds 14 High Street, Anytown – 5 beds]	

EITHER

[I confirm that in accordance with funding received pursuant to a grant funding agreement between the Homes and Communities Agency (trading as Homes England) and [x] dated [y] ("the **Agreement**"), as at the date of this Annual Return, the unit(s) listed above remain in use in this local authority area as social housing available to people who:

- have recent lived experience of rough sleeping;
- are at immediate risk of rough sleeping; and
- are at immediate risk of homelessness,

in accordance with the Agreed Purposes (as defined in the Agreement).]

OR

[I confirm that in accordance with funding received pursuant to a grant funding agreement between the Homes and Communities Agency (trading as Homes England) and [x] dated [y] ("the **Agreement**"), as at the date of this Annual Return, the unit(s) listed above remain in use in this local authority area as social housing available to people who:

- have recent lived experience of rough sleeping;
- are at immediate risk of rough sleeping;
- are at immediate risk of homelessness; and
- [include agreed modifications],

in accordance with the Agreed Purposes (as defined in the Agreement) (as modified and re-stated in accordance with the change process on [date] pursuant to Clause 5 (*Changes to Capital Firm Schemes*) and/or Clause 10 (*Changes to Revenue Firm Schemes*) of the Agreement).]

Signed:

Position:

Consortium Member:

Date:

Schedule 6

Form of Health and Safety Report

Consortium Member: []

Firm Scheme: []

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

Reporting period: [] to []

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

Schedule 7

Anti-bribery and Anti-corruption

1 The Consortium Members must:

- a. 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**);
- b. 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;
- c. 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**);
- d. 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 1a of this Schedule 7 (*Anti-bribery and Anti-corruption*), and will enforce them where appropriate;
- e. if required by Homes England, produce a written certificate to it signed by an officer of the Relevant Consortium Member, confirming compliance with this Schedule 7 (*Anti-bribery and Anti-corruption*) by the Relevant Consortium Member and all persons associated with it under paragraph 1e of this Schedule 7 (*Anti-bribery and Anti-corruption*). The Relevant Consortium Member shall provide such supporting evidence of compliance as Homes England may reasonably request;
- f. ensure that any person associated with the Relevant Consortium Member 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 Relevant Consortium Member in this Schedule 7 (*Anti-bribery and Anti-corruption*) (Relevant Terms). The Relevant Consortium Member shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to Homes England for any breach by such persons of any of the Relevant Terms;
- g. 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 Relevant Consortium Member in connection with the performance of this Agreement; and
- h. for the purpose of this Schedule 7 (*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 7 (*Anti-bribery and Anti-corruption*) a person associated with the Relevant Consortium Member includes any subcontractor of the Relevant Consortium Member.

- 2 Where the Relevant Consortium Member is aware that it is in breach of an obligation under this Schedule 7 (*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 Relevant Consortium Member has any grounds for suspecting financial irregularity in the use of any Funding, it must:
 - a. notify Homes England immediately;
 - b. explain to Homes England what steps are being taken to investigate the suspicion; and
 - c. 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 Grant for purposes other than the purposes permitted under this Agreement.

Schedule 8

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 or MHCLG 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 8 (*Information and Confidentiality*) shall not apply to any Confidential Information which:
 - a. is in, or which comes into, the public domain otherwise than by reason of a breach of this Agreement or of any other duty of confidentiality relating to that information;
 - b. is obtained from a third party without that third party being under an obligation (express or implied) to keep the information confidential;
 - c. is lawfully in the possession of the other party before the date of this Agreement and in respect of which that party is not under an existing obligation of confidentiality; or
 - d. is independently developed without access to the Confidential Information of the other party.
- 4 Each party will be permitted to disclose Confidential Information to the extent that it is required to do so:
 - a. to enable the disclosing party to perform its obligations under this Agreement or any loan agreement or proposed loan agreement or funding documentation with a commercial lender;
 - b. by any applicable law or by a court, arbitral or administrative tribunal in the course of proceedings before it, including without limitation, any requirement for disclosure under FOIA, EIR or the Code of Practice on Access to Government Information and each Consortium Member acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and Homes England or MHCLG may nevertheless be obliged to disclose such Confidential Information;
 - c. 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
 - d. in order to give proper instructions to any professional adviser of that party who also has an obligation to keep any such Confidential Information confidential.
- 5 Each Consortium Member shall ensure that all Confidential Information obtained from Homes England or MHCLG under or in connection with this Agreement:

- a. 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;
 - b. is treated as confidential and not disclosed (without Homes England's or MHCLG's (as applicable) prior written approval) or used by any such staff or professional advisors or consultants otherwise than for the purposes of this Agreement; and
 - c. where it is considered necessary in the opinion of Homes England or MHCLG (as applicable) it shall ensure that such staff, professional advisors or consultants sign a confidentiality undertaking before commencing work in connection with this Agreement.
- 6 Nothing in this Schedule 8 (*Information and Confidentiality*) shall prevent Homes England or MHCLG (as appropriate):
- a. disclosing any Confidential Information for the purpose of:
 - i. the examination and certification of Homes England's or MHCLG's (as applicable) accounts; or
 - ii. any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which Homes England or MHCLG's (as applicable) has used its resources;
 - b. disclosing any Confidential Information obtained from a Consortium Member:
 - i. to Homes England or MHCLG (as applicable);
 - ii. to any other department, office or agency of the Crown; or
 - iii. to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - iv. 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;
 - v. to any person engaged in providing any services to Homes England or MHCLG (as applicable) for any purpose relating to or ancillary to this Agreement or any person conducting an Office of Government Commerce gateway review,
- 7 provided that in disclosing information under any of paragraphs 6b.i (*Information and Confidentiality*) to 6b.iv (*Information and Confidentiality*) of this Schedule 8 (*Information and Confidentiality*) inclusive, Homes England or MHCLG (as appropriate) 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.
- 8 Nothing in this Schedule 8 (*Information and Confidentiality*) shall prevent a party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.
- 9 Homes England, MHCLG and any LA Provider(s) are FOIA Authorities and:

- a. Each Consortium Member acknowledges that Homes England, MHCLG and any LA Provider(s):
 - i. are subject to legal duties which may require the release of information under FOIA and/or EIR; and
 - ii. may be under an obligation to provide Information subject to a Request for Information.
- 10 The FOIA Authority in receipt of or to receive the Request for Information (the **Relevant FOIA Authority**) shall be responsible for determining in its absolute discretion whether:
- a. any Information is Exempted Information or remains Exempted Information; or
 - b. any Information is to be disclosed in response to a Request for Information,
- and in no event shall any party, other than the Relevant FOIA Authority, respond directly to a Request for Information to which MHCLG or Homes England is required to respond to, except to confirm receipt of the Request for Information and that the Request for Information has been passed to the Relevant FOIA Authority unless otherwise expressly authorised to do so by the Relevant FOIA Authority.
- 11 Notwithstanding any other provision of this Agreement but subject to paragraph 12 of this Schedule 8 (*Information and Confidentiality*) below, each party acknowledges that the Relevant FOIA Authority may be obliged under FOIA or EIR to disclose Information:
- a. without consulting them (or any one of them); or
 - b. following consultation with them (or any one of them) and having taken (or not taken, as the case may be) its views into account.
- 12 Without in any way limiting paragraph 10 of this Schedule 8 (*Information and Confidentiality*) or paragraph 11 of this Schedule 8 (*Information and Confidentiality*) in the event that the Relevant FOIA Authority receives a Request for Information, the Relevant FOIA Authority will, where appropriate, as soon as reasonably practicable notify the other Parties.
- 13 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:
- a. 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;
 - b. 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;
 - c. provide the Relevant FOIA Authority with any Information already in its possession or power in the form the Relevant FOIA Authority requires within five (5) Business

Days (or such other period as the Relevant FOIA Authority may specify) of the Relevant FOIA Authority requesting that Information; and

- d. permit the Relevant FOIA Authority to inspect any records as requested from time to time.
- 14 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.
- 15 The obligations in this Schedule 8 (*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.
- 16 Each Consortium Member must regularly review its security arrangements in relation to its access to (if any) and operation of (if any) IMS and in particular it must:
- a. notify Homes England immediately if there is any change in the identity of the individual discharging the role of the security administrator on its behalf or if such person leaves its employment or relinquishes that role;
 - b. 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;
 - c. ensure that IMS passwords are kept confidential and not shared by or with its employees or consultants; and
 - d. ensure that systems are in place to prevent any person accessing IMS under a "User ID" other than his own.
- 17 Each Consortium Member acknowledges and agrees that the Relevant FOIA Authority may in its absolute discretion redact all or part of the Information within a Request for Information prior to its publication. In so doing and in its absolute discretion, the Relevant FOIA Authority may take account of any EIR Exceptions and FOIA Exemptions. The Relevant FOIA Authority may in its absolute discretion consult with the Consortium Members regarding any redactions to the Information to be published pursuant to this Schedule 8 (*Information and Confidentiality*). The Relevant FOIA Authority will make the final decision regarding publication and/or redaction of the Information.

Schedule 9

Data Protection

- 1 In so far that Shared Personal Data is Processed under this Agreement it is understood that the Parties will each act in the capacity of an independent Data Controller.
- 2 Each Consortium Member (including its employees agents or officers) shall at all times during the period of this Agreement comply with the provisions and obligations imposed by this Schedule 9 (*Data Protection*) and the Data Protection Legislation generally, including any requirement to obtain registrations, consents, and provide notifications and relevant privacy information to Data Subjects as required for the purposes of their obligations under this Agreement.
- 3 Each Consortium Member warrants and represent that they each have in place appropriate technical and organisational measures to protect the Shared Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, and which provide a level of security appropriate to the risk represented by the processing and the nature of the data to be protected.
- 4 A Consortium Member shall notify Homes England without undue delay on 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 Relevant Consortium Member shall use all reasonable endeavours to ensure that in complying with its obligations under Clause 16 (*Review, Monitoring and Reporting*), no Personal Data shall be included in any communications with Homes England save to the extent absolutely necessary for purposes of fulfilling its obligations under this Agreement.
- 7 The provision of this Schedule 9 (*Data Protection*) shall apply during the continuance of the Agreement and indefinitely after its termination.
- 8 Each Consortium Member shall indemnify Homes England against all claims and proceedings and all liability, losses, costs and expenses incurred in connection therewith by Homes England as a result of the Consortium Member's destruction of and/or damage to any of the Shared Personal Data processed by it, its employees, agents, or any breach of or other failure to comply with the obligations in the DPA and/or this Schedule 9 (*Data Protection*) by it, its employees, agents or sub-contractors.
- 9 Each Consortium Member shall appoint and identify an individual within its organisation authorised to respond to enquiries from Homes England concerning its Processing of the Shared Personal Data and will deal with all enquiries from Homes England relating to such Personal Data promptly, including those from the Information Commissioner.

- 10 Each Consortium Member undertakes to include obligations no less onerous than those set out in this Schedule 9 (*Data Protection*) in all contractual arrangements with agents engaged by it in performing its obligations under this Agreement to Homes England.

Schedule 10

Intellectual Property

- 1 Subject to paragraph 5 of this Schedule 10 (*Intellectual Property*) each Consortium Member shall, to the extent that it is able to do so without incurring material cost, grant to Homes England and MHCLG a perpetual, transferable, non-exclusive, royalty-free licence (carrying the right to grant sub-licences) to copy and use (from computer disk or otherwise) all and any Intellectual Property Rights in any, drawings, reports, specifications, calculations and other documents provided by it or which are or become owned by it 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 10 (*Intellectual Property*) are generated by or maintained on a computer or in any other machine readable format, each Consortium Member shall if requested by Homes England use its reasonable endeavours (without having to incur material cost) procure for the benefit of Homes England and MHCLG for the duration of this Agreement at the cost of that Consortium Member the grant of a licence or sub-licence and supply any relevant software and/or database to enable Homes England and MHCLG making such request to access and otherwise use such data for the purposes referred to in paragraph 1 of this Schedule 10 (*Intellectual Property*).
- 3 Neither Party shall infringe any third party's Intellectual Property Rights in connection with this Agreement.
- 4 Each Consortium Member shall fully indemnify Homes England and MHCLG within five (5) Business Days of demand under this paragraph 4 of this Schedule 10 (*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 10 (*Intellectual Property*), any breach by that Consortium Member of this Schedule 10 (*Intellectual Property*) and against all costs and damages of any kind which Homes England and/or MHCLG may incur in connection with any actual or threatened proceedings before any court or adjudication body.
- 5 Each Consortium Member shall only be entitled to revoke the licence granted to Homes England and MHCLG under paragraph 1 of this Schedule 10 (*Intellectual Property*) in the following circumstances and upon the following terms:
 - 6 on the termination of the whole of this Agreement in circumstances where no Allocated Capital Grant or Allocated Revenue Grant has been paid to the Lead Partner; or
 - 7 on the termination of this Agreement (in whole or in part) in circumstances where some Allocated Capital Grant or Allocated Revenue Grant has been paid to the Lead Partner provided that nothing in this paragraph 7 of this Schedule 10 (*Intellectual Property*) shall entitle a Consortium Member to revoke such licence insofar as it relates to:
 - 8 Capital Firm Schemes in respect of which Capital Firm Scheme Grant has been paid or in respect of which a valid entitlement to claim Capital Firm Scheme Grant has arisen;
 - 9 Revenue Firm Schemes in respect of which Revenue Firm Scheme Grant has been paid or in respect of which a valid entitlement to claim Revenue Firm Scheme Grant has arisen; or
 - 10 Continuing Capital Firm Schemes.

Schedule 11
Deed of Adherence

This deed is made the day of 20[]

Parties

- (1) [] (**Incoming Consortium Member**);
- (2) [], [], [] (**Original Consortium Member**); and
- (3) **HOMES AND COMMUNITIES AGENCY (TRADING AS HOMES ENGLAND)**, a body corporate under Section 1 of the Housing and Regeneration Act 2008, of One Friargate, Coventry, CV1 2GN (including any statutory successor) (**Homes England**).

WHEREAS

- (A) The Original Consortium Members entered into a grant agreement with Homes England dated [] (the **Grant Agreement**) as the same may be varied, amended or supplemented in accordance with its terms in connection with the delivery of housing pursuant to the Rough Sleeping Accommodation Programme.
- (B) The Incoming Consortium Member has agreed to assume and be bound by the same obligations liabilities and duties of the Consortium Members under the Grant Agreement upon the terms and conditions of this Deed.

IT IS NOW HEREBY AGREED as follows:

1. **Interpretation**

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

2. **Observance**

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

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

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

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

3. **Further assurance**

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

4. **Governing Law and Jurisdiction**

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

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

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

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

[EXECUTION CLAUSES]

Schedule 12

Deed of Release

This deed is made the day of 20[]

Between

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

WHEREAS

- (A) Together, the Remaining Consortium Members and the [Outgoing] [Removed] Consortium Member entered into or adhered to a grant agreement with Homes England dated [] (the **Grant Agreement**) as the same may be varied, amended or supplemented in accordance with its terms in connection with inter alia the delivery of housing pursuant to the Rough Sleeping Accommodation Programme.
- (B) It has been agreed that the [Outgoing] [Removed] Consortium Member shall cease to be a Consortium Member and Party to the Grant Agreement upon the terms and conditions of this Deed.

IT IS NOW HEREBY AGREED as follows:

1. Interpretation

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

2. Release

- 2.1 With effect from the date of this Deed (the **Effective Date**), the [Outgoing] [Removed] Consortium Member shall cease to be a Consortium Member for the purposes of, and a Party to, the Grant Agreement.
- 2.2 The Remaining Consortium Members agree that from the Effective Date they shall continue to be liable for each of their obligations under the Grant Agreement.

3. Allocation of Grant

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

[Insert Relevant Details]

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

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

- a. [the terms of the Grant Agreement insofar as there are any Firm Schemes of the type described in Clause 25.9.2 (*Default Events and Termination*) of the Grant Agreement;]
- b. Clauses 3 (*Acknowledgements, Representations and Warranties*), 13 (*Delivery Obligations*), 15 (*Operational Obligations*), 16.15 to 16.20 (inclusive) (*Review, Monitoring and Reporting*), 17 (*Transparency Obligations*), 18 (*Capital Grant Claim Procedures*), 19 (*Revenue Grant Claim Procedures*), 24 (*Repayment of grant*), 25 (*Default Events and Termination*) to 32 (*Construction Industry Scheme*) (inclusive), 34 (*Dispute resolution*), 35 (*Further assurance*), 42.2 (*Cumulative rights and enforcement*), 43 (*Waiver*) to 45 (*Survival of this Agreement*) (inclusive) and 48 (*Governing law*) of the Grant Agreement; and
- c. Schedule 1 (*Agreed Principles*), Schedule 13 (*Legal Opinion*) (where applicable) and Clause 31 (*Health and Safety*) of the Grant Agreement.

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

5 **Further assurance**

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

6 **Governing Law and Jurisdiction**

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

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

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

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

[EXECUTION CLAUSES]

Schedule 13

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**) and the Secretary of State for Housing, Communities and Local Government (**MHCLG**)

Dear Sirs,

Legal Opinion re Rough Sleeping Accommodation Programme grant agreement and related matters

I refer to the proposed grant agreement to be entered into between [] (the **Council**), [*insert other Consortium Member Parties*] and Homes England (the **Agreement**) for the purposes of the Rough Sleeping Accommodation Programme 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; and
- (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 MHCLG and is solely for their 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

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.

Name	Title	Specimen Signature

Schedule 14

SPEI Entrustment

Template: Entrustment

Tasks entrusted under this Agreement: as set out at Clause 2.1 (*Purpose*) and/or 2.2 (*Purpose*) of the Agreement.

Duration: the duration of each Firm Scheme shall be its Duration as defined in the Agreement.

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

Schedule 15

Relevant Consortium Member – Obligations Matrix

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

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

Clause Number	Landlord of Firm Scheme	Applicable to Consortium Member responsible for the act, omission, event or default giving rise to Homes England's rights/remedies in respect thereof	Applicable to all Consortium Members	Other
"Consortium Member Affiliate"	✓			
"Development Costs"	✓			
"Fund Proceeds"	✓			
"Fundamental (B) Default"	✓			
"GW2 Event"	✓			
"Lease Termination Date"	✓			
"Legal Opinion"				✓* *The Consortium Member that is an LA Provider and will be the Landlord of the LA Scheme
"Local Housing Authority"	✓			
"Milestone Extension Events"	✓			
"Milestone Failure"	✓			
"MMC Stage"	✓			

Clause Number	Landlord of Firm Scheme	Applicable to Consortium Member responsible for the act, omission, event or default giving rise to Homes England's rights/remedies in respect thereof	Applicable to all Consortium Members	Other
"Notification Failure"	✓			
"Nil Grant Unit"	✓			
"Professional Team"	✓			
"Public Sector Funding"	✓			
"RCGF"	✓			
"Relevant Authority"	✓			
"Revenue Quarterly Payment"	✓			
"RSAP Housing"	✓			
"Scheme Default"	✓			
"Secure Legal Interest"	✓			
"Secure Legal Interest (L&R)"	✓			
"Secure Legal Interest (P&D)"	✓			
"Single Claim Scheme"	✓			
"SPEI Allowable Costs"	✓			
"SPEI Revenue"	✓			

Clause Number	Landlord of Firm Scheme	Applicable to Consortium Member responsible for the act, omission, event or default giving rise to Homes England's rights/remedies in respect thereof	Applicable to all Consortium Members	Other
"Start on Site Date"	✓			
"Subcontractor"	✓			
"SW1 Event"	✓			
"SW2 Event"	✓			
"SW3 Event"	✓			
"Waiver Condition"				✓ The Consortium Member(s) which are responsible for or associated with the Prohibited Act
Clause 1.2.12 (<i>Interpretation</i>)				✓ The Consortium Member seeking the relevant consent or approval
Clause 1.2.19 (<i>Interpretation</i>)	✓			

Clause Number	Landlord of Firm Scheme	Applicable to Consortium Member responsible for the act, omission, event or default giving rise to Homes England's rights/remedies in respect thereof	Applicable to all Consortium Members	Other
Clause 1.2.30. <i>(Interpretation)</i>	✓			
Clause 4.2 <i>(Capital Firm Schemes)</i>				✓ The Consortium Member who holds or will hold the Secure Legal Interest and which will be the landlord of the RSAP Dwellings comprised in the relevant Firm Scheme or as the context requires, Capital Substitute Scheme or Additional Scheme
Clause 4.2 <i>(Capital Firm Schemes)</i>	✓			
Clause 5.1 <i>(Changes to Capital Firm Schemes)</i>	✓			

Clause Number	Landlord of Firm Scheme	Applicable to Consortium Member responsible for the act, omission, event or default giving rise to Homes England's rights/remedies in respect thereof	Applicable to all Consortium Members	Other
Clause 5.3 <i>(Changes to Capital Firm Schemes)</i>	✓			
Clause 5.5 <i>(Changes to Capital Firm Schemes)</i>	✓			
Clause 6.6 <i>(Capital Indicative Schemes)</i>				<p style="text-align: center;">✓</p> <p>The Consortium Member who holds or will hold the Secure Legal Interest and which will be the landlord of the RSAP Dwellings comprised in the relevant Firm Scheme or as the context requires, Capital Substitute Scheme or Additional Scheme</p>

Clause Number	Landlord of Firm Scheme	Applicable to Consortium Member responsible for the act, omission, event or default giving rise to Homes England's rights/remedies in respect thereof	Applicable to all Consortium Members	Other
Clause 6.7 (<i>Capital Indicative Schemes</i>)				<p style="text-align: center;">✓</p> <p>The Consortium Member who holds or will hold the Secure Legal Interest and which will be the landlord of the RSAP Dwellings comprised in the relevant Firm Scheme or as the context requires, Capital Substitute Scheme or Additional Scheme</p>

Clause Number	Landlord of Firm Scheme	Applicable to Consortium Member responsible for the act, omission, event or default giving rise to Homes England's rights/remedies in respect thereof	Applicable to all Consortium Members	Other
Clause 6.8 (<i>Capital Indicative Schemes</i>)				<p style="text-align: center;">✓</p> <p>The Consortium Member who holds or will hold the Secure Legal Interest and which will be the landlord of the RSAP Dwellings comprised in the relevant Firm Scheme or as the context requires, Substitute Scheme or Additional Scheme</p>

Clause Number	Landlord of Firm Scheme	Applicable to Consortium Member responsible for the act, omission, event or default giving rise to Homes England's rights/remedies in respect thereof	Applicable to all Consortium Members	Other
Clause 8.2 (<i>Capital Firm Scheme substitution and additions</i>)				<p style="text-align: center;">✓</p> <p>The Consortium Member who holds or will hold the Secure Legal Interest and which will be the Landlord of the RSAP Dwellings comprised in the relevant Firm Scheme or as the context requires, Capital Substitute Scheme or Additional Scheme</p>

Clause Number	Landlord of Firm Scheme	Applicable to Consortium Member responsible for the act, omission, event or default giving rise to Homes England's rights/remedies in respect thereof	Applicable to all Consortium Members	Other
Clauses 8.3 (<i>Capital Firm Scheme substitution and additions</i>)				<p style="text-align: center;">✓</p> <p>The Consortium Member who holds or will hold the Secure Legal Interest and which will be the Landlord of the RSAP Dwellings comprised in the relevant Firm Scheme or as the context requires, Capital Substitute Scheme or Additional Scheme</p>

Clause Number	Landlord of Firm Scheme	Applicable to Consortium Member responsible for the act, omission, event or default giving rise to Homes England's rights/remedies in respect thereof	Applicable to all Consortium Members	Other
Clauses 8.5.3 (<i>Capital Firm Scheme substitution and additions</i>)				<p style="text-align: center;">✓</p> <p>The Consortium Member who holds or will hold the Secure Legal Interest and which will be the Landlord of the RSAP Dwellings comprised in the relevant Firm Scheme or as the context requires, Capital Substitute Scheme or Additional Scheme</p>
Clauses 8.6 (<i>Capital Firm Scheme substitution and additions</i>) and 8.7 (<i>Capital Firm Scheme substitution and additions</i>)	<p style="text-align: center;">✓</p> <p>(in relation to the Undeliverable Scheme)</p>			

Clause Number	Landlord of Firm Scheme	Applicable to Consortium Member responsible for the act, omission, event or default giving rise to Homes England's rights/remedies in respect thereof	Applicable to all Consortium Members	Other
Clauses 8.9 (<i>Capital Firm Scheme substitution and additions</i>) and 8.10.3 (<i>Capital Firm Scheme substitution and additions</i>)				<p style="text-align: center;">✓</p> <p>The Consortium Member who holds or will hold the Secure Legal Interest and which will be the Landlord of the RSAP Dwellings comprised in the relevant Firm Scheme or as the context requires, Capital Substitute Scheme or Additional Scheme</p>
Clause 8.12.3 (<i>Capital Firm Scheme substitution and additions</i>)	✓			
Clause 9.2 (<i>Revenue Firm Schemes</i>)				<p style="text-align: center;">✓</p> <p>The Consortium</p>

Clause Number	Landlord of Firm Scheme	Applicable to Consortium Member responsible for the act, omission, event or default giving rise to Homes England's rights/remedies in respect thereof	Applicable to all Consortium Members	Other
				Member who holds or will hold the Secure Legal Interest and which will be the Landlord of the RSAP Dwellings comprised in the relevant Firm Scheme
Clause 10.3 (Changes to Revenue Firm Schemes)				<p style="text-align: center;">✓</p> <p>The Consortium Member who holds or will hold the Secure Legal Interest and which will be the Landlord of the RSAP Dwellings comprised in the relevant Firm Scheme</p>

Clause Number	Landlord of Firm Scheme	Applicable to Consortium Member responsible for the act, omission, event or default giving rise to Homes England's rights/remedies in respect thereof	Applicable to all Consortium Members	Other
Clause 11.3 (<i>Revenue Firm Scheme additions</i>)				<p style="text-align: center;">✓</p> <p>The Consortium Member who holds or will hold the Secure Legal Interest and which will be the Landlord of the RSAP Dwellings comprised in the relevant Firm Scheme</p>
Clause 11.4 (<i>Revenue Firm Scheme additions</i>)				<p style="text-align: center;">✓</p> <p>The Consortium Member who holds or will hold the Secure Legal Interest and which will be the Landlord of the RSAP Dwellings comprised in the relevant Firm Scheme</p>

Clause Number	Landlord of Firm Scheme	Applicable to Consortium Member responsible for the act, omission, event or default giving rise to Homes England's rights/remedies in respect thereof	Applicable to all Consortium Members	Other
Clause 11.6 (<i>Revenue Firm Scheme additions</i>)				<p style="text-align: center;">✓</p> <p>The Consortium Member who holds or will hold the Secure Legal Interest and which will be the Landlord of the RSAP Dwellings comprised in the relevant Firm Scheme</p>
Clause 13.1 (<i>Delivery Obligations</i>)	✓			
Clause 13.2 (<i>Delivery Obligations</i>)	✓			
Clause 14 (<i>Revenue Eligible Expenditure</i>)	✓			
Clause 15 (<i>Operational Obligations</i>)	✓			
Clause 16.2.3 (<i>Review, Monitoring and Reporting</i>)		✓		

Clause Number	Landlord of Firm Scheme	Applicable to Consortium Member responsible for the act, omission, event or default giving rise to Homes England's rights/remedies in respect thereof	Applicable to all Consortium Members	Other
Clause 16.7.2 <i>(Review, Monitoring and Reporting)</i>				<p style="text-align: center;">✓</p> <p style="text-align: center;">The Consortium Member requesting a review meeting under Clause 16.7 <i>(Review, Monitoring and Reporting)</i></p>
Clause 16.23 <i>(Review, Monitoring and Reporting)</i>		✓		
Clause 16.25 <i>(Review, Monitoring and Reporting)</i>		✓		
Clause 16.26 <i>(Review, Monitoring and Reporting)</i>		✓		
Clause 16.29 <i>(Review, Monitoring and Reporting)</i>		✓		
Clause 16.30 <i>(Review, Monitoring and Reporting)</i>		✓		
Clause 16.31 <i>(Review, Monitoring and Reporting)</i>		✓		

Clause Number	Landlord of Firm Scheme	Applicable to Consortium Member responsible for the act, omission, event or default giving rise to Homes England's rights/remedies in respect thereof	Applicable to all Consortium Members	Other
Clause 18 (<i>Capital Grant Claim Procedures</i>)	✓			
Clause 19 (<i>Revenue Grant Claim Procedures</i>)	✓			
Clause 22 (<i>Adjustments to Practical Completion Tranche Grant</i>)	✓			
Clause 24.1 (<i>Repayment of grant</i>)	✓			
Clause 24.2 (<i>Repayment of grant</i>)				<p>✓</p> <p>To be determined in accordance with the allocation of responsibility in relation to Clauses 24.2.1 to 24.2.15 (<i>Repayment of grant</i>) below</p>
Clause 24.3.3 (<i>Repayment of grant</i>)	✓			

Clause Number	Landlord of Firm Scheme	Applicable to Consortium Member responsible for the act, omission, event or default giving rise to Homes England's rights/remedies in respect thereof	Applicable to all Consortium Members	Other
Clause 24.5 (<i>Repayment of grant</i>)	✓			
Clause 24.6 (<i>Repayment of grant</i>)				✓ The Consortium Member to which Clause 24.2 (<i>Repayment of grant</i>) allocates responsibility for payment of the Recoverable Amount
Clause 24.9 (<i>Repayment of grant</i>)				✓ The Consortium Member to which Clause 24.2 (<i>Repayment of grant</i>) allocates responsibility for payment of the Recoverable Amount

Clause Number	Landlord of Firm Scheme	Applicable to Consortium Member responsible for the act, omission, event or default giving rise to Homes England's rights/remedies in respect thereof	Applicable to all Consortium Members	Other
Clause 24.10 (<i>Repayment of grant</i>)	✓			
Clause 24.11 (<i>Repayment of grant</i>)	✓			
Clause 24.12 (<i>Repayment of grant</i>)		✓		
Clause 24.13 (<i>Repayment of grant</i>)	✓			
Clause 24.14 (<i>Repayment of grant</i>)	✓			
Clause 24.15 (<i>Repayment of grant</i>)	✓			
Clause 25.1 (<i>Default Events and Termination</i>)	✓			
Clause 25.4 (<i>Default Events and Termination</i>)		✓		
Clause 25.8.1 (<i>Default Events and Termination</i>)		✓		
Clause 25.10 (<i>Default Events and Termination</i>)		✓		

Clause Number	Landlord of Firm Scheme	Applicable to Consortium Member responsible for the act, omission, event or default giving rise to Homes England's rights/remedies in respect thereof	Applicable to all Consortium Members	Other
Clause 26 (<i>Subsidy</i>)		✓		
Clause 31 (<i>Health and Safety</i>)	✓			
Clause 32 (<i>Construction Industry Scheme</i>)	✓			
Clause 44 (VAT)	✓			
Schedule 1 (<i>Acknowledgements, Representations and Warranties</i>)	✓			
Schedule 2 (<i>Development Costs</i>)	✓			
Schedule 3 (<i>Form of Statement of Grant Usage</i>)	✓			
Schedule 4 (<i>Guidance to external auditors or accountants</i>)		✓		
Schedule 7 (<i>Anti-bribery and Anti-corruption</i>)		✓		
Schedule 9 (<i>Data Protection</i>)		✓		

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:

Nottingham City Council

EXECUTED as a **DEED**)
Given under **THE COMMON SEAL** of)
NOTTINGHAM CITY COUNCIL)

.....
Authorised Signatory

Print Name:

Nottingham City Homes Registered Provider Limited

Executed as a deed by **NOTTINGHAM CITY HOMES**)
REGISTERED PROVIDER LIMITED acting by a Director and)
a Director or Secretary)

.....
Director

Print Name:

.....
Director or Secretary

Print Name:

Framework Housing Association

Executed as a deed by **FRAMEWORK HOUSING**)
ASSOCIATION acting by a Director and)
a Director or Secretary)

.....
Director

Print Name:

.....
Director or Secretary

Print Name: