



dated **200[]**

Homes and Communities Agency

and

[ABC Council]

Grant Agreement

Local Authority Model for NAHP 2008/11

Local Authority owns land, develops and retains ownership

Local Authority bidding round 2

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Grant Agreement¹

dated

Parties

- (1) **Homes and Communities Agency**, a body corporate under Section 1 of the Housing and Regeneration Act 2008, of 110 Buckingham Palace Road, London, SW1W 9SA (including any statutory successor) (the **Agency**); and
- (2) [] of [] (the **Council**).

Introduction

- (A) The Agency is empowered pursuant to the Transfer of Housing Corporation Functions (Modifications and Transitional Provisions) Order 2008 to exercise the functions of the Housing Corporation under Section 27A of the Housing Act 1996 to make grants available to facilitate the development and provision of affordable housing by bodies other than registered social landlords.
- (B) The Council has submitted proposals to the Agency in respect of certain affordable housing schemes which it proposes to build² and retain ownership of.
- (C) The Agency has selected the Council to receive grant funding in respect of the affordable housing schemes referred to in this Grant Agreement.
- (D) The Agency has agreed to make grant available to the Council for the purposes of the Schemes (as hereinafter defined) on the terms and conditions of this Grant Agreement in order to enable the provision of affordable housing in response to housing need in accordance with regional strategies and priorities.

1 Definitions and interpretation

This Grant Agreement shall operate and be construed in accordance with the definitions and interpretation provisions set out in Annexure 1.

2 Purpose of grant

- 2.1 The Agency has agreed to make the Agreed Grant available to the Council subject to and in accordance with the terms and conditions of this Agreement.
- 2.2 The Agency shall, subject as hereinafter provided, pay the Agreed Grant to the Council in accordance with the terms of Condition 3.2.
- 2.3 The Council acknowledges and agrees that:
- 2.3.1 the Agreed Grant is given by the Agency on the express understanding that it is applied solely for the purposes of developing the Dwellings;

¹ This Agreement is premised upon the Council owning the freehold of the land which forms the basis of the Scheme. Amendment will be required if the freehold land is not in the Council's ownership at the date of entry into this Agreement.

² Recital B assumes that the affordable housing units will be newly constructed. If this is not the case, this clause will be amended accordingly.

2.3.2 the Public Sector Subsidy in respect of each Scheme may not exceed an amount equal to the Final Scheme Costs in respect of such Scheme; and

2.3.3 the Dwellings must be used and continue to be used only for the Agreed Purposes.

2.4 All grant funding under this Agreement is subject to the provisions of the Housing Act 1996 and the Housing and Regeneration Act 2008 (in each case to the extent applicable) and any determinations made under such provisions by the Corporation prior to 1 December 2008 and by the Agency and/or the Regulator after that date.

2.5 The Dwellings provided with the benefit of the Agreed Grant shall be deemed to have been provided with public money for the purposes of Section 180 of the Housing Act and Regeneration Act 2008 (or, for the period prior to that provision coming into force, sections 16 and 16A of the Housing Act 1996).

3 **Payment of grant**

3.1 The Council shall notify the Agency in writing in respect of each Scheme when it considers that all of:

3.1.1 the First Tranche Conditions Precedent; or

3.1.2 the Second Tranche Conditions Precedent;

have been satisfied in respect of the relevant Scheme and shall make an application for the First Tranche Grant or Second Tranche Grant (as the case may be) to be paid to it.

3.2 Save as hereinafter provided the Agency shall subject to being satisfied that the First Tranche Conditions Precedent or the Second Tranche Conditions Precedent (as the case may be) have been properly fulfilled pay to the Council:

3.2.1 the First Tranche Grant within ten (10) Business Days of the First Drawdown Date; or

3.2.2 the Second Tranche Grant within ten (10) Business Days of the Second Drawdown Date.

3.3 Unless the Agency has in its absolute discretion agreed to extend either the First Longstop Date or Second Longstop Date (as the case may be), if the First Tranche Conditions Precedent have not been satisfied in respect of any Scheme by the First Longstop Date or the Second Tranche Conditions Precedent by the Second Longstop Date (as the case may be), the Agency shall have no obligation to make any payment or further payment to the Council in respect of such Scheme whether by way of First Tranche Grant, Second Tranche Grant or otherwise.

3.4 Notwithstanding any other term of this Agreement the Agency shall have no obligation to make any payment to the Council whether by way of First Tranche Grant, Second Tranche Grant or otherwise where prior to the First Drawdown Date (in the case of the First Tranche Grant) and the Second Drawdown Date (in the case of the Second Tranche Grant):

3.4.1 a Prohibited Act has been committed by or on behalf of the Council;

- 3.4.2 the Agency becomes aware of a material breach of the Warranties which the Agency acting reasonably considers materially and adversely to impair the Council's ability to deliver the Scheme in accordance with the terms of this Agreement;
- 3.4.3 the Agency becomes aware of any material inaccuracy in any certificate or confirmation given by or on behalf of the Council pursuant to this Agreement;
- 3.4.4 the Agency becomes aware of any material and adverse changes in any of the information provided at any time by or on behalf of the Council to the Agency in respect of any Scheme which the Agency acting reasonably considers materially and adversely to impair the Council's ability to deliver the Scheme in accordance with the terms of this Agreement

PROVIDED THAT the Agency shall pay the withheld amount to the Council within ten (10) Business Days of receipt by the Agency of an undertaking from the Council on terms satisfactory to the Agency to put right or otherwise deal with the circumstance which gave rise to the Agency's withholding of payment.

- 3.5 The Council acknowledges and agrees that the Agency shall not be obliged to pay to the Council the First Tranche Grant before the Start on Site Date nor the Second Tranche Grant before the Scheme Completion Date as defined in the Scheme Details.
- 3.6 If following receipt of the certificates referred to in the Second Tranche Conditions Precedent 7 and 8 the Agency determines in respect of any Scheme that the amount of Public Sector Subsidy exceeds the Final Scheme Costs in respect of such Scheme, the Agency shall be entitled forthwith to reduce the Second Tranche Grant by such amount as is necessary to ensure that the total amount of Public Sector Subsidy in respect of the Scheme does not exceed the Final Scheme Costs.
- 3.7 If notwithstanding the issue of the certificates referred to in Condition 3.6 it is subsequently established that the amount of Public Sector Subsidy in respect of any Scheme paid to the Council in fact exceeds the Final Scheme Costs in respect of such Scheme the Council shall pay to the Agency within ten (10) Business Days of receipt of a notice so to do the Balancing Sum.
- 3.8 If:
 - 3.8.1 following receipt of the confirmation referred to in Second Tranche Condition Precedent 6 the Agency determines or is otherwise advised by the Council that the actual HQI profile for the relevant Property is less than the HQI Profile for that Property;
 - 3.8.2 following receipt of the documentation referred to in Second Tranche Condition Precedent 3 the Agency determines is advised or becomes aware of any failure in the Dwellings to meet the Required Standards;
 - 3.8.3 following receipt of the evidence referred to in Second Tranche Conditions Precedent 15 the Agency determines or is advised that the Dwellings have failed to achieve the score to which the Council committed in its Bid; or

3.8.4 following receipt of the evidence referred to in Second Tranche Condition Precedent 16 the Agency determines or is advised that the Scheme fails to meet the relevant Code for Sustainable Homes level to which it committed in its Bid;

the Agency shall be entitled (but not obliged) forthwith to reduce the Second Tranche Grant by such amount as is reasonable having regard to the relevant circumstances and if the Agency opts to reduce the Second Tranche Grant under this Condition 3.8 then it shall not be entitled to treat the failure by the Council to satisfy the relevant Second Tranche Condition Precedent as a ground for terminating the relevant Scheme under Condition 12.2.1.

3.9 The Agency may notify the Council at any time if it considers that the First Tranche Grant or the Second Tranche Grant or the Agreed Grant or any part thereof has been wrongly paid or overpaid by the Agency to the Council and if the Council does not dispute the fact of such wrongful payment or overpayment the Council shall repay to the Agency within ten (10) Business Days of a receipt of a demand for the same such amount as has been wrongfully paid or overpaid together with interest at 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 amount in question was paid to the Council until the date upon which the Agency receives the repayment required from the Council under this Condition 3.9.

3.10 If the Council disputes the fact of such wrongful payment or overpayment, the matter shall forthwith be referred for resolution in accordance with the terms of Condition 16.

3.11 Without prejudice to any other term of this Agreement, the Agency reserves the right (which right the Council expressly acknowledges and agrees) subject to Condition 3.12 to recover the Agreed Grant or any part thereof on demand from the Council in circumstances:

3.11.1 where a Prohibited Act has occurred;

3.11.2 where Agreed Grant or any part thereof has been paid to the Council on the basis of a misrepresentation by the Council;

3.11.3 where the First Tranche Grant and/or Second Tranche Grant has been paid to the Council but the Council has failed to deliver the relevant Scheme materially in accordance with the terms of this Agreement;

3.11.4 where this Agreement has been terminated by the Agency in its entirety **provided that** nothing in this Condition 3.11.4 shall entitle the Agency to recover the Agreed Grant in respect of any Delivered Scheme unless such termination arose under Conditions 12.1.1 or 12.1.2;

3.11.5 the Dwellings are not used for the Agreed Purposes unless such alternative use has been previously approved by the Agency in writing and in giving any such approval the Agency shall be entitled to act in its absolute discretion and (acting reasonably) to attach conditions to its approval; or

3.11.6 the Agreed Grant has not been used as required by Condition 2.3.1

and the Council shall repay to the Agency within 10 Business Days of such demand an amount equivalent to the Agreed Grant (or any part thereof) received by the Council together with interest at 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 Agreed Grant (or relevant part thereof) was paid to the Council until the date upon which the Agency receives the repayment required from the Council under this Condition 3.11.

- 3.12 If any of the circumstances contemplated in Conditions 3.11 (other than Condition 3.11.4 or 3.11.6) shall arise, the Agency must before exercising its rights of recovery serve written notice on the Council indicating its intention to take recovery action and if within 30 Business Days following service of such notice the Council has not given an undertaking on terms satisfactory to the Agency to put right or otherwise deal with the relevant circumstance, the Agency shall be entitled to exercise its rights of recovery.
- 3.13 Any application for the payment of First Tranche Grant or Second Tranche Grant (as the case may be) shall be made in such form as the Agency shall specify.
- 3.14 The Agency may from time to time vary the quantum of the Agreed Grant that is to be paid as First Tranche Grant and Second Tranche Grant in respect of a Scheme, save that:
- 3.14.1 the amount payable as First Tranche Grant shall never be less than fifty per centum (50%) of the Agreed Grant for that Scheme; and
- 3.14.2 the aggregate of the First Tranche Grant and the Second Tranche Grant payable to the Council in respect of a Scheme shall never exceed the amount of the Agreed Grant for that Scheme.
- 3.15 In exercising its rights under Conditions 3.8 and 4.2 the Agency will not act in a vexatious or mischievous manner.

4 Conditions precedent to the payment of agreed grant

- 4.1 Notwithstanding any other term of this Agreement, no payment of First Tranche Grant nor Second Tranche Grant (as the case may be) shall be made in respect of any Scheme unless the Agency is satisfied that each of the First Tranche Conditions Precedent or (as applicable) Second Tranche Conditions Precedent in respect of that Scheme has been satisfied and where any such First Tranche Condition Precedent or Second Tranche Condition Precedent is required to have been satisfied by a date specified in Schedule 2 that such Condition Precedent was so satisfied by such date.
- 4.2 If a Milestone Failure occurs or is in the opinion of the Agency reasonably likely to occur (having regard to the information supplied pursuant to Conditions 15.2.1 and 15.9) and such Milestone Failure is not the direct result of a Milestone Extension Event the Agency shall be entitled (but not obliged) and at its absolute discretion to:
- 4.2.1 exercise the rights described under Condition 12.5; or
- 4.2.2 agree a revised Milestone Date with the Council in which case any relevant condition of this Agreement shall apply mutatis mutandis to the revised Milestone Date;

- 4.3 Where any Milestone Failure occurs or is in the opinion of the Agency reasonably likely to occur (having regard to the information supplied pursuant to Conditions 15.2.1 and 15.9) and the Agency reasonably determines that such failure is directly caused by a Milestone Extension Event or such other circumstance as the Council could not reasonably have avoided the Agency shall subject to Condition 4.4 extend the relevant Milestone Date and associated Scheme Completion Date by such reasonable period as it considers appropriate to take account of the delay caused or reasonably likely to be caused by the Milestone Extension Event.
- 4.4 Notwithstanding any other term of this Agreement, the Agency shall not be obliged to extend the Planning Milestone Date beyond the Planning Longstop Date and in such circumstances the Agency shall be entitled to exercise in relation to that Scheme any of the rights (mutatis mutandis) set out in Conditions 4.2.1 or 4.2.2.
- 4.5 In order to facilitate the satisfaction of the Conditions Precedent the Agency shall confirm to the Council:
- 4.5.1 within fifteen (15) Business Days of receipt by it of each item of evidence referred to in First Tranche Condition Precedent 2 and each of Second Tranche Conditions Precedent 4 and 11 whether such evidence is satisfactory to it; and
- 4.5.2 within fifteen (15) Business Days of receipt by it of notification from the Council of its compliance with the requirements of Second Tranche Condition Precedent 6 whether such requirements have been complied with satisfactorily.
- 4.6 Notwithstanding any other term of this Agreement, if any of the First Tranche Conditions Precedent are not satisfied by the First Longstop Date or if any of the Second Tranche Conditions Precedent are not satisfied by the Second Longstop Date the Agency shall (unless it has agreed to extend the First Longstop Date or (at its absolute discretion) the Second Longstop Date (as applicable)) be entitled (but not obliged) and at its reasonable discretion to exercise the rights described under Condition 12.5.

5 **Council's obligations**

- 5.1 The Council shall carry out the design, construction and completion of the Scheme so that:
- 5.1.1 the Site and the Dwellings referred to in the Scheme Details fully comply with and meet all the Required Standards; and
- 5.1.2 the Works are carried out and completed in accordance with the Scheme Delivery Timetable (as amended to take into account any agreed revisions to any Milestone Dates and Scheme Completion Date) and so as to fully comply with and meet all the Required Standards.
- 5.2 The Council shall ensure that in exercising its rights and performing its obligations under this Agreement and in selecting and appointing any subcontractor (including the Service Provider) it shall at all times comply with:
- 5.2.1 all applicable Legislation;
- 5.2.2 Good Industry Practice;

- 5.2.3 the Race Equality Requirements;
 - 5.2.4 Guidance; and
 - 5.2.5 the Bid.
- 5.3 The Council must let each Dwelling on the terms of a Secure Tenancy unless it operates an Introductory Tenancy regime in which case it shall be entitled to let the Dwelling on an Introductory Tenancy where it would be in accordance with its usual practice to do so.
- 5.4 The Council shall be responsible for proving the accuracy of any facts or figures referred to in this Agreement and the Council shall prove (where requested to do so) the accuracy of any such facts or figures on an Open Book basis to the reasonable satisfaction of the Agency .
- 5.5 The Council elects to be the only client for the purposes of the CDM Regulations in respect of each and every Scheme and the Agency agrees to such election, The Council shall comply with all relevant obligations under the CDM Regulations in respect of each and any Scheme (including without limitation those of a client).
- 5.6 The parties may from time to time agree changes to the Scheme Details in respect of individual Schemes and if such changes are agreed they shall be implemented through the amendment by the Council of the relevant Scheme Details on IMS and the electronic confirmation of that amendment by the Agency through IMS.
- 5.7 Subject to any extension given by the Agency the Council shall be obliged to deliver all Dwellings which are the subject of this Agreement by the Second Longstop Date.
- 5.8 If, and to the extent, that in relation to any Scheme, Planning Permission (which is suitable for such Scheme) has not been obtained by the Council by the date of this Agreement the Council shall use all reasonable endeavours to ensure that such Planning Permission is obtained by the Planning Milestone Date and if such Planning Permission is not obtained by the Planning Longstop Date the Agency shall be entitled notwithstanding any contrary provision herein contained to exercise in relation to that Scheme any of the rights (mutatis mutandis) set out in Conditions 4.2.1 or 4.2.2.
- 5.9 The Council must:
- 5.9.1 charge the weekly rent (the Rent) for each Dwelling as set out in the Scheme Details;

[DN: The rent must be calculated by reference to and in accordance with the documents published by the Housing Corporation and respectively entitled Circular 27/01 and Circular 04/08 as updated, amended or replaced from time to time by the Regulator.]
 - 5.9.2 not except for within the first twelve months of any tenancy increase the Rent more than once in any consecutive period of twelve months;
 - 5.9.3 not increase the Rent (when compared with the Rent payable immediately before the relevant rent increase date) by more than RPI + 0.5% per annum subject to

- (a) any applicable changes in Government policy in relation to rents or rent increases in relation to Affordable Housing for Rent; or
- (b) any applicable requirements of the Regulator in relation to rents or rent increases in relation to Affordable Housing for Rent.

and the Council must comply with any such changes or requirements;

5.9.4 charge the service charge in the Scheme Details;

5.9.5

- (a) not increase the service charge for each Dwelling for services which have benefited and continue to benefit such Dwelling more than once in any consecutive 12 month period nor by more than RPI + 0.5% per annum,
- (b) comply with any applicable requirements of the Regulator in respect of service charges, and
- (c) comply with any change in Government policy about the increase of service charge that affect Dwellings funded under this Agreement.

5.10 The Council must keep the Property insured with a reputable insurance office for the Full Reinstatement Cost against loss or damage by the Insured Risks.³

5.11 The Council must maintain or procure that any contractor maintains full and proper insurances in respect of all works undertaken in carrying out the Works and all unfixed goods and materials in connection with such works for in every case the full reinstatement or replacement costs of them from time to time including professional fees.

5.12 The Council will be deemed to have fulfilled its obligations under Condition 5.10 even if the insurance is subject to reasonable excesses exclusions and conditions.

5.13 The Council will not be obliged under this Condition 5 to effect any insurance against a peril which:

5.13.1 is for the time being uninsurable; or

5.13.2 can only be insured at a premium that (in the reasonable opinion of Agency) is excessive.

5.14 The Council will give to the Agency within 10 Business Days of a written request for the same a copy of the insurance policies (or other evidence acceptable to the Agency acting reasonably from the insurers of the terms of the insurance) required under this Condition 5.

5.15 The Council will promptly give written notice to the Agency of any changes made to the insurance under this Condition 5.

³ Insurance provisions may need to be amended to reflect local authority insurance arrangements.

- 5.16 At the request of the Agency the Council will give the Agency a copy of the receipt for the payment of the last premium or other evidence acceptable to the Agency acting reasonably that the insurance required under this Condition 5 is up-to-date and that there is no outstanding premium.
- 5.17 Following damage to or destruction of:
- 5.17.1 the Property by any of the Insured Risks; or
- 5.17.2 any works forming part of the Works or any material or goods required to undertake such works;
- the Council will diligently apply (or procure the application of) the proceeds of the insurance covering reinstatement, rebuilding or replacement costs for those purposes so as to achieve reinstatement, rebuilding or replacement as soon as reasonably practicable and will make up any shortfall out of its own monies.
- 5.18 If the Property is substantially damaged or destroyed the Agency may not object to the reinstatement or rebuilding resulting in Property that is not identical to the Property immediately before the damage or destruction so long as the Property (as reinstated or rebuilt) is of equivalent or better standard and affords amenities that are not inferior to or deficient from those immediately before the damage or destruction.
- 5.19 If the whole or any part of the Property cannot be effectively reinstated within three years of the date of destruction or damage then the obligations of the Council in Condition 5.17 will be terminated in relation to the whole or part of the Property affected on payment of the Agency's Proportion of the insurance proceeds applicable to the part affected.
- 5.20 The amount of the insurance payable to the Agency under Condition 5.19 may be:
- 5.20.1 agreed; or
- 5.20.2 determined in accordance with Condition 16.
- 5.21 Until paid the amount of the insurance payable to the Agency under Condition 5.19 shall be a debt owed by the Council to the Agency.
- 5.22 The Council must not do or permit or suffer to be done anything which may render any policy or policies of insurance required under this Condition 5 void or voidable.
- 5.23 The Council must:
- 5.23.1 use all reasonable endeavours to comply and to procure that its contractors comply with the terms of the Employment and Apprenticeships Statement; and
- 5.23.2 provide the Agency with such information as the Agency may reasonably require from time to time to monitor compliance with Condition 5.23.2 including but without limitation information on;⁴
- (a) the number of employment or training opportunities created in connection with the Scheme; and

⁴ The Agency anticipates monthly reports.

- (b) the number of apprenticeships offered at the Scheme.

6 Independent certification of works

The Council must:

- 6.1 appoint a competent, reputable and financially sound employer's agent in relation to the Scheme;
- 6.2 ensure that the terms of the Employer's Agent Appointment (amongst other things):
- 6.2.1 require the Employer's Agent to inspect all of the Dwellings within a Scheme and to confirm whether they meet the Required Standards and if they do not to specify why and how they do not;
 - 6.2.2 do not absolve the Employer's Agent from a duty to exercise independent skill and judgement in the performance of its obligations;
 - 6.2.3 include an obligation on the Employer's Agent to exercise and to continue to exercise the reasonable skill, care and diligence reasonably to be expected of a professional, competent and experienced employer's agent in performing its duties
 - 6.2.4 require the Employer's Agent to maintain professional indemnity insurance in relation to its duties under the Employer's Agent Appointment with a reputable insurer of at least five million pounds (£5,000,000) for each and every claim unless otherwise agreed by the Agency acting reasonably and having regard to the professional indemnity Insurance market at the relevant time, such insurance to be kept in force throughout the entire period that the Employer's Agent may have liability for any breach of the Employer's Agent Appointment for negligence in relation to each or any Scheme provided that such insurance continues to be available in the market on reasonable terms and at commercially reasonable premium rates to consultants of a similar size and financial standing to the Employer's Agent; and
 - 6.2.5 require the Employer's Agent to provide a collateral warranty executed as a deed in favour of the Agency on terms approved by the Agency (acting reasonably) and a certified copy of the Employer's Agent Appointment within ten (10) working days (or such longer period as the Agency, acting reasonably, may agree) of the date of the Employer's Agent appointment to the Scheme **provided always** that neither the collateral warranty nor the professional appointment shall include net contribution clauses, caps on liability or fair share wording.
- 6.3 ensure that the Employer's Agent acts in an independent capacity in performing the obligations in Condition 6.2;
- 6.4 ensure the due performance and observance of the obligations and duties of the Employer's Agent in accordance with the Employer's Agent Appointment.

7 Council's warranties and undertakings

- 7.1 The Council warrants to the Agency on the date hereof and on each day until and including the date the Agency pays the Second Tranche Grant to the Council in the terms set out in Schedule 3.
- 7.2 Each of such warranties 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.
- 7.3 All warranties, representations, undertakings, indemnities and other obligations made, given or undertaken by the Council in this Agreement are cumulative and none shall be given a limited construction by reference to any other.
- 7.4 The Agency will take all reasonable steps to mitigate any Losses incurred by it as a result of any breach of any of the Warranties.

8 **Council's due diligence**

- 8.1 The Council shall, subject to the terms of this Agreement, be deemed to have:
- 8.1.1 satisfied itself as to the nature and extent of the risks assumed by it under this Agreement; and
- 8.1.2 gathered all information necessary to perform its obligations under this Agreement and other obligations assumed.

9 **Services**

- 9.1 Where the Services are or are to be provided to the Dwellings within a Scheme by a Service Provider the Council must ensure that:
- 9.1.1 the Service Provider is an Accredited Manager;
- 9.1.2 suitable arrangements are in place to ensure that the Services are continuously provided to the Dwellings by an Accredited Manager notwithstanding any termination or suspension of the Management Agreement;
- 9.1.3 the effect of the Management Agreement is to require the Service Provider to keep the Dwellings in good structural and decorative order and to ensure that the Services are provided in accordance with Good Industry Practice and Guidance and to no less a standard than that provided by the Council to its other tenants.
- 9.2 Where the Council is providing the Services it must ensure that the Dwellings are kept in good structural and decorative order and that the Services are provided in accordance with Good Industry Practice and Guidance and to no less a standard than that provided by the Council to its other tenants.

10 **Change in information supplied**

The Council shall notify the Agency immediately where there is or has been any material change to the information supplied to the Agency in its response to Section 2 of the Pre-Qualification Questionnaire (Financial and Commercial Standing).

11 **Disposal of Property and payments on disposal**

11.1 Notwithstanding the terms of the Deed of Covenant the Council shall not prior to the Effective Date dispose of any part of the Property without the prior written consent of the Agency (such consent not to be unreasonably withheld or delayed).

11.2 For the purposes of Condition 11.1 it shall:

11.2.1 not be reasonable for the Agency to withhold consent to any Excepted Disposal;

11.2.2 be reasonable for the Agency to withhold consent where the effect of the disposal would be to prevent the Council from delivering the relevant Scheme in accordance with the terms of this Agreement.

11.3 In giving consent under Condition 11.1 the Agency may (at its absolute discretion) do any or all of the following:

11.3.1 otherwise than in respect of an Excepted Disposal reduce the amount of Agreed Grant or any tranche thereof by such amount as the Agency considers appropriate if the proposed disposal will prevent the Council from delivering the relevant Scheme in accordance with the terms of its Bid;

11.3.2 otherwise than in respect of an Excepted Disposal require the repayment of all or part of any Grant Tranche paid in respect of the Scheme to which the proposed disposal relates if in the Agency 's opinion the proposed disposal will prevent the Council from delivering the relevant Scheme to a material extent; or

11.3.3 impose reasonable pre-conditions upon the giving of its consent.

11.4 If the Council disposes of some or all of the Property within a Scheme (other than by way of an Excepted Disposal) without or in breach of the consent referred to in Condition 11.1:

11.4.1 the Agency shall be entitled to exercise its rights under Condition 12.2.3; and

11.4.2 the Council shall on demand repay such amount of Agreed Grant as it has received in respect of the relevant Scheme together with interest thereon at the rate and on the terms set out in Condition 3.11.

11.5 After the Effective Date the Council may subject to and in accordance with the terms of the Deed of Covenant and Conditions 11.6 to 11.8 dispose of the Property.

11.6 Subject to Condition 11.7, on any disposal of a Dwelling that is not:

11.6.1 a Letting; or

11.6.2 a disposal of an estate or interest that arose on a disposal under Condition 11.6.1; or

the Council will pay the Agency's Proportion (and not the Agency's Surplus) plus the repayment of the Attributable Grant to the Agency within 15 Business Days of a demand from the Agency.

11.7 On any disposal that is not a Letting of:

11.7.1 any Dwelling used as Affordable Housing for Rent (whether the Dwelling is occupied or not) which is to continue to be used as Affordable Housing for Rent following such disposal; or

11.7.2 any interest in the reversion to any leasehold interest granted as a result of the exercise of a Right to Acquire or Right to Buy;

the Council will pay the Agency's Surplus (and not the Agency's Proportion) to the Agency within 15 Business Days of a demand from the Agency.

11.8 All measurements of internal floor space to be undertaken pursuant to Annexure 3 and/or in relation to any definitions contained in this Agreement or annexure hereto shall be measured by reference to the Net Internal Area as defined in and otherwise in accordance with the then current edition of the RICS Code of Measuring Practice (or as otherwise agreed by the Agency).

11.9 **State aid**

If the Agency is required pursuant to the Decision of the EC Commission published on 15 July 2005 in relation to public sector compensation granted to certain undertakings entrusted with the operation of services of general economic interest to recover any amount of overcompensation (as described in the Decision) the Agency will be entitled to recover any such amount from the Council in addition to any Agency's Proportion, repayment of Attributable Grant or Agency's Surplus already recovered by the Agency and such amounts shall be deemed to be additional to the Agency's Proportion, repayment of Attributable Grant or Agency's Surplus, as applicable.

12 **Termination**

12.1 If the Council or where applicable any senior officer thereof acting on behalf of the Council in respect of this Agreement:

12.1.1 commits a Prohibited Act (and in the case of a senior officer in respect of which the Council has not initiated gross misconduct proceedings) or a breach of any of the Warranties;

12.1.2 is convicted of dishonesty in relation to this Agreement;

12.1.3 experiences a change in its financial or commercial circumstances of the type contemplated in Condition 10 which in the opinion of the Agency would materially and adversely affect the Council's ability to comply with the terms of this Agreement;

12.1.4 is subject to a direction made by the Secretary of State under Section 15 Local Government Act 1999 which would in the opinion of the Agency have a material and adverse affect on the Council's ability to discharge its obligations under the Agreement;

then in any such circumstances the Agency may subject to Condition 12.3 (if it so decides) exercise the rights described in Condition 12.4.

- 12.2 If:
- 12.2.1 the Council fails to satisfy any of the Conditions Precedent in respect of any Scheme;
 - 12.2.2 the Agency becomes aware of any material and adverse change in any of the information provided to it at any time by or on behalf of the Council in respect of any Scheme which the Agency acting reasonably considers materially and adversely to impair the Council's ability to deliver the Scheme in accordance with the terms of this Agreement;
 - 12.2.3 during the period prior to the Effective Date disposes of the Property without or in breach of the consent referred to in Condition 11.1;
 - 12.2.4 the Council fails to satisfy the First Tranche Conditions Precedent by the First Longstop Date or the Second Tranche Conditions Precedent by the Second Longstop Date; or
 - 12.2.5 the Agency becomes aware of any material inaccuracy in any certificate or confirmation given by or on behalf of the Council pursuant to this Agreement or in any opinion given in satisfaction of First Tranche Condition Precedent 7;
- then in such circumstances the Agency may subject to Condition 12.3 (if it so decides) exercise the rights described in Condition 12.5;
- 12.3 If the Council commits a material and adverse breach or any breach which in the Agency's opinion when taken with previous breaches becomes material and adverse of any of its obligations under this Agreement (including those referred to in Conditions 12.1 or 12.2) the Agency may serve notice of such breach upon the Council and if within a period of thirty (30) Business Days following service of such notice the breach has not been remedied or where so permitted by the Agency (acting reasonably) the Council has not given an undertaking on terms satisfactory to the Agency to remedy the breach within a period acceptable to the Agency or if it becomes apparent that the breach is incapable of remedy either within such period or at all the Agency shall be entitled to terminate this Agreement on giving not less than ten (10) Business Days' notice.
- 12.4 In the event of the occurrence of any one or more of the circumstances described in Condition 12.1 the Agency may forthwith and without any liability to the Council terminate the whole of this Agreement.
- 12.5 In the event of the occurrence of any one or more of the circumstances described in Condition 12.2 the Agency may forthwith and without any liability to the Council but without determining the whole of this Agreement terminate the Agreement insofar as it relates to the Scheme or Schemes in respect of which the relevant circumstance or circumstances has or have occurred.
- 12.6 In the event that this Agreement is terminated in its entirety (but without prejudice to any of the Agency's other rights or remedies at law or in equity) the Council shall:
- 12.6.1 on demand from the Agency pay all costs and expenses properly and reasonably incurred by the Agency in respect of entry into this Agreement and

all actions taken by the Agency in respect of this Agreement up to the date of termination; and

12.6.2 repay to the Agency within ten (10) Business Days of the Agency's demand an amount equivalent to that of any Grant Tranche already paid together with interest at 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 relevant Grant Tranche was paid to the Council's conveyancer until the date upon which the Agency receives the repayment of the relevant Grant Tranche.

12.7 Where the Agency purports to terminate this Agreement in accordance with this Condition 12 and the Council disputes the Agency's entitlement to such exercise of its right to terminate, the Council may refer the matter within five (5) Business Days of receiving notice of the Agency's purported termination to the Dispute Resolution Procedure for determination and the time periods set out in this Condition 12 shall be suspended and this Agreement shall continue until such determination is made.

12.8 Following determination of the matter referred to the Dispute Resolution Procedure under Condition 12.7 where:

12.8.1 the Agency is entitled to terminate, the unexpired time periods (if any) in this Condition 12 shall continue to run from the date of the receipt of the determination and this Agreement shall terminate on the expiry thereof; or

12.8.2 the Agency is not entitled to terminate, any notice to terminate relating to such determination shall be withdrawn and this Agreement shall continue.

13 **VAT**

The payment of Agreed Grant or any part thereof hereunder by the Agency to the Council shall be regarded as inclusive of any Value Added Tax chargeable thereon.

14 **Information and confidentiality**

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

14.2 Each Party agrees to treat all Confidential Information belonging to the other as confidential and not to disclose such Confidential Information or any other confidential information relating to the Agency or Council (as the case may be) 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.

14.3 The obligations of confidence referred to in Condition 14.2 shall not apply to any Confidential Information which:

14.3.1 is in, or which comes into, the public domain otherwise than by reason of a breach of this Agreement or of any other duty of confidentiality relating to that information; or

- 14.3.2 is obtained from a third party without that third party being under an obligation (express or implied) to keep the information confidential; or
 - 14.3.3 is lawfully in the possession of the other Party before the date of this Agreement and in respect of which that Party is not under an existing obligation of confidentiality; or
 - 14.3.4 is independently developed without access to the Confidential Information of the other Party.
- 14.4 Each Party will be permitted to disclose Confidential Information to the extent that it is required to do so:
- 14.4.1 to enable the disclosing party to perform its obligations under this Agreement; or
 - 14.4.2 by any applicable law or by a court, arbitral or administrative tribunal in the course of proceedings before it including without limitation any requirement for disclosure under FOIA, EIR or the Code of Practice on Access to Government Information; or
 - 14.4.3 by any regulatory body (including any investment exchange) acting in the course of proceedings before it or acting in the course of its duties; or
 - 14.4.4 in order to give proper instructions to any professional adviser of that Party who also has an obligation to keep any such Confidential Information confidential.
- 14.5 Each Party shall ensure that all Confidential Information obtained by it under or in connection with this Agreement:-
- 14.5.1 is given only to such of its employees, professional advisors or consultants engaged to advise it in connection with this Agreement as is strictly necessary for the performance of this Agreement and only to the extent necessary for the performance of this Agreement;
 - 14.5.2 is treated as confidential and not disclosed (without the other Party' s prior written approval) or used by any such staff or professional advisors or consultants otherwise than for the purposes of this Agreement;
 - 14.5.3 where it is considered necessary in the opinion of the other Party, the relevant Party shall ensure that such staff, professional advisors or consultants sign a confidentiality undertaking before commencing work in connection with this Agreement.
- 14.6 Nothing in this Condition 14 shall prevent either Party from:
- 14.6.1 disclosing any Confidential Information for the purpose of:
 - (a) the examination and certification of its accounts; or
 - (b) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Agency has used its resources; or

14.6.2 disclosing any Confidential Information obtained from the other Party:

- (a) to any other department, office or agency of the Crown; or
- (b) to any person engaged in providing any services to such Party for any purpose relating to or ancillary to this Agreement or any person conducting an Office of Government Commerce gateway review;

provided that in disclosing information under Condition 14.6.2(a) or 14.6.2(b) the disclosing Party 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.

14.7 Nothing in this Condition 14 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of this 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.

14.8 The Parties to this Agreement are FOIA Authorities and:

14.8.1 are subject to legal duties which may require the release of information under FOIA and / or EIR; and

14.8.2 FOIA Authorities may be under an obligation to provide Information subject to a Request for Information.

14.9 The FOIA Authority in receipt of or to receive the RFI ("Relevant FOIA Authority") shall be responsible for determining in its absolute discretion whether:

14.9.1 any Information is Exempted Information or remains Exempted Information; and/or

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

and in no event shall any party, other than the Relevant FOIA Authority, respond directly to a RFI except to confirm receipt of the RFI and that the RFI has been passed to the Relevant FOIA Authority unless otherwise expressly authorised to do so by the Relevant FOIA Authority.

14.10 Subject to Condition 14.11 below, each Party acknowledges that the Relevant FOIA Authority may disclose Information:

14.10.1 without consulting the other; or

14.10.2 following consultation with the other party and having taken (or not taken, as the case may be) its views into account.

14.11 Without in any way limiting Conditions 14.9 and 14.10, in the event that the Relevant FOIA Authority receives a RFI, the Relevant FOIA Authority will, where appropriate, as soon as reasonably practicable notify the other Party.

14.12 Each party will assist and co-operate 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 and sub-contractors will), at their own cost:

- 14.12.1 transfer any RFI received to the Relevant FOIA Authority as soon as practicable after receipt and in any event within two Working Days of receiving a request for information;
 - 14.12.2 provide all such assistance as may be required from time to time by the Relevant FOIA Authority and supply such data or information as may be requested by the Relevant FOIA Authority;
 - 14.12.3 provide the Relevant FOIA Authority with any data or information in its possession or power in the form that the Relevant FOIA Authority requires within five Working Days (or such other period as the Relevant FOIA Authority may specify) of the Relevant FOIA Authority requesting that Information;
 - 14.12.4 permit the Relevant FOIA Authority to inspect any records as requested from time to time.
- 14.13 Nothing in this Agreement will prevent the Relevant FOIA Authority from complying with any valid order, decision, enforcement or practice recommendation notice issued to it by the Information Commissioner under FOIA and / or EIR in relation to any Exempted Information.
- 14.14 The obligations in this Condition 14 will survive the expiry or termination of this Agreement for a period of 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.
- 14.15 The Council warrants represents and undertakes that it has obtained all and any necessary registrations notifications and consents required by the DPA to process Personal Data for the purposes of performing its obligations under this Agreement and undertakes at all times during the currency of this Agreement to comply with the DPA in processing all Personal Data in connection with this Agreement.

15 **Monitoring and reporting**

- 15.1 The Council shall with effect from and including the first Quarter Date after the date of this Agreement and until the Effective Date has passed submit a report (the **Quarterly Report**) to the Agency ten (10) Business Days before each Quarter Date.
- 15.2 The Quarterly Report shall address the following issues in respect of each Scheme, as appropriate to that quarter:
- 15.2.1 progress against any Milestone Dates including any anticipated delays in achieving any Milestone Date;
 - 15.2.2 reasons for, and actions to mitigate, any delays;
 - 15.2.3 any health and safety issues;
 - 15.2.4 any Significant Event;

- 15.2.5 any breach of any term or warranty of this Agreement or any agreement referred to herein;
 - 15.2.6 any change in the financial standing of the Council for the purposes of Condition 12.1.4;
 - 15.2.7 any matter or event which would entitle the Agency to terminate this Agreement in whole or in part;
 - 15.2.8 the receipt by the Council of any Public Sector Subsidy (excluding for the purposes of this Condition 15 the Agreed Grant) or guarantee of it or offer of the same in respect of any Scheme; and
 - 15.2.9 any other issue requested on reasonable notice by the Agency (including without limitation at a previous meeting).
- 15.3 Within ten (10) Business Days of receipt of the Quarterly Report, the Agency shall notify the Council as to whether it considers (acting reasonably) that a meeting is necessary or desirable to discuss any item arising out of such Quarterly Report and such notification shall include an agenda for such meeting.
- 15.4 Where the Agency fails to respond within ten (10) Business Days there shall be deemed to be no requirement for a meeting.
- 15.5 The Agency may also call a meeting with the Council at any time provided that the Agency:
- 15.5.1 gives reasonable prior written notice of such meeting; and
 - 15.5.2 includes with the notice (or circulates within ten (10) Business Days of the notice) an agenda for such meeting.
- 15.6 The Agency and the Council shall use all reasonable endeavours to ensure that any representatives at any meeting held pursuant to this Condition 15 have the necessary authority and knowledge to deal with the items on the agenda for such meeting.
- 15.7 Subject to the prior approval of the other party (such approval not be unreasonably withheld) either party may request that additional persons attend a meeting to provide detailed or particular advice or information.
- 15.8 Save as otherwise agreed between the parties, any meeting under this Condition 15 shall be minuted by the Council and such minutes shall be distributed within ten (10) Business Days following the meeting to the Agency and any other attendee.
- 15.9 The Council must update the "Scheme Events" data screen within IMS with any proposed changes on a monthly basis.

16 **Dispute resolution**

16.1 All disputes and differences arising out of or in connection with this Agreement (a **Dispute**) shall be resolved pursuant to the terms of this Condition 16.

16.2 **Negotiation**

- 16.2.1 In the event that the Council or the Agency consider that a Dispute exists, such party shall serve a notice upon the other party (a **Notice of Dispute**) giving brief details of the Dispute and in the first instance the parties shall use their reasonable endeavours to resolve such Dispute amicably and in good faith and in accordance with this Condition 16.2.
- 16.2.2 Representatives of the parties shall meet within five (5) Business Days (or such other longer period not exceeding twenty (20) Business Days as the parties may agree) of receipt of a Notice of Dispute.
- 16.2.3 Where either no representatives of both parties are available to meet within the period set out in Condition 16.2.2 or the representatives fail to agree a unanimous resolution of the Dispute at such meeting, the Dispute shall be referred to the chief executives (or nominated deputies) of the Council and the Agency (the **Chief Executives**).
- 16.2.4 The Chief Executives shall meet within ten (10) Business Days (or such other longer period not exceeding twenty (20) Business Days as the parties may agree) of such referral to attempt to resolve the Dispute. Any unanimous resolution of the Chief Executives shall be recorded in writing and signed by them and shall be final and binding unless the parties agree otherwise.
- 16.2.5 If the Dispute remains unresolved after ten (10) Business Days following referral to the Chief Executives, such Dispute may be referred:
- (a) to an Adjudicator in accordance with Condition 16.3;
 - (b) in the case of Disputes in relation to matters described in Conditions 16.4.1(a) – 16.4.1(e) to Expert Determination in accordance with Condition 16.4; or
 - (c) in the event that such Dispute is not referred to an Adjudicator or to Expert Determination, a party may refer such Dispute to the Courts in accordance with Condition 16.3.6.

16.3 **Adjudication**

- 16.3.1 Save in respect of a Dispute in relation to matters described in Conditions 16.4.1(a) - 16.4.1(e) either party (the **Referring Party**) may give the other party (the **Recipient Party**) written notice requiring adjudication (a **Notice of Adjudication**) and identifying the Dispute in respect of which adjudication is required. The Adjudicator shall be selected in accordance with Condition 16.3.2 below.
- 16.3.2 The parties shall endeavour to secure the appointment of the Adjudicator within five (5) Business Days of the Notice of Adjudication. Where the parties fail to agree on the identity of an Adjudicator within such period, the Adjudicator shall be nominated by the Chairman of TeCSA following application by either of the parties and the Chairman of TeCSA shall endeavour to secure the appointment of the Adjudicator within ten (10) Business Days from the Notice of Adjudication.

- 16.3.3 The TeCSA Adjudication Rules (as amended from time to time, including any rules issued by any successor bodies) shall apply to any adjudication, including for the avoidance of doubt with regard to the summary enforcement of the Adjudicator's decision.
- 16.3.4 All information, data or documentation disclosed or delivered by a party to the Adjudicator in consequence of or in connection with his appointment as Adjudicator shall be treated as confidential. The Adjudicator's appointment shall provide that the Adjudicator shall not, save as permitted by Condition 14, disclose to any person or company any such information, data or documentation and all such information, data or documentation shall remain the property of the party disclosing or delivering the same and all copies shall be returned to such party on completion of the Adjudicator's work.
- 16.3.5 If any party is dissatisfied with or otherwise wishes to challenge the Adjudicator's decision made in accordance with Condition 16.3 then any such party may (within forty (40) Business Days of receipt of the Adjudicator's decision) give notice to the other party that it is dissatisfied (a **Notice of Dissatisfaction**) with that decision and reserves the right to commence proceedings and in the absence of notice no such proceedings may be commenced, the requirement for such a Notice of Dissatisfaction being a strict condition precedent to the ability to commence proceedings.
- 16.3.6 Any Dispute in relation to which a Notice of Dissatisfaction is given or which is not resolved by negotiation or which is not referred to an Adjudicator or to Expert Determination shall be finally determined by the Courts of England and Wales.

16.4 **Expert Determination**

- 16.4.1 Where any Dispute relates to:
- (a) whether the valuation methodology used by the Council to determine the Final Scheme Costs is appropriate and consistent with the nature of the Works and the Scheme;
 - (b) whether the Milestones have been met;
 - (c) whether a change in the financial or commercial standing of the Council would materially affect the Council's ability to comply with its obligations;
 - (d) whether the Council has fully complied with the Open Book obligations;
or
 - (e) whether the Agreed Grant exceeds the Final Scheme Costs

such Dispute shall be referred to a sole expert (an **Expert**) for determination (**Expert Determination**) in accordance with the provisions of this Condition 16.4 by either party in notice in writing to the other party (a **Notice of Expert Determination**).

- 16.4.2 The Expert shall be drawn from members of the relevant body or institution satisfying the required criteria as set out below:
- (a) for Disputes relating to the matters described in Conditions 16.4.1(a) or 16.4.1(b), the Expert shall be a member of the Royal Institute of Chartered Surveyors of not less than ten (10) years standing;
 - (b) for Disputes relating to the matters described in Conditions 16.4.1(c), 16.4.1(d) or 16.4.1(e), the Expert shall be a fellow of the Institute of Chartered Accountants in England and Wales of not less than ten (10) years standing.
- 16.4.3 The Notice of Expert Determination shall identify the Dispute in respect of which determination by an Expert is required and identify by name at least one but no more than three persons whom that party proposes as the Expert.
- 16.4.4 The recipient of the Notice of Expert Determination (the **Notified Party**) shall within five (5) Business Days of receipt::
- (a) give written acknowledgement of receipt;
 - (b) indicate concurrence in one of the proposed Experts or propose at least one and not more than three alternatives; and
 - (c) identify any other Dispute which is referable for determination by the Expert which it wishes to be determined jointly and concurrently with that Dispute to which the Notice of Expert Determination applies.
- 16.4.5 If the party serving the Notice of Expert Determination (the **Notifying Party**) does not receive such acknowledgement within five (5) Business Days of the date of the Notice of Expert Determination, provided that the Notifying Party has proof of actual receipt of such notice by the Notified Party, the Notifying Party shall appoint the Expert, being the proposed Expert or any one of the proposed Experts named in the Notice of Expert Determination.
- 16.4.6 If the parties agree the Expert, the Notifying Party shall immediately thereafter appoint such agreed Expert.
- 16.4.7 In default of appointment of an Expert pursuant to this Condition 16.4 within five (5) Business Days of the date of the Notice of Expert Determination the Notifying Party shall apply to the president for the time being of the relevant body or institution named in Condition 16.4.2 to nominate the Expert satisfying the required criteria. A nomination made by the person or persons from time to time appointed by such president or such body or institution to make nominations of experts or adjudicators shall be as valid as if made by the president himself. The Notifying Party shall use all reasonable endeavours to procure that an Expert appointed pursuant to such nomination is appointed and able to commence the referral within ten (10) Business Days of the date of the Notice of Expert Determination.
- 16.4.8 The ability of any proposed Expert to accept an appointment and commence the referral forthwith and to act in accordance with the time limits set out in this

Condition 16.4 shall be an important factor in the selection of the Expert whether by agreement of the Parties or by presidential nomination and the parties shall use all reasonable endeavours to procure compliance with this Condition 16.4.

- 16.4.9 The Notifying Party shall use all reasonable endeavours to procure that the Expert confirms acceptance of the appointment in writing to both parties immediately upon acceptance of the appointment.
- 16.4.10 The Notifying Party shall ensure that the Expert is provided with a certified copy of this Condition 16.4 as soon as reasonably practicable and in any event no later than three (3) Business Days after receipt of the Expert's confirmation of the acceptance of the appointment.
- 16.4.11 The parties acknowledge and agree and shall procure compliance by the Expert such that:
- (a) the Expert shall act as expert and not as arbitrator;
 - (b) the Expert shall, subject to this Condition 16.4 and the agreement of the parties, conduct his determination in such manner as he shall in his sole and unfettered discretion see fit, provided that he acts impartially and, without limitation:
 - i all written communications to and from the Expert and any party shall be copied to the other party;
 - ii the Expert shall not conduct any oral hearing or otherwise discuss the issues in Dispute other than in the presence of both parties; and
 - iii the Expert may act inquisitorially and may take the initiative in ascertaining the facts and the law relevant to the Dispute;
 - (c) the Expert shall deliver a written reasoned final determination within twenty (20) Business Days of accepting the appointment, or such longer period as the parties may agree. The Expert may, with the consent of the Notifying Party extend such period of twenty (20) Business Days by not more than ten (10) Business Days;
- 16.4.12 If the Expert shall die, or refuse to act or become incapable of acting, the parties, acting in accordance with this Condition 16.4, may appoint a new expert to act as Expert, and any Expert so appointed shall conduct the reference ab initio.
- 16.4.13 The parties shall each bear their own costs and shall share the fees and expenses of the Expert equally unless the Expert shall otherwise determine. The Expert may so determine if the party ordered to pay any fees, costs or expenses acted improperly, unreasonably or negligently in bringing or opposing the reference or in the manner in which it conducted the same.

16.4.14 Any Expert Determination shall be final and binding as between the Parties, and shall not be the subject of appeal, review, variation, setting aside or other challenge by either Party save on grounds of fraud or manifest error.

16.4.15 All matters certified or otherwise determined by any Expert in accordance with this Condition 16.4 shall be performed or otherwise carried into effect on the date determined by the Expert or in default of any such determination not later than five (5) Business Days after the date of the determination of such Expert. Where the Expert certifies or otherwise determines that a sum (in this Condition 16.4.15 only the Amount) is due from one party (in this Condition 16.4.15 only the Payer) to the other party (in this Condition 16.4.15 only the Payee) the amount shall not become due and payable as a debt until five (5) Business Days after the day on which the Payee duly demanded the same in writing. The Amount shall bear interest at a rate of 2% above the Bank of England base rate from time to time from the date the same becomes due and payable until and including the date of payment, and shall be recoverable by action at the suit of the Payee.

17 Intellectual property

17.1 Subject to Condition 17.5 the Council hereby grants (to the extent that it is lawfully able to do so) to the Agency a perpetual, transferable, non-exclusive, royalty-free licence (carrying the right to grant sub-licences) to copy and use (from computer disk or otherwise) all and any Intellectual Property, drawings, reports, specifications, calculations and other documents provided by the Council and which are or become owned by the Council and which relate to the Schemes, for any purpose relating to this Agreement the exercise of the Agency's rights against any successor in title to the Dwellings and for the purposes of the dissemination of best practice.

17.2 To the extent that any of the data, materials and documents referred to in Condition 27.1 are generated by or maintained on a computer or in any other machine readable format, the Council shall if requested by the Agency procure for the benefit of the Agency at the cost of the Council the grant of a licence or sub-licence for the term of this Agreement and supply any relevant software and/or database to enable the Agency making such request to access and otherwise use such data for the purposes referred to in Condition 17.1.

17.3 Neither party shall infringe any third party's Intellectual Property in connection with this Agreement.

17.4 The Council shall fully indemnify the Agency within five (5) Business Days of demand under this Condition 17.4 against any action, claim, demand, proceeding, cost, charge or expense arising from or incurred by it by reason of any infringement or alleged infringement of any Intellectual Property rights of any third party by the activities described in this Condition 17, any breach by the Council of this Condition 17 and against all costs and damages of any kind which the Agency may incur in connection with any actual or threatened proceedings before any court or adjudication body.

17.5 The Council shall only be entitled to revoke the licence granted to the Agency under Condition 17.1 in the following circumstances and upon the following terms:

17.5.1 on the termination of the whole of this Agreement in circumstances where no Agreed Grant has been paid to the Council; or

17.5.2 on the termination of this Agreement insofar as it relates to a particular Scheme or Schemes **provided that** nothing in this Condition 17.5.2 shall entitle the Council to revoke such licence insofar as it relates to Schemes which are not subject to such termination.

18 **Assignment**

18.1 The Council shall not be entitled to assign, transfer or novate any rights or remedies under this Agreement without the consent of the Agency **provided that** in exercising or declining to exercise its power under this Condition 18.1 the Agency will be entitled to act in its absolute discretion including with regard to any requirement that the proposed assignee provide as a precondition of such proposed assignment such form of performance bond guarantee or other document as the Agency may require having regard to the nature of the obligations to be undertaken by the proposed assignee and the general duty of the Agency to safeguard the application of public monies.

18.2 **Construction Industry Scheme**

18.2.1 The Agency will inform the Council as to whether or not it is at the date of this Agreement a Contractor and:

- (a) if it is a Contractor Conditions 18.2.3 to 18.2.11 shall apply; and
- (b) if it is not a Contractor Conditions 18.2.3 to 18.2.11 shall not apply
- (c) notwithstanding that the Agency is a Contractor, for such time as the Council is a Local Authority and the provisions of paragraphs 2.26 to 2.28 of HMRC's Booklet CIS 340 (Construction Industry Scheme) remain in effect as published at November 2008 then Conditions 18.2.2 to 18.2.11 shall not apply.⁵

18.2.2 If at any time up to the due date for final payment by the Agency under this Agreement the Agency becomes a Contractor (whether or not it has previously been a Contractor) or ceases to be a Contractor the Agency shall so inform the Council and the provisions of Conditions 18.2.3 to 18.2.11 shall or shall not apply as the case may be.

18.2.3 It is acknowledged by the Agency and the Council that the Agency shall not make any payment under or pursuant to this Agreement unless a Verification has been obtained by the Agency.

18.2.4 The Agency shall be required to use its reasonable endeavours to obtain a Verification and the Council shall provide the Agency with the information referred to in Regulation 6(2) of the 2005 Regulations.

18.2.5 Where the Agency has obtained or received a Verification or Notification that the Council is registered under FA 2004 for payment under deduction or is not registered under FA 2004:

⁵ The Construction Industry Scheme rules relate to payments made under a contract relating to construction operations. The grant agreement is capable of being construed as such a contract. Appropriate provisions have therefore been included. Condition 18.2.1(c), however, makes clear that for so long as HMRC's current guidance remains in place, the terms of Conditions 18.2.2-18.2.11 will not be applied.

- (a) at least five (5) Business Days before the final date for payment of any sum due under this Agreement the Council shall give to the Agency a statement showing the Direct Cost of Materials to be included in the payment;
 - (b) the Agency shall make the Statutory Deduction from that part of the payment which is not in respect of the Direct Cost of Materials as stated by the Council pursuant to Condition 18.2.5(a) or as estimated by the Agency 18.2.5(d);
 - (c) where the Council complies with Condition 18.2.5(a) he shall indemnify the Agency against any loss or expense caused to the Agency by any incorrect statement of the amount of Direct Cost of Materials provided by the Council pursuant to Condition 18.2.5(a);
 - (d) where the Council fails to comply with Condition 18.2.5(a), or where the Agency has reasonable grounds to believe that any statement provided pursuant to Condition 18.2.5(a) is incorrect, the Agency shall make a fair estimate of the Direct Cost of Materials to be included in the payment.
- 18.2.6 Where the Agency has obtained or received a Verification or Notification that the Council is registered for gross payment under FA 2004 the Agency shall pay any amount due without making the Statutory Deduction.
- 18.2.7 Where the Agency has obtained a Verification or Notification as referred to in Conditions 18.2.5 or 18.2.6 or a Notification under this Condition 18.2.7 and subsequently receives a Notification the Agency shall thereupon notify the Council and thereafter Conditions 18.2.5 or 18.2.6 shall apply as appropriate.
- 18.2.8 The Agency shall comply with its obligations towards the Council under Regulation 4 of the 2005 Regulations and the Council shall provide the Agency with the information referred to in 2005 Regulation 6(8) of the Regulations.
- 18.2.9 Where the Agency has made an error or omission in calculating the Statutory Deduction he may correct the error by repayment or further deduction from payments due to the Council under this Agreement (and if there are no such further payments due to the Council any overpayment by the Agency shall be reimbursed by the Council to the Agency immediately upon demand by the Agency) subject only to an instruction from HMRC to the Agency not to make such a correction.
- 18.2.10 If compliance with this Condition 18.2 involves the Agency or the Council in not complying with any other provisions of this Agreement, then the provisions of this Condition shall prevail.
- 18.2.11 The relevant procedures applicable under this Agreement to the resolution of disputes or differences between the Agency and the Council shall apply to any dispute or difference between the Agency and the Council as to the operation of this Condition 18.2 except where FA 2004 or the 2005 Regulations or any other Act of Parliament or statutory instrument, rule or order made under any Act of

Parliament provide for some other method of resolving such dispute or difference.

19 **No agency**

19.1 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.

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

20 **Exclusion of third party rights**

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

21 **Entire agreement**

21.1 This Agreement and the conditions herein contained together with the Schedules and Annexes constitute the entire agreement between the parties and may only be varied or modified in writing by agreement under the seals of the parties.

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

22 **Notices**

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

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

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

22.2.2 if delivered by the Recorded Delivery Service, three (3) Business Days after delivery including the date of postage;

22.2.3 if delivered by facsimile transmission, upon production by the sender's equipment of a transmission report indicating that the fax was sent to the fax number of the recipient in full without error **provided that** a confirmation copy is delivered by hand within 48 hours of delivery of the facsimile transmission;

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

23 **Severability**

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

24 **Cumulative rights and enforcement**

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

25 **Waiver**

25.1 The failure of any party at any one time to enforce any provision of this Agreement in no way affects its 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.

25.2 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.

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

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

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

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

26 **Public relations and publicity**

26.1 The Council shall ensure that the requirements in relation to Site signage for capital projects as published at the relevant Start on Site Date are observed and implemented in respect of each Scheme.

26.2 The Council shall:

26.2.1 notify the Agency's corporate Press Office and Communications Team (from time to time) in advance of any publicity plan, event or communication which it proposes to implement, hold or issue,

26.2.2 ensure that pro-active positive press releases issued in respect of any Scheme acknowledge in the body of their text the fact and amount of the Agency's grant contribution to such Scheme,

26.2.3 ensure that the following wording (or such other wording as the Agency may require from time to time) is included within all press releases in respect of any Scheme in the section entitled "Notes to Editors":

"The Homes and Communities Agency (Agency) is the Government's new single national housing and regeneration agency for England. It brings together the development and regeneration expertise of English Partnerships, investment functions of the Housing Corporation, and the Academy for Sustainable Communities, with major delivery programmes of Communities and Local Government.

Its role is to create opportunities for people to live in high quality, sustainable places. We provide funding for affordable housing, bring land back into productive use and improve quality of life by raising standards for the physical and social environment."

- 26.2.4 the Council must ensure that any letter or literature sent to welcome new tenants or residents of Dwellings includes the following statement (or such other statement as the Agency may require from time to time):

"Your home was jointly funded by the Homes and Communities Agency, (the new government housing and regeneration agency with responsibility for the National Affordable Housing Programme), which plans to invest over £2.5 billion each year in creating affordable homes all over England between 2008 and 2011."

27 Council's records and accounting

- 27.1 The Council shall, as and when requested by the Agency whether before or after the date of payment of the Agreed Grant or any part thereof, make available in a timely manner to the Agency where required in connection with this Agreement or the Schemes a copy of each of:

27.1.1 all data, materials, documents and accounts of any nature created, acquired or brought into existence in any manner whatsoever by or on behalf of the Council for the purposes of this Agreement; and

27.1.2 all such data, materials, documents and accounts created, acquired or brought into existence by the Council's officers, employees, agents or consultants relating to the Schemes and which have been supplied to the Council for the purposes of this Agreement.

- 27.2 The Council shall:

27.2.1 at all times maintain a full record of particulars of all the income (including Public Sector Subsidy) received and expenditure incurred by the Council in respect of the development of each Scheme;⁶

27.2.2 at all times when reasonably required to do so by the Agency, provide a summary of any of the income and expenditure referred to in Condition 27.2.1 as the Agency may reasonably require to enable it to monitor the performance by the Council of its obligations under this Agreement; and

⁶ The Councils queried whether this obligation to maintain separate books of account could be limited to the development period. The definition of Scheme relates to development so this point is covered. Nonetheless we have amended Conditions for 27.2.1 and 27.3 to make this clearer.

27.2.3 at all times provide such facilities as the Agency may reasonably require for its representatives to visit any place where the records are held and examine the records maintained under this Condition.

27.3 Compliance with the above shall require the Council to keep (and where appropriate shall procure that any Subcontractor shall keep) in respect of the development period separate books of account (from those relating to any business, activity or operation carried on by the Council and where applicable Subcontractor and which do not directly relate to any Scheme) in accordance with good accountancy practice with respect to all Schemes showing in detail:

27.3.1 income (including Public Sector Subsidy and receipts);

27.3.2 administrative overheads where directly attributed or where apportioned on a pro rata basis;

27.3.3 payments made to Subcontractors;

27.3.4 capital and revenue expenditure;

27.3.5 VAT incurred on all items of expenditure where the Council has received grant under this Agreement in respect of such VAT, including the rate of such VAT and full details of the recovery (or not) by the Council of such VAT as input tax from the HM Revenue & Customs or other competent authority;

27.3.6 any balances in any account or fund held for the purpose of servicing any debts relating to the relevant Scheme; and

27.3.7 such other item as the Agency may reasonably require to conduct (itself or through a third party) cost audits for verification of income, cost expenditure or estimated expenditure, for the purpose of any of the provisions of this Agreement

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

27.4 On the expiry of this Agreement or (if earlier) upon termination thereof, the Council shall if requested to do so deliver up to the Agency all the data, materials, documents and accounts referred to in this Condition 27 which it has in its possession, custody or control and shall procure the handing over to the Agency such data, materials, documents and accounts referred to in Condition 27.1.2 or as otherwise directed by the Agency.

27.5 The Council must for a period of ten (10) years from the date upon which it receives the Second Tranche Grant retain all of the data, documents, materials and accounts referred to in this Condition 27 and the Council may retain such data, documents, materials and accounts in electronic form only.

27.6 Without prejudice to Conditions 27.1 to 27.5 inclusive the Council will provide to the Agency or to the Regulator (where so directed by the Agency) such information as it may reasonably require from time to time including (without limitation):

27.6.1 the completion of a CORE log for all lettings and sale;

27.6.2 the submission of a Regulatory and Statistical Return (Long Form); and

27.6.3 any successor returns or requirements to those in Conditions 27.6.1 and 27.6.2;

each in such format as reasonably required by the Agency from time to time.

28 **Co-operation**

28.1 Each party undertakes to co-operate in good faith with the other to facilitate the proper performance of this Agreement and the delivery of the Schemes and in particular will (subject to Condition 28.2):

28.1.1 use all reasonable endeavours to avoid unnecessary disputes and claims against the other party;

28.1.2 not interfere with the rights of the other party (nor its employees, agents, representatives, contractors or subcontractors) in performing its obligations under this Agreement nor in any other way hinder or prevent the other party (nor its employees, agents, representatives, contractors or subcontractors) from performing those obligations **provided that** this provision shall not prevent either party from exercising its express rights under this Agreement or any other agreement in relation to the Schemes.

28.2 Nothing in Condition 28.1 shall:

28.2.1 interfere with the right of each of the parties to arrange its affairs in whatever manner it considers fit in order to perform its obligations under this Agreement and in connection with the Schemes in the manner in which it considers to be the most effective and efficient; or

28.2.2 relieve either party from any obligation contained in this Agreement.

28.3 Without prejudice to the generality of the foregoing the Council shall co-operate fully and in a timely manner with any reasonable request from time to time:

28.3.1 of any auditor (whether internal or external) of the Agency to provide documents, or to procure the provision of documents, relating to the Schemes, and to provide, or to procure the provision of, any oral or written explanation relating to the same; and/or

28.3.2 of the Agency where the Agency is required under any legislation to provide any document relating to the Schemes to any person.

29 **Governing law**

This Agreement shall be governed by and construed in accordance with the laws of England and Wales and subject to the provisions of Condition 16 the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

30 **No fetter on statutory functions**

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

31 **Survival of this agreement**

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

31.2 Insofar as any of the obligations of the Council 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.

Schedule 1

Scheme Details

| | |
|---|---|
| Scheme Name and Scheme Code | <i>[to be inserted by parties]</i> |
| Scheme Information | |
| Site Description | [Title details and title plan] |
| Scheme Description | [Number of Dwellings etc] ⁷ [Unit mix] [Affordable Housing for Rent] |
| Basic Design and Quality Standards | <i>[to be inserted by parties]</i> |
| Additional Design and Quality Standards | <i>[to be inserted by parties]</i> |
| Agreed clients group[s] | <i>[to be inserted by parties]</i> |
| Local Authority | Identity, location and code to be inserted by parties |
| Scheme Delivery Timetable (including Milestones and Milestone Dates) ⁸ | <i>[to be inserted by parties]</i> |
| Scheme Completion Date | <i>[to be inserted by parties]</i> |
| Start on Site Date | <i>[to be inserted by parties]</i> |
| Scheme Costs | <i>[to be inserted by parties]</i> |
| First Longstop Date | <i>[to be inserted by parties]</i> |
| Second Longstop Date | <i>[to be inserted by parties]</i> |

Management Arrangements

Description of proposed management arrangements *[to be inserted by parties]*

Rent Information

Starting rent (pw) [Starting [weekly] [monthly] rent calculated in

⁷ To be amended following selection of bids to ensure adequate description of the Scheme

⁸ Milestone Dates are to be agreed between the parties by reference to each Scheme but should include as a minimum dates for the following (where relevant):

- Exchange of contracts (where relevant)
- Acquisition of land (where relevant)
- Planning permission
- Start on Site
- Practical Completion

accordance with any applicable Guidance in respect of each Dwelling]

Starting Service Charge (pw)

[Starting weekly service charge]

Rent and Service Charge uplift restrictions

[To be inserted by parties]

Grant Details

Agreed Grant

£[] in respect of Affordable Housing for Rent

First Tranche Grant

[]

Second Tranche Grant

[]

Public Sector Subsidy (excluding Agreed Grant)

[To be inserted by parties]

Schedule 2
Conditions Precedent

Part 1

First Tranche Conditions Precedent

| | First Tranche Conditions Precedent | Date for Satisfaction | Notes |
|---|---|--|---|
| 1 | Each of the Milestones up to and including the Start on Site Date has been met by the Milestone Date | Milestone Date | Milestone Date may be extended in accordance with Condition 4 |
| 2 | <p>Receipt by the Agency of satisfactory evidence from the Council that</p> <p>(i) the Council is the legal and beneficial owner of the Site owning either a freehold interest or leasehold interest of at least sixty (60) years unexpired duration, and</p> <p>(ii) there are no third party rights, covenants or restrictions to which the Site is subject which would impede or prevent the development of the Dwellings or their use for the Agreed Purposes</p> | No fewer than 15 Business Days prior to the Start on Site Date | |
| 3 | Receipt by the Agency of the Deed of Covenant duly executed by the Council together with written confirmation from the Council's Solicitor by way of solicitor's undertaking that he will register the Deed of Covenant at the Land Registry within 20 Business Days of receipt of the duly dated document from the Agency, such undertaking to be in a form approved by the Agency. | On or before the Start on Site Date | |
| 4 | Provision of the following written information by the Council to | No fewer than fifteen (15) Business Days prior | |

| | First Tranche Conditions Precedent | Date for Satisfaction | Notes |
|---|--|--|--------------|
| | <p>the Agency in relation to the Council</p> <p>(a) Bank name</p> <p>(b) Bank/branch address</p> <p>(c) Bank sort code</p> <p>(d) Bank account number</p> <p>(e) Bank account name</p> | to the Start on Site Date | |
| 5 | Delivery by the Council to the Agency of a legal opinion from the Council's solicitor in the form set out in Schedule 7 | No fewer than 20 Business Days prior to the Start on Site Date | |
| 6 | Receipt by the Agency of a satisfactory Collateral Warranty together with a certified copy of a satisfactory Employer's Agent Appointment. | On or before the Start on Site Date | |

Schedule 2 (Grant Agreement)

Part 2

Second Tranche Conditions Precedent

| | Second Tranche Conditions Precedent | Date for Satisfaction | Notes |
|---|--|--|--|
| 1 | Receipt by the Agency of: (a) written confirmation from the Council that a Management Agreement has been entered into in respect of each Scheme, and (b) of evidence from the Council that the person to provide the Services to the Dwellings is an Accredited Manager | No fewer than 5 Business Days prior to the Scheme Completion Date | Only applicable if a third party is providing the Services |
| 2 | Receipt by the Agency of evidence from the Council's Solicitor that the restriction as set out in the Deed of Covenant has been registered with the Land Registry. | No fewer than fifteen (15) Business Days prior to the Scheme Completion Date | |
| 3 | Not used | | |
| 4 | Receipt by the Agency of satisfactory evidence from the Council demonstrating that (i) the Property and (ii) the Council's arrangements in respect of management, rents and service charges in relation to the Dwellings comply in all respects with the applicable Scheme Details and (where applicable) were completed in accordance with the Scheme Delivery Timetable. | Within thirty (30) Business Days after the Scheme Completion Date. | |

| | Second Tranche Conditions Precedent | Date for Satisfaction | Notes |
|---|---|--|--------------|
| 5 | Receipt by the Agency of confirmation from the Council that all of the Dwellings in the Scheme meet the standards and requirements of a building standards indemnity scheme currently approved by the Council of Mortgage Lenders. | Within thirty (30) Business Days after the Scheme Completion Date. | |
| 6 | <p>Receipt by the Agency of confirmation from the Council that the Council has:</p> <ul style="list-style-type: none"> (a) entered into the IMS all required details in respect of the Scheme, (b) completed all relevant aspects of the IMS on-line HQI assessment for the Scheme up to and including the Practical Completion stage, and (c) generated a unique HQI identifier which has been attributed to the matching Scheme in the IMS, and <p>the resulting HQI profiles for the relevant Property are equal or greater than the stated HQI profiles in the Bid for such Property</p> | Within thirty (30) Business Days after the Scheme Completion Date | |
| 7 | Receipt by the Agency of a certificate from the Council as to the final amount of Final Scheme Costs | Within thirty (30) Business Days after the Scheme Completion Date | |
| 8 | Receipt by the Agency of a certificate from the Council confirming that the amount of Public Sector Subsidy (excluding Agreed Grant) does not exceed the figure for the same set out in Schedule 1 | Within thirty (30) Business Days after the Scheme Completion Date | |

| | Second Tranche Conditions Precedent | Date for Satisfaction | Notes |
|----|--|---|--|
| 9 | <p>Receipt by the Agency of written confirmation from the Council that:</p> <p style="padding-left: 40px;">(a) the Scheme has been constructed and developed in accordance with all relevant Planning Permissions and Planning Agreements; and</p> <p style="padding-left: 40px;">(b) there are no known breaches of any such Planning Permissions or Planning Agreements.</p> | | |
| 10 | Each of the Milestones from but excluding the Start on Site Date have been met by the Milestone Date | Milestone Date | Milestone Dates may be extended in accordance with Condition 4 |
| 11 | Receipt by the Agency of satisfactory evidence from the Council demonstrating that the Council has suitable accounting systems in place to ensure ongoing compliance with Condition 27 | N/A | |
| 12 | Receipt by the Agency of written confirmation from the Council that all necessary consents, approvals, permissions and authorities (statutory or otherwise necessary to the lawful development and (where applicable) refurbishment of the Property have been obtained | Within thirty (30) Business Days after the Scheme Completion Date | |
| 13 | Not used | | |
| 14 | Receipt by the Agency of satisfactory evidence that the 2012 Construction Commitment (Affordable Housing Provider version) principles have been adopted. | Within thirty (30) Business Days after the Scheme Completion Date | |

| | Second Tranche Conditions Precedent | Date for Satisfaction | Notes |
|----|--|---|--------------|
| 15 | <p>Receipt by the Agency of satisfactory evidence that a Building for Life assessment has been carried out by an appropriately qualified assessor and that the Building for Life scores to which the Council committed in its Bid have been achieved and that such scores are equal to or greater than the minimum acceptable scores.</p> <p>For the purposes of this Second Tranche Condition Precedent 15 the minimum acceptable scores are:</p> <ul style="list-style-type: none"> - in the case of rural properties or infill street properties – 10/20; and - in the case of all other properties – 12/20 | Within thirty (30) Business Days after the Scheme Completion Date | |
| 16 | Receipt by the Agency of satisfactory evidence that the Scheme meets the Code for Sustainable Homes level to which the Council committed in its Bid and that such level is equal to or greater than Code for Sustainable Homes Level 3. | Within thirty (30) Business Days after the Scheme Completion Date | |

Schedule 3

Council's Warranties

1 Capacity of the Council

1.1 The Council is not subject and will not prior to either the First Drawdown Date or the Second Drawdown Date become subject to any other obligation (excluding its obligations under the Project Documents), compliance with which will or is likely to, have a material adverse effect on the ability of the Council to perform its obligations under this Agreement and any other Project Document.

1.2 So far as the Council 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 in a manner which has materially affected or could materially affect its ability to perform its obligations under this Agreement or any Project Document.

2 No litigation

To the best of the Council's knowledge, no claim is presently being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of the knowledge of the Council, pending or threatened against the Council or any of its assets which will or might have a material adverse effect on the ability of the Council to perform its obligations under this Agreement and any other Project Document.

3 Information provided to the Agency

3.1 All information supplied by or on behalf of the Council to the Agency or its agents or employees in connection with the Council's Bid or in the course of the subsequent negotiations was at the time of submission and as far as the Council was aware (or ought to have been aware) having made all reasonable and proper enquiries true, complete and accurate in all respects;

3.2 The Council has informed the Agency of any material change that has occurred since the date of submission of which the Council 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 any Public Sector Subsidy excluding Agreed Grant received or to be received by the Council; and

3.3 The Council is not aware of any material facts or circumstances which have not been disclosed to the Agency and which might, if disclosed materially, adversely affect the decision of anyone considering whether or not to contract with the Council.

3.4 The copies of each Project Document which the Council delivers to the Agency in accordance with the terms of this Agreement will be true and complete copies of such documents and there will not be in existence any other agreements or documents replacing or relating to any such Project Documents which are not referred to therein and which would materially affect their interpretation or application.

4 Prohibited Acts

In entering into this Agreement the Council has not committed any Prohibited Act.

5 **Local Government Act 1999**

To the best of the Council's knowledge, the Council is not subject to any direction by the Secretary of State under Section 15 of the Local Government Act 1999 nor do any circumstances exist which would entitle the Secretary of State to issue such a direction.

6 **Local Government Finance Act 1988**

No report has been made nor is the Council aware of any circumstances that would give rise to the making of a report under Section 114 (3) Local Government Finance Act 1988.

Schedule 4

Project Documents

- 1 Prospectus
- 2 Bid
- 3 [Insert details of construction related documents]
- 4 Deed of Covenant

Schedule 5

Race Equality Requirements

Racial Discrimination and the promotion of race equality

1. The Council (including its agents and employees) shall not, and shall procure that any Council Party and Service Provider shall not in connection with this Agreement or any of the Schemes referred to herein:
 - 1.1 discriminate directly or indirectly, or by way of victimisation or harassment, against any person on grounds of colour, race, nationality, or ethnic or national origins contrary to Part II (Discrimination in the field of Employment) of the Race Relations Act 1976, as amended (the **Act**); and/or
 - 1.2 discriminate directly or indirectly or by way of victimisation or harassment against any person on grounds of colour, race, nationality, or ethnic or national origins contrary to Part III of the Act (Discrimination in Other Fields);
 - 1.3 contravene Part IV of the Act (Other Unlawful Acts).
2. Where appropriate:
 - 2.1 the Council (including its agents and employees) shall, and shall procure that any Council Party (including its agents and employees) shall, for the purposes of ensuring compliance with 1.1 – 1.3 above, in relation to staff engaged in delivering the Scheme observe as far as possible the provisions of the Commission for Racial Equality's Code of Practice in Employment, including, but not limited to, those provisions recommending the adoption, implementation, and monitoring of an equal opportunities policy and the Regulator's Regulatory Code (or any successor or replacement code, standard or guidance brought into effect by the Regulator), including, but not limited to the provisions outlined in Sections 2.7, 3.2, 3.5 thereof;
 - 2.2 the Council shall and shall procure that any Council Party shall, in performing its/their obligations under this Agreement, comply with the provisions of Section 71(1) of the Act, as if they were a body within the meaning of Schedule 1A to the Act;
 - 2.3 the Council shall and shall procure that any Council Party shall, notify the Agency forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against the Council or any Council Party under the Act;
 - 2.4 where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with any matter relating to the Council's performance of its obligations under this Agreement being in contravention of the Act, the Council shall, and shall procure that any Council Party shall, free of charge:
 - 2.4.1 provide any information requested in the timescale allotted;
 - 2.4.2 attend any meetings as required and permit any of its staff to attend;
 - 2.4.3 promptly allow access to and investigation of any documents or data deemed to be relevant;

- 2.4.4 allow itself and any of its staff to appear as witness in any ensuing proceedings; and
- 2.4.5 co-operate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.

Schedule 6

Costs

Part 1

Eligible costs

Heads of expenditure

1 Acquisition

- 1.1 Purchase price of land/site (excluding irrecoverable VAT thereon).
- 1.2 Stamp Duty Land Tax on the purchase price of land/site.

2 Works

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

3 On costs

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

- 3.9 Borrowing administration charges (including associated legal and valuation fees).
- 3.10 An appropriate proportion (as agreed by the Agency) of the Council's development and administration costs.
- 3.11 Marketing costs – for sale schemes only.
- 3.12 Post-completion interest – for sale schemes only.
- 3.13 Irrecoverable VAT on the above.

4 **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.

5 **Note 2**

Some items will not qualify as Eligible Costs unless the Council 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:

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

6 **Note 3**

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

Schedule 6

Costs

Part 2

Costs which are not eligible costs

Capital costs incurred:

- 1.1 which are not eligible for grant under Section 27A Housing Act 1996;
- 1.2 on land (forming part of the total site acquired) which will not be used exclusively for housing provision purposes directly related to the Scheme;
- 1.3 on estate offices, factories, letting offices;
- 1.4 on stores (other than external storage provision required by Design and Quality Standards);
- 1.5 on medical or dental surgeries, clinics;
- 1.6 on police stations, public libraries, bus shelters;
- 1.7 on shops, restaurants, public houses, offices;
- 1.8 on transformer and other related buildings;
- 1.9 on maintenance depots, tools, plant and vehicles;
- 1.10 on garages (other than integral garages on market purchase scheme types) and greenhouses;
- 1.11 on separate commercial laundry blocks and related equipment.

Schedule 7

Form of Legal Opinion

[TO BE TYPED ON COUNCIL NOTEPAPER]

Our ref

Your ref

Date

Email address

Homes and Communities Agency
110 Buckingham Palace Road
London
SW1W 9SA

To: Homes and Communities Agency

Dear Sirs,

Legal Opinion re Grant Agreement and related matters

I refer to the proposed Grant Agreement to be entered into between [ABC Council] (the **Council**) and the Agency (the **Grant Agreement**) for the purposes of, inter alia, providing affordable housing which has been dated on or about the date hereof. In connection with the giving of this opinion, I have examined:

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

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

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

Neither the execution and the delivery of, nor the performance by the Council of its obligations under the Grant Agreement will violate any provisions of any existing application law, rule, regulation or agreement binding on the Council, and the Grant 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 following reservation:

- 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 The Agency and is solely for its benefit. It may not be disclosed to or relied upon by any other person or made public in any way without my prior consent. Discipline 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 Grant Agreement referred to above.

| Name | Title | Specimen Signature |
|------|-------|--------------------|
|------|-------|--------------------|

Schedule 8

Employment and Apprenticeships Statement

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

THE COMMON SEAL of)
HOMES AND COMMUNITIES Agency)
was hereunder affixed in the presence of:)

Authorised Signatory

**[INSERT APPROPRIATE COUNCIL
ATTESTATION CLAUSE]**