

# GREATER**LONDON**AUTHORITY

**dated**

**2022**

**Greater London Authority**

and

**[Lead Partner]**

and

**[Other Original Consortium Members]**

## **Consortium Grant Agreement (Mixed Consortium)**

in relation to the Homes for Londoners: Affordable Homes Programme 2021-26

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# Grant Agreement

dated

## Parties

- (1) **Greater London Authority** whose address is City Hall, Kamal Chunchie Way, London E16 1ZE (the **GLA**); and
- (2) [ ] (company / a registered society as defined in section 1 of the Co-operative and Community Benefit Societies Act 2014) ([registered number]) whose registered office is at [ ] (the **Lead Partner**); and
- (3) [ ] (company / a registered society as defined in section 1 of the Co-operative and Community Benefit Societies Act 2014) ([registered number]) whose registered office is at [ ], [ ] (company / a registered society as defined in section 1 of the Co-operative and Community Benefit Societies Act 2014) ([registered number]) whose registered office is at [ ], [ ] (company / a registered society as defined in section 1 of the Co-operative and Community Benefit Societies Act 2014) ([registered number]) whose registered office is at [ ] and [xx] Council [ ] whose office is at [ ] (together with the Lead Partner, each an **Original Consortium Member**) (and collectively the **Original Consortium Members**).

## Introduction

- (A) The Localism Act 2011 devolved the housing and regeneration functions of the Homes and Communities Agency in London to the GLA.
- (B) The Consortium Members have submitted a bid to the GLA for grant funding to assist the Consortium Members with the delivery of affordable housing.
- (C) The GLA has agreed to advance grant funding to the Consortium Members pursuant to the GLA's Homes for Londoners: Affordable Homes Programme 2021-2026 to facilitate the delivery of certain affordable housing projects subject to and in accordance with the terms of this Agreement.
- (D) In addition to the Named Projects submitted on OPS at the date of this Agreement, the Lead Partner (on behalf of a Consortium Member) may have submitted indicative proposals in respect of dwellings the Consortium Members expect to bring forward to be delivered as Affordable Housing during the AHP 2021-26 period. The parties record their intention that the indicative proposals are to be incorporated into Named Projects by reference to the Average Grant Rate. Alternative rates agreed by GLA (in its absolute discretion) may be used provided always that once the final Unprofiled Indicative Dwelling is incorporated into a Named (Indicative) Project in accordance with the requirements of this Agreement, the average of the grant rates for all AHP Dwellings (based on Tenure Type) comprised within the Named (Indicative) Projects will be equal to or lower than the Average Grant Rates. The obligations relating to the indicative proposals (including obligations relating to the Average Grant Rate) are obligations on the Consortium.

- (E) Grant received by the Lead Partner and any Consortium Member pursuant to this Agreement is social housing assistance as defined in Section 32(13) of the Housing and Regeneration Act 2008.
- (F) In relation to any Consortium Member which is a RP Provider, this Agreement together with any other relevant GLA decisions places a public service obligation on that Consortium Member to provide affordable homes for such persons who are failed by the housing market and require accommodation suited for their needs. In addition, this Agreement together with statutory and other instruments constitutes an entrustment of a public service obligation (in compliance with the United Kingdom Competition Requirement) from the GLA to that Consortium Member to provide suitable accommodation for families and residents in London who are failed by the housing market.
- (G) In relation to any Consortium Member which is a LA Provider, the purpose of the grant funding provided under this Agreement is to fund affordable housing which will be owned and operated by a local authority and the GLA and that Consortium Member have entered into this Agreement on the basis that no Subsidy therefore arises.
- (H) The grant funding provided under this Agreement is (at its date) made in compliance with the United Kingdom Competition Requirement.

## 1 Definitions and interpretations

### 1.1 Definitions

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

**Acquisition Milestone** means the acquisition by the Relevant Consortium Member of a Secure Legal Interest in a Named Project;

**Acquisition Tranche Grant** means, where GLA has accepted an Acquisition Milestone on OPS (in its absolute discretion) and subject to Condition 6.5, such sum as is equivalent to the percentage of the Named Project Grant recorded on and agreed by GLA through OPS;

**Acquisition Tranche Payment Date** means in relation to a Named Project such date as the GLA may have accepted in OPS as the date on which a claim for Acquisition Tranche Grant may be made;

**Actual Development Costs** means in respect of each Named Project the amount of Development Costs actually incurred by the Relevant Consortium Member in acquiring, developing and/or Rehabilitating that Named Project as such amount is warranted and certified by the Lead Partner on behalf of the Relevant Consortium Member pursuant to Condition 14.5.4 and Condition 14.8.3;

**Additional Project** means a project for the delivery of AHP Housing proposed by the Lead Partner on behalf of the Relevant Consortium Member under Condition 9, in addition to those projects or proposals comprised within the Original Approved Bid;

**Additional Project Acceptance Date** means the date upon which the GLA confirms acceptance of an Additional Project pursuant to Condition 9.3;

**Additionality Condition** means the condition that all the AHP Dwellings comprised within a Named Project meet the definition of "additional" homes as detailed in the Guidance and set out in Section 2 (*Net Additionality for GLA Grant*) of the Affordable Housing Capital Funding Guide;

**Additional Affordable Housing Dwelling** means a house, flat or maisonette to be provided by any Consortium Member as Affordable Housing in London during the period from 1 April 2021 to 31 March 2026 in respect of which such Consortium Member did not seek grant funding from GLA (through a consortium or otherwise) under any GLA programme (including any Previous AHP Programme) or utilise any RCGF Funds;

**Affiliate** means:

- (a) where the Consortium Member is a RP Provider, any subsidiary or holding company of that Consortium Member or any subsidiary to any such holding company as subsidiary and holding company are defined in Section 1159 of the Companies Act 2006;
- (b) where the Consortium Member is a LA Provider, any subsidiary, associate or joint venture in which a local authority has a material interest sufficient to require group financial statements to be prepared which account for these interests, in accordance with CIPFA's Code of Practice on Local Authority Accounting in the United Kingdom 2021/22 (as amended or updated) which is the Statement of Recommended Practice on local authority accounting or any code or other document which replaced it as the Statement of Recommended Practice;

**Affordable Habitable Room** means a Habitable Room within an Affordable Dwelling;

**Affordable Housing** has the meaning given to it under the Glossary within the London Housing Strategy issued in May 2018 (as the same may be amended, updated or replaced from time to time);

**Affordable Housing Capital Funding Guide** means the guide of that name published on [www.london.gov.uk/CFG](http://www.london.gov.uk/CFG) or any successor guide so published;

**Affordable Percentage Condition** means the requirement that at Practical Completion of a Named Project, the number of Affordable Habitable Rooms provided or to be provided (as the context requires) on the Development Site when expressed as a percentage of the total number of Habitable Rooms provided or to be provided on the Development Site pursuant to the relevant Planning Permission represents no less than the Required Affordable Percentage;

**Affordable Dwelling** means a dwelling within a Development Site which is to be provided as Affordable Housing;

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

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

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

**Agreement Funding** means any funding given by the GLA to the Lead Partner on behalf of the Consortium and any RCGF Funds used by a Consortium Member under or in connection with this Agreement;

**Agreement Information** means:

- (a) this Agreement in its entirety (including changes to the Agreement that may be agreed from time to time); and
- (b) data extracted from the claims made under this Agreement which shall consist of any Consortium Member's name, the expenditure account code, the expenditure account code description, the document number, the clearing date and the claim amount;

**AHP 2021-26** means the programme described in the publication entitled "Homes for Londoners: Affordable Homes Programme 2021-26 Funding Guidance" issued by the GLA in November 2020 (as the same may be amended or updated from time to time);

**AHP Dwelling** means a house, flat or maisonette which is developed (or is to be developed) with the benefit of RCGF Funds and/or grant funding payable under this Agreement and in relation to each relevant Named Project as more particularly described in the relevant Named Project Details;

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

- (a) permanently on Shared Ownership Lease terms;
- (b) at a London Living Rent; and
- (c) at a Social Rent,

in accordance with the terms of this Agreement;

**Allocated Net Grant** means £[ ]<sup>1</sup>, being the maximum amount of grant payable by the GLA to the Lead Partner (on behalf of the Consortium) in respect of the Approved Bid (as the same may be amended from time to time in accordance with the terms of this Agreement);

**Allocated RCGF Funds** means the RCGF Funds that the GLA has agreed in OPS will be applied towards the Approved Bid (as the same may be amended from time to time in accordance with the terms of this Agreement);

**Allocated Total Grant** means the aggregate of the Allocated Net Grant and Allocated RCGF Funds;

**Annual Committed Number** has the meaning ascribed to it in limb (b) of the definition of "Indicative Proposals" as such numbers may be updated from time to time on OPS and accepted by GLA (in its absolute discretion);

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<sup>1</sup> Insert funding allocation

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

**Average Grant Rate** means the notional average grant rate for each Tenure Type as set out by GLA on OPS and which must be equal to or higher than the average of the actual grant rates (inclusive of any RCGF Funds used) applied to all AHP Dwellings of that Tenure Type being delivered under any Named (Indicative) Project as such rate may be adjusted from time to time in accordance with the terms of this Agreement;

**Building Contract** means a contract entered into between the Relevant Consortium Member and a Building Contractor relating to the construction and development and/or Rehabilitation of a Named Project;

**Building Contractor** means any building contractor or developer appointed or to be appointed by the Relevant Consortium Member in respect of a Named Project;

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

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

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

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

**CEDR** means the Centre for Effective Dispute Resolution;

**Certified Design Standards** means the minimum design standards in accordance with which the AHP Dwellings in a Named Project will be delivered as certified by the Lead Partner on behalf of each Consortium Member on OPS as part of their bid;

**Certified Standards** means the Certified Design Standards, the Certified Sustainability Standards (subject in each case to any exemptions approved by GLA (in its absolute discretion) and recorded on OPS) and the Minimum Building Safety Standard;

**Certified Sustainability Standards** means the sustainability standards which the AHP Dwellings in a Named Project will be delivered to as certified by the Lead Partner on behalf of the Consortium Members on OPS as part of their bid;

**Change in Control** means:

- (a) in respect of a Consortium Member that is an RP Provider, a change in the power of a person (or persons acting together) to secure that the affairs of another are conducted directly or indirectly in accordance with the wishes of that person (or those persons acting together) which in the case of a corporate body shall include:
  - i being the beneficial owner of more than 50% of the issued share capital, membership rights or voting rights in that corporate body; or



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

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

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

**Completed Interest** means a Secure Legal Interest which meets the description in limbs (a), (b) or (c) of the definitions of SLI (SO/LLR Accommodation) or SLI (Rented Accommodation);

**Completion Authority** means a written irrevocable authority from each Consortium Member authorising the GLA to complete a Deed of Release or a Deed of Adherence (as applicable) following the execution of such a deed by the GLA;

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

**Compliance Checklist** means a document in the form identified as the "GLA Resident Ballot Compliance Checklist" in Section 8.5.19 of the Affordable Housing Capital Funding Guide completed (such that each response to the questions posed in the Compliance Checklist is in the affirmative) and signed by the Lead Partner, counter-signed by the Independent Body and in a form satisfactory to the GLA;

**Condition Precedent** means receipt by the GLA of the Legal Opinion;

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

**Consortium** means the Consortium Members jointly;

**Consortium Member Party** means:

- (a) the Consortium Member, any Building Contractor, any member of the Professional Team, agent employee or subcontractor of that Consortium Member; or
- (b) an Affiliate;

**Consortium Members** means, subject to Condition 19, the Original Consortium Members and any New Consortium Member and **Consortium Member** shall be construed accordingly;

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

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

**CPI** means the general index of consumer prices (for all items) published by the Office for National Statistics or, if that index is not published for any month, any substituted index or index figures published by that Office;

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

**Data Protection Legislation** means the UK GDPR, the Data Protection Act 2018 and any other relevant national Legislation implementing or supplementing the UK GDPR, and any formal guidance or Codes of Conduct issued by the Information Commissioner (or other Relevant Authority) in each case as amended, superseded or replaced from time to time;

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

**DLUHC** means the Department for Levelling Up, Housing and Communities (or any successor body with similar or equivalent jurisdiction or authority);

**Deduction Amount** has the meaning ascribed to it in Condition 20.8.1;

**Deed of Adherence** means the deed referred to in Condition 19.3 and in the form set out in Schedule 6;

**Deed of Release** means the deed referred to in Condition 19.2 and in the form set out in Schedule 5;

**Default Event** means a General Default, a Project Default or an Interim Reconciliation Default;

**Development Costs** means the costs relating to Site acquisition and/or Works in relation to a Named Project incurred or to be incurred in respect of such Named Project by the Relevant Consortium Member in relation to the heads of expenditure set out in Part 1 to Schedule 2 or such other heads of expenditure as the GLA may in its absolute discretion agree in respect of any Named Project provided that any costs falling within the heads of

expenditure set out in Part 2 to Schedule 2 shall not be capable of being treated as Development Costs;

**Development Site** means the Site, unless such Site forms part of a wider connected development or redevelopment proposal whether or not such site is geographically contiguous to the Site, in which case "Development Site" shall encompass the site of that wider connected development or redevelopment;

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

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

**Disposal Notification** means a written notification sent by the Relevant Consortium Member to the GLA which identifies:

- (a) the nature of the Disposal;
- (b) the number and address of the AHP Dwellings and/or other property comprised within the Disposal;
- (c) the disponent other than in the case of an individual purchaser of an AHP Dwelling which is for use as his/her only or principal home; and
- (d) the amount of Total Project Grant attributed to the AHP Dwelling or property comprised within the Disposal and the quantum of such grant which the Relevant Consortium Member will repay to the GLA and/or recycle into the Relevant Consortium Member's RCGF (where the Relevant Consortium Member is a RP Provider) in accordance with the terms of this Agreement and the Recovery Determination;

**DQHAP** means the "Delivering Quality Homes Action Plan" to be submitted by the Lead Partner on behalf of the Relevant Consortium Member on OPS (in a form satisfactory to GLA, acting reasonably);

**DQHAP/POE Breach** has the meaning ascribed to it in Condition 10.6;

**EDI Breach** has the meaning ascribed to it in Condition 24.4;

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

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

**Estate Regeneration Default** means the occurrence of any of the events or circumstances set out in Conditions 20.2.11 to 20.2.13 (inclusive);

**Estate Regeneration Funding Condition** means the obligations set out in Condition 10.2;

**Estate Regeneration Project** means a Named Project which in whole or in part comprises or entails regeneration or another arrangement which satisfies the description of a Strategic Estate Regeneration Project set out in Section 8.3 of the Affordable Housing Capital Funding Guide;

**Estate Regeneration Requirement** means the obligations set out in Condition 10.2 and/or Condition 11.4.11;

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

**Exemption** means an exemption to the Resident Ballot Requirement agreed by the GLA pursuant to Section 8.6 of the Affordable Housing Capital Funding Guide;

**Exemption Certificate** means a certificate identified as an "Exemption Certificate" on GLA letter headed paper and signed by a senior officer of the GLA which confirms that the delivery of the Named Project is subject to an Exemption;

**Final Claim Stage** means the date at which the relevant Named Project reaches Practical Completion;

**Final Reconciliation Exercise** has the meaning ascribed to it in Condition 12.10;

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

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

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

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

**General Default** has the meaning given to it in Condition 20.1;

**General Termination Event** means an event pursuant to which this Agreement may be terminated pursuant to Condition 20.5;

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

**Good Practice Guide to Estate Regeneration** means the guidance entitled "Better homes for local people" published by the GLA in February 2018;

**Grant** means any and all sums paid by the GLA to the Lead Partner on behalf of the Consortium pursuant to this Agreement;

**Grant Rate Default** has the meaning ascribed to it in Condition 12.11;

**Guidance** means the publication entitled "Homes for Londoners: Affordable Homes Programme 2021-26 Funding Guidance" issued by the GLA in November 2020;

**Habitable Room** means a room within a dwelling the intended purpose of which is for sleeping, living or dining and which has a minimum width of 2.13 metres (7 ft.) and includes:

- (a) a living room;
- (b) a dining room;
- (c) a bedroom; and
- (d) a kitchen/diner (provided that for the purposes of this Agreement the kitchen/diner is 13 sqm or greater in size).

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

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

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

**Independent Body** means an entity which is independent of the Consortium and has been appointed in accordance with the principles set out in Section 8.5.2 of the Affordable Housing Capital Funding Guide;

**Indicative Allocation** means such part of the Allocated Total Grant attributed to the Indicative Proposals and agreed by GLA on OPS;

**Indicative Proposals** means the Consortium's proposals for the development of a specified number of further SR Dwellings, LLR Dwellings and/or SO Dwellings accepted by the GLA and set out on OPS in accordance with any of Conditions 5.2 and 5.9 (as may be updated in accordance with the terms of this Agreement) including details of:

- (a) the Financial Year in which such dwellings will achieve Start on Site (the **Start Year**); and
- (b) the number (by Tenure Type) of such dwellings to achieve Start on Site in each Start Year (the **Annual Committed Number**);

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

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

**Information Commissioner** has the meaning set out in Section 114 of the Data Protection Act 2018 and for the avoidance of doubt is the UK's independent body set up to uphold and enforce Information rights;

**Insolvency Event** means the occurrence of any of the following in relation to any Consortium Member which is a RP Provider:

- (a) it is unable or admits an inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness;
- (b) the value of its assets is less than its liabilities (taking into account contingent and prospective liabilities);
- (c) a moratorium is declared in respect of any indebtedness and/or any moratorium pursuant to Section 145 of the HRA 2008;
- (d) any corporate action, legal proceedings or other procedure or step is taken in relation to:
  - i the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) other than a solvent liquidation or reorganisation on terms previously approved by the GLA (such approval not to be unreasonably withheld or delayed);
  - ii a composition, compromise, assignment or arrangement with any of its creditors;
  - iii the appointment of a liquidator (other than in respect of a solvent liquidation on terms previously approved by the GLA, such approval not to be unreasonably withheld or delayed), receiver, administrative receiver, housing administrator, administrator, compulsory manager or other similar officer;
  - iv enforcement of any Security over any of its assets;
  - v any analogous procedure or step is taken in any jurisdiction;other than any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within ten (10) Business Days of commencement; or
- (e) any expropriation, attachment, sequestration, distress or execution affecting any of its asset or assets which has a Material Adverse Effect in relation to the Approved Bid or any Named Project;

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

**Interest** means interest at a rate per annum equal to two percentage points (2%) above the base rate from time to time of The Bank of England;

**Interim Reconciliation Default** has the meaning ascribed to it in Condition 12.9;

**Interim Reconciliation Exercise** has the meaning ascribed to it in Condition 12.8;

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

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

**LA Project** means a Named Project in respect of which a LA Provider is or is to be the Landlord;

**Landlord** means the Consortium Member that holds the Secure Legal Interest and who will be the landlord of the tenants of the AHP Housing comprised in the relevant Named Project;

**Landlord Offer** means the offer identified by that name and more particularly described in Sections 8.5.11 to 8.5.16 of the Affordable Housing Capital Funding Guide which is in the form issued to GLA pursuant to Section 8.5.14 of the Affordable Housing Capital Funding Guide and which is the subject of the confirmations provided by the Lead Partner and the Independent Body in the Compliance Checklist;

**Lead Partner's Representative** means the Lead Partner's Development Director or such other person agreed by the GLA to act as the Lead Partner's representative from time to time for the purposes of this Agreement;

**Legal Opinion** means a legal opinion in the form set out in Schedule 3 given:

- (a) where the Relevant Consortium Member is a LA Provider, by its solicitor and dated prior to the date of this Agreement; or
- (b) in the case of a New Consortium Member that is a LA Provider, by its solicitor and dated prior to the completion date of the Deed of Adherence;

**Legislation** means:

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

in each case in the United Kingdom; and

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

**LLR Dwelling** means an AHP Dwelling let or to be let at a London Living Rent and on terms which comply with the applicable provisions of Condition 11.4;

**LLR Rent Level** means a rent which does not exceed the rent level published by GLA at [www.london.gov.uk/londonlivingrent](http://www.london.gov.uk/londonlivingrent) as adjusted by GLA from time to time;

**LLR Tenant** means an individual who fulfils the criteria for an occupant of an LLR Dwelling set out in the Affordable Housing Capital Funding Guide;

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

**London Living Rent** means a rent which does not exceed the LLR Rent Level (inclusive of service charges) for an equivalent property of the relevant size and number of bedrooms in the relevant Ward and which is set in accordance with the applicable requirements of Legislation and the Affordable Housing Capital Funding Guide and any other relevant guidance issued by the Regulator (as any of the same may be amended, replaced or updated from time to time);

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

**Material Adverse Effect** means the effect of any event or circumstance which is reasonably likely to be materially adverse to the ability of any Consortium Member to deliver its element of the Approved Bid (including any Named Project) or the Consortium Members' ability, collectively, to comply with the terms of this Agreement or (as the context requires) to deliver the Approved Bid or a Named Project on the basis agreed under this Agreement and/or within the time limits (if any) for doing so;

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

**Milestone** means the Acquisition Milestone (where agreed by GLA in its absolute discretion in respect of a Named Project), Start on Site, Practical Completion and such other stages of a Named Project labelled as a "milestone", in each case as set out in OPS and agreed by the parties;

**Milestone Date** means the date agreed by the GLA through OPS by which the relevant Milestone must have been achieved (as the same may be extended by the GLA pursuant to Condition 8.1);

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

- (a) exceptionally adverse weather conditions;



- (b) delay in receipt of any necessary permission or approval of any statutory body or other person which the Relevant Consortium Member has taken all practicable steps to avoid or reduce;
- (c) the exercise after the date of this Agreement by the United Kingdom Government of any statutory power which directly affects the execution of the Works necessary to the delivery of the Named Project by restricting the availability or use of labour which is essential to the proper carrying out of such Works or preventing the Relevant Consortium Member from, or delaying in, securing such goods or materials or such fuel or energy as are essential to the proper carrying out of such Works;
- (d) the use or threat of terrorism and/or the activity of the relevant authorities in dealing with such use or threat;
- (e) fire, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation, earthquakes, riot and civil commotion;
- (f) failure by any statutory undertaker, utility company or other like body to carry out works or provide services;
- (g) any accidental loss or damage to the development or any roads servicing it;
- (h) any failure or shortage of power, fuel or transport;
- (i) any blockade or embargo;
- (j) any:
  - i official or unofficial strike;
  - ii lockout;
  - iii go-slow; or
  - iv other dispute,

generally affecting the house building industry or a significant sector of it;
- (k) the appointment of the Building Contractor under the Building Contract has been terminated or the Building Contract has been terminated (where applicable); or
- (l) any material failure by the Building Contractor under the terms of the Building Contract (where applicable) which has the direct result of delaying the Relevant Consortium Member's compliance with a Milestone Date and which did not result from the Relevant Consortium Member's failure effectively to manage the Building Contract; or

- (m) any impediment, prevention or default, whether by act or omission by the GLA except to the extent caused or contributed to by any default, whether by act or omission, of the Relevant Consortium Member,

unless:

- A any of the events arise (directly or indirectly) as a result of any wilful or negligent default or wilful or negligent act of the Relevant Consortium Member or, save in respect of the event referred to in (k) above, any of its Subcontractors of any tier; or
- B in respect of the event referred to in (f) above, such event arises as a result of any failure by the Relevant Consortium Member (whether wilful or otherwise) to notify the relevant statutory undertaker or utility company of the requirement for works or services to be completed by the date required to enable the Relevant Consortium Member to complete the Named Project by the Named Project Completion Date;

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

**Minimum Building Safety Standard** means the five standards set out in paragraph 40 of the Guidance;

**Minimum SO Lease and LLR Term** means a lease with a term of at least nine hundred and ninety (990) years (save where expressly agreed otherwise with the prior written consent of the GLA in its absolute discretion);

**Minimum Unexpired Term** means the relevant lease has an unexpired term of, having regard to the acknowledgment set out in paragraph 16 of the Agreed Principles, at least one hundred and twenty five (125) years;

**MMC Project** means a Named Project comprised exclusively of dwellings constructed using one of the Modern Methods of Construction;

**Modern Methods of Construction** means the methods of construction identified in Section 2.3.35 (*Modern Methods of Construction (MMC) categories for schemes*) in the Chapter of the Affordable Housing Capital Funding Guide entitled "Procurement and Scheme issues";

**Named (Indicative) Project** means a Named Project which comprises solely of dwellings Profiled pursuant to Condition 6.1.2 and accepted by the GLA as a Named Project<sup>2</sup>;

**Named Project** means each project for the development of AHP Dwellings as has been fully detailed in OPS and accepted by the GLA through OPS as a Named Project as at the date hereof or in accordance with any of Conditions 6.1 or 9.4 and, for the avoidance of doubt, includes any Named (Indicative) Projects;

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<sup>2</sup>Consortium Members to note: the intention is for all Indicative Proposals to be profiled into "Named Projects". The delineation between a Named Project and a Named (Indicative) Project is seeking to distinguish between the origins of that Named Project. If the dwellings in a Named Project are from the Indicative Proposals, the term Named (Indicative) Projects will be used as some provisions of this Agreement relate specifically to Named Projects which originated from the Indicative Proposals.

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

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

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

**Named Project Grant** means the amount of grant payable by the GLA in respect of a Named Project as set out in the relevant Named Project Details, which for the avoidance of doubt excludes RCGF Funds;

**Named Project Practical Completion Date** means the date set out in the Named Project Delivery Timetable by which the Named Project must have achieved Practical Completion;

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

**New Consortium Member** means a RP Provider or LA Provider approved by the GLA in writing who delivers to the GLA a Deed of Adherence in accordance with the provisions of Condition 19;

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

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

**Non Start Indicative Dwelling** means an Unprofiled Indicative Dwelling which does not or will not achieve Start on Site in the relevant Start Year;

**Open Book Basis** means the full and transparent disclosure and declaration of all information which the Consortium Members or Consortium Member Parties are required to maintain, keep or disclose under this Agreement including all price components including profit margins, central office overheads, Site overheads, preliminaries, contingencies and the cost of all materials, goods, equipment, work and services, apportionments of such items together with all and any books of accounts together with such other information as the GLA reasonably requires to monitor compliance with the United Kingdom Competition Requirement;

**Open Book Obligations** mean the obligations set out in Condition 21;

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

**Original Approved Bid** means the aggregate of the Indicative Proposals and Named Projects accepted by the GLA pursuant to Conditions 5 and 6 at the date of this Agreement;

**Other Affordable Housing** means Affordable Housing (but excluding LLR Dwellings, SR Dwellings and SO Dwellings) of the type described in the Affordable Housing Capital Funding Guide which, if accepted by GLA on OPS (in its absolute discretion), is more particularly described in the Named Project Details;

**Outgoing Consortium Member** means a Consortium Member complying with the provisions of Conditions 19.1 and 19.2;

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

- (a) the grant of a tenancy (compliant with Condition 11.4) in respect of a LLR Dwelling or a SR Dwelling;
- (b) the grant of a Shared Ownership Lease (which, for the avoidance of doubt, does not include the subsequent acquisition by the occupier of an increased share of the equity of the relevant SO Dwelling) that has not been granted pursuant to the RTSO or is as a result of a conversion from an LLR Dwelling to a SO Dwelling;
- (c) a disposal to a statutory undertaker for the purposes of the supply or transmission (whether exclusively or otherwise) of statutory services to the Site;
- (d) a disposal pursuant to or required by a planning obligation within the meaning of Section 106 or Section 299A of the Town and Country Planning Act 1990 in connection with the Named Project;
- (e) a disposal to a highway authority for the purposes of or in connection with the adoption of roads, footpaths or cycleways on the Site;
- (f) the grant of any mortgage or charge; or
- (g) the grant of an easement;

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

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

**POE** means the Post-Occupancy Evaluation, initial details of which are set out on the following website [https://www.london.gov.uk/sites/default/files/poe\\_pilot\\_information\\_sheet.pdf](https://www.london.gov.uk/sites/default/files/poe_pilot_information_sheet.pdf) (or any successor website notified to the Lead Partner by the GLA) as the same may be updated or replaced by provisions within the Affordable Housing Capital Funding Guide or such other guidance issued by the GLA and notified to the Lead Partner;

**Practical Completion** means that stage in the execution of a Named Project when the Works have been completed in accordance with the terms of the relevant Building Contract and/or the terms of this Agreement such that the AHP Dwellings comprised within the relevant Named Project are fit for beneficial occupation as a residential development in accordance with any applicable NHBC or equivalent requirements current at the date of any required inspection subject only to the existence of minor defects and/or minor

omissions at the time of inspection which are capable of being made good or carried out without materially interfering with the beneficial use and enjoyment of the Named Project and which would be reasonable to include in a snagging list, and Practically Complete shall be construed accordingly;

**Practical Completion Tranche Grant** means subject to Condition 6.5 such sum as is equivalent to the percentage of the Named Project Grant recorded on and agreed by GLA through OPS;

**Practical Completion Tranche Payment Date** means in relation to a Named Project such date as the GLA may have accepted in OPS as the date on which a claim for Practical Completion Tranche Grant may be made;

**Previous AHP Programme** means any capital grant funding programme administered by GLA supporting the delivery of affordable housing other than AHP 2021/26;

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

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

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

**Profile** means the incorporation of one or more Unprofiled Indicative Dwelling(s) into a Named Project accepted by GLA pursuant to the procedures set out in Condition 6.1;

**Profit Making Organisation** means a body designated on the Register as a profit-making organisation as such term is defined under Section 115 of the HRA 2008;

**Prohibited Act** means:

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

- i under Legislation creating offences in respect of fraudulent acts;
  - ii at common law in respect of fraudulent acts in relation to this Agreement; or
  - iii under the Bribery Act 2010 or the Criminal Finances Act 2017; or
- (d) defrauding or attempting to defraud or conspiring to defraud the GLA or the Regulator;

**Project Default** has the meaning given to it in Condition 20.2;

**Project Termination Event** means an event pursuant to which this Agreement may be terminated in relation to a particular Named Project pursuant to Condition 20.6;

**Protected Characteristics** has the meaning ascribed to it in the Equality Act 2010;

**Public Sector Funding** means all funding or subsidy in relation to a Named Project in money or money's worth (including the proportion of Agreement Funding allocated to that Named Project) received or receivable by the Relevant Consortium Member from public sector bodies including for this purpose funding from government bodies (whether national or local), the European Union or bodies in receipt of lottery funds from the National Lottery Distribution Fund pursuant to the National Lotteries Acts 1993 and 1998 and any further funding by the GLA not provided under this Agreement;

**Purchase Point** means the date upon which a SO Dwelling is sold to its first purchaser or in relation to a LLR Dwelling a date which is not earlier than ten (10) years after the point at which such LLR Dwelling first becomes available for letting;

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

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

**RCGF** means the Recycled Capital Grant Fund maintained by the Relevant Consortium Member (if any) in accordance with the Recovery Determination;

**RCGF Funds** means that amount of the Relevant Consortium Member's RCGF which the parties have agreed will be applied towards the Development Costs;

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

**Recoverable Amount** has the meaning ascribed to it in Condition 18.2;

**Recovery Determination** means the Recovery of Capital Grants from Registered Providers and Recycled Capital Grant Fund (Greater London) General Determination 2017 and any successor determination or other instrument;

**Reduction Amount** means an amount equal to the sum of the following calculation:

Reduction Amount = Indicative Year Allocation – Profiled Amount

Where:

**Indicative Year Allocation** means the aggregate amount of grant allocated to the Indicative Proposals that are to have been Profiled into Named Projects by 30 June (or such later date agreed by the GLA, in its absolute discretion) in the relevant Start Year as set out on OPS;

**Profiled Amount** means the aggregate grant allocated to the Indicative Proposals which have been Profiled into Named Projects by 30 June in the relevant Start Year (or such later date agreed within the relevant Start Year by the GLA, in its absolute discretion);

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

**Registered Provider** means (as appropriate) a local authority entered on the Register pursuant to Section 114 of the HRA 2008 or a Profit Making Organisation and/or a non-profit organisation (as such term is defined in Section 115 of the HRA 2008);

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

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

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

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

**Relevant Consortium Member** has in respect of each Condition identified in Schedule 4 the meaning given to it in accordance with Schedule 4;

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

**Relevant Notifications** has the meaning given to it in Condition 13.2.1;

**Remediation Period** means 30 Business Days from the date upon which the GLA serves the first notice on the Lead Partner pursuant to Condition 20.5;

**Remediation Plan** has the meaning ascribed to it in Conditions 10.6.1 and 24.4.1;

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

**Replacement Lead Partner** means the Consortium Member that assumes the role of Lead Partner under this Agreement where the provisions of Condition 20.10.2 apply;

**Request for Information/RFI** shall have the meaning set out in FOIA or any request for information under EIR which may relate to the Named Projects, this Agreement or any activities or business of the GLA or a Consortium Member that is an LA Provider;

**Required Affordable Percentage** means the percentage set out in respect of each Named Project on OPS and approved by GLA (in its absolute discretion) which represents the total the number of Affordable Habitable Rooms that must be provided on the Development Site when expressed as a percentage of the total number of Habitable Rooms, as such percentage may be amended from time to time in accordance with Condition 7;

**Resident Ballot Requirement** means the obligation to undertake a resident ballot on the basis set out in Section 8 of the Affordable Housing Capital Funding Guide where the Named Project is an Estate Regeneration Project and GLA has not provided the Lead Partner with an extant Exemption Certificate;

**Restructure** means in relation to any Consortium Member that is a RP Provider, any merger or de-merger or consolidation or reconstruction or amalgamation or a transfer of its engagements to any person or the acceptance of any transfer of engagements from any person or any other arrangement having an equivalent effect to these;

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

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

**Right to Shared Ownership** means the right for eligible tenants of the AHP Dwellings (other than any AHP Dwellings where the Landlord is a LA Provider or any other RTSO Exempted Dwellings) to purchase such AHP Dwelling on Shared Ownership Lease terms as more particularly described in the RTSO Guidance;

**RP Provider** means (as appropriate) a body entered on the Register as a profit making and/or a non-profit organisation (as such terms are defined in Section 115 of the HRA 2008);

**RTSO Exempted Dwelling** means:

- (a) a LLR Dwelling; or
- (b) any dwelling which is identified in the RTSO Guidance as exempted from the Right to Shared Ownership from time to time;

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

**RTB Funds** means receipts retained by a Council pursuant to the exercise of the Right to Buy which shall include any grant paid to any Consortium Member which is a LA Provider pursuant to a Right to Buy Ringfence Agreement entered into by the GLA and that Consortium Member;



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

**Section 106 Agreement** means an agreement in respect of and affecting any AHP Dwelling (or prospective AHP Dwelling) made pursuant to Section 106 of the TCPA and/or Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and/or Section 38 and/or Section 278 of the Highways Act 1980 and/or Section 104 of the Water Industry Act 1991 or an agreement with any Relevant Authority or body relating to other services;

**Section 106 Project** means a Named Project where the development of AHP Housing forms or will form part of a wider non AHP Housing project and is required pursuant to:

- (a) a Section 106 Agreement; and/or
- (b) any condition attached to or imposed upon any decision by a Relevant Authority to grant planning permission or reserved matters approval under Part III of the Town and Country Planning Act 1990 (including any approvals issued pursuant to conditions);

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

**Secure Legal Interest** means:

- (a) with respect to each Named Project which comprises only SO Dwellings, a SLI (SO/LLR Accommodation); or
- (b) with respect to each Named Project which comprises at least one SO Dwelling or LLR Dwelling and at least one SR Dwelling:
  - i a SLI (SO/LLR Accommodation) in relation to each SO Dwelling or LLR Dwelling; and
  - ii a SLI (Rented Accommodation) in respect of each SR Dwelling; or
- (c) with respect to each Named Project which comprises only of SR Dwellings, a SLI (Rented Accommodation);

provided that in each case, where the Relevant Consortium Member possesses:

- (d) the freehold estate and one or more leasehold interests derived from the freehold estate; or
- (e) more than one leasehold interest in a chain of leases,

in any Named Project, the interest which is the lowest leasehold interest owned by the Relevant Consortium Member in the chain of leases must satisfy limb (a), (b) or (c) above (as applicable);

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

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

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

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

**SLI (SO/LLR Accommodation)** means the Relevant Consortium Member has in respect of the Site:

- (a) freehold title registered with title absolute;
- (b) leasehold title registered with title absolute where the lease has an unexpired term which is sufficient for the Minimum SO Lease and LLR Term to be granted at the Purchase Point; or
- (c) either:
  - i freehold title registered with possessory title; or
  - ii leasehold title registered with good leasehold title where the lease has an unexpired term which is sufficient for the Minimum SO Lease and LLR Term to be granted at the Purchase Point;and, in each case defective title indemnity insurance in favour of the Relevant Consortium Member with a limit of indemnity to at least the Named Project Grant for that Site; or
- (d) a binding contract with the owner of the legal and beneficial interest in the Site to acquire one of the interests in limbs (a), (b) or (c) and that acquiring that interest is conditional only upon matters that are within the direct and unilateral control of the Relevant Consortium Member;

**SLI (Rented Accommodation)** means the Relevant Consortium Member has in respect of the Site:

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

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

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

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

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

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

**SPEI Allowable Costs** means those costs incurred by the Relevant Consortium Member in providing the AHP Housing as specified in OPS (calculated using generally acceptable accounting principles) as follows:

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

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

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

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

**SPEI Revenue** means all income (including all Public Sector Funding but excluding Agreement Funding) which the Relevant Consortium Member or an Affiliate receives for the purposes of or earns from the AHP Housing;

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

**SR Dwelling** means an AHP Dwelling let or to be let at a Social Rent and on terms which comply with the applicable provisions of Condition 11.4.8;

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

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

**Start on Site Tranche Grant** means subject to Condition 6.5 such sum as is equivalent to the percentage of the Named Project Grant recorded on and agreed by GLA through OPS;

**Start on Site Tranche Payment Date** means in relation to a Named Project such date as the GLA may have accepted in OPS as the date on which a claim for Start on Site Tranche Grant may be made;

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

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

**Start Year** has the meaning ascribed to it in limb (a) of the definition of "Indicative Proposals";

**Subcontractor** means any subcontractor including without limitation any Building Contractor appointed by the Relevant Consortium Member to undertake all or part of the Works;

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

- (a) arises from the resources of the United Kingdom Government, devolved government, other public authority in the United Kingdom or an emanation of any of these, including:
  - i a direct or contingent transfer of funds such as direct grants, loans or loan guarantees;
  - ii the forgoing of revenue that is otherwise due;
  - iii the provision of goods or services, or the purchase of goods or services; or
  - iv a measure analogous to these,

- (b) confers an economic advantage on one or more economic actors;
- (c) is specific insofar as it benefits, as a matter of law or fact, certain economic actors over others in relation to the production of certain goods or services; and
- (d) has, or could have, an effect on trade or investment between the United Kingdom and any part of the European Economic Area and/or any other country or countries which the United Kingdom has entered into a trade agreement with which has provisions in respect of public sector funding arrangements;

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

**Tenure Type** means one of the following tenure types:

- (a) a letting on Shared Ownership Lease terms;
- (b) a letting at a London Living Rent; or
- (c) a letting permanently at a Social Rent;

**The London Plan** means the document entitled "The London Plan – The Spatial Development Strategy for Greater London" published by the GLA in March 2021 (as the same may be amended or updated from time to time);

**Total Project Grant** means the aggregate of the Named Project Grant paid to the Lead Partner and the RCGF Funds used by the Relevant Consortium Member under or in connection with a Named Project;

**Tranche** means (as applicable) any of the Acquisition Tranche Grant, Start on Site Tranche Grant or the Practical Completion Tranche Grant;

**Transparency Commitment** means the GLA's commitment to publishing its agreements, contracts, tender documents and data from invoices and claims received in accordance with the Local Government Transparency Code 2015 and the GLA's Contracts and Funding Code;

**UK GDPR** means the retained EU law version of the General Data Protection Regulation ((EU) 2016/679), defined in the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019, as amended, updated or replaced from time to time;

**United Kingdom Competition Requirement** means as provided for in Section 29 of the European Union (Future Relationship) Act 2020 and/or such other Legislation and/or regulations and/or guidance issued by the Secretary of State and/or approved by Parliament which is in force and/or applies in England which regulates Subsidy;

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

**Unprofiled Indicative Dwelling** means an LLR Dwelling, SR Dwelling or SO Dwelling forming part of the Indicative Proposals that has not yet been Profiled into a Named Project in accordance with the requirements of this Agreement;

**Uplift Amount** means an amount of the type described in the Recovery Determination and calculated for the purposes of Condition 18.9 in accordance with the methodology set out from time to time in the Affordable Housing Capital Funding Guide;

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

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

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

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

**Ward** means each of the electoral wards in London in respect of which GLA will determine the LLR Rent Level;

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

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

## 1.2 Interpretation

1.2.1 Words denoting any gender include all other genders.

1.2.2 The singular includes the plural and vice versa.

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

1.2.4 Any reference to this Agreement or to any other document or publication shall include (except where expressly stated otherwise) any variation, amendment or supplement to or restatement of such document or publication to the extent that

such variation, amendment, supplement or restatement is not prohibited under the terms of this Agreement.

- 1.2.5 Any reference to any enactment, order, direction, determination, regulation or similar instrument shall (except where expressly stated otherwise) be construed as a reference to the enactment, order, direction, determination, regulation or instrument as amended, replaced, consolidated or re-enacted.
- 1.2.6 A reference to a person includes firms, partnerships and corporate bodies and their successors and permitted assignees or transferees.
- 1.2.7 Headings are for convenience of reference only.
- 1.2.8 A party means a party to this Agreement.
- 1.2.9 The words includes or including are to be construed without limitation.
- 1.2.10 Where any discretion is granted by this Agreement to any party, that party shall be entitled to exercise that discretion freely and without fetter (implied or otherwise).
- 1.2.11 A paragraph in a Schedule shall be construed as reference to a paragraph in that particular Schedule.
- 1.2.12 A deliberate act or omission of any person shall exclude acts or omissions which were within the contemplation of the parties or which were otherwise provided for in this Agreement.
- 1.2.13 In any case where the consent or approval of the GLA (or any officer of the GLA) is required or a notice is to be given by the GLA, such consent or approval or notice shall only be validly given if it is in writing (including by email) and signed (or sent, if by email) by (if relevant) the officer stipulated in this Agreement or such other person as may be specified by the GLA by notice in writing to the Relevant Consortium Member.
- 1.2.14 An obligation to do anything includes an obligation to procure its being done.
- 1.2.15 Any restriction includes an obligation not to permit infringement of the restriction.
- 1.2.16 When there are two or more persons affected by the obligations under this Agreement such obligations are to bind each such person jointly and severally.
- 1.2.17 The terms "Site" "Named Project" and "Named (Indicative) Project" include each and every part of it.
- 1.2.18 Save where a contrary intention is shown, any reference to the GLA acting reasonably shall be interpreted as requiring the GLA to act in a commercially reasonable manner and any reference to the exercise of discretion by GLA shall be construed as permitting GLA to exercise its discretion freely and without constraint of any kind.

- 1.2.19 If there is any ambiguity or conflict between the implied terms and the express terms of this Agreement then the express terms shall prevail.
- 1.2.20 Each Consortium Member shall in relation to the delivery of its obligations under this Agreement be responsible as against the GLA for the acts or omissions of its Consortium Member Parties as if they were the acts or omissions of that Consortium Member.
- 1.2.21 Neither the giving of any approval, consent, examination, acknowledgement, knowledge of the terms of any agreement or document nor the review of any document or course of action by or on behalf of the GLA shall, unless otherwise expressly stated in this Agreement or agreed in writing by the GLA, relieve any Consortium Member of any of its obligations under this Agreement or of any duty which it may have hereunder to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, examination, acknowledgement or knowledge nor confer impose or imply any liability or responsibility on or on behalf of the GLA in respect of or in connection with the matter to or in relation to which such approval consent examination acknowledgement was given or review made.
- 1.2.22 Save where an obligation in this Agreement is expressed to be an obligation of the Consortium (in which case the Consortium Members shall be jointly liable for its discharge) liability for the discharge of such obligation will rest with each individual Consortium Member to whom the relevant obligation applies.
- 1.2.23 The terms "Agreement Funding" "Allocated Total Grant" "Allocated Net Grant" "Capital Grant", "Named Project Grant" and "Total Project Grant" shall (unless the context precludes such interpretation) include every Tranche thereof.
- 1.2.24 Any reference to Section 8 of the Affordable Housing Capital Funding Guide in this Agreement refers to the section entitled "Resident Ballots for Estate Regeneration Projects" of such guide.
- 1.2.25 Any terms used in the definition of "Subsidy" shall, unless the context requires otherwise, be construed as having the meaning given to them in the EU-UK Trade and Cooperation Agreement.
- 1.2.26 Any reference to a Section and/or a Chapter of the Affordable Housing Capital Funding Guide in this Agreement shall refer to any successor, replacement or amendment of such Section or Chapter from time to time.
- 1.2.27 A reference to "average" under this Agreement is a reference to the calculation of the mean average.
- 1.2.28 Where the term "average of the grant rates" is used, each grant rate shall be treated as including any RCGF Funds used in respect of the relevant AHP Dwelling.



## 2 **Purpose**

2.1 In consideration of the sum of £1 (receipt of which the GLA hereby acknowledges), as well as the mutual consideration by each party to the other to perform the obligations set out herein, the GLA has agreed to:

2.1.1 make the Allocated Net Grant available to the Consortium; and

2.1.2 permit the Relevant Consortium Member to use the Allocated RCGF Funds,

to enable the Consortium to provide the AHP Dwellings subject to and in accordance with the terms and conditions of this Agreement.

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

## 3 **Acknowledgements, Representations and Warranties**

3.1 Without prejudice to any other term of this Agreement, each Consortium Member:

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

3.1.2 represents and warrants in the terms set out in Part 2A or Part 2B of Schedule 1 (as applicable) to the GLA on the date hereof and on each day during the currency of this Agreement; and

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

## 4 **Subsidy**

4.1 This Agreement is drafted with the intention that it is lawful and complies with the requirements of the United Kingdom Competition Requirement (if applicable).

4.2 Where a Consortium Member is a RP Provider:

4.2.1 if the Agreement Funding or any part thereof gives rise to an SPEI Overpayment or otherwise constitutes Unlawful Subsidy then the GLA shall be entitled to recover from the Relevant Consortium Member the amount of such SPEI Overpayment and/or Unlawful Subsidy together with such interest as it is required by Legislation to recover and the Relevant Consortium Member must pay such amount(s) within ten (10) Business Days of the GLA requesting repayment; and

4.2.2 the Relevant Consortium Member shall promptly give written notice to the GLA of any Public Sector Funding it receives from a third party in relation to any AHP Housing.

4.3 Where a Consortium Member is an LA Provider:

- 4.3.1 the GLA and the Relevant Consortium Member acknowledge that they have structured this Agreement with the objective that it is lawful and payments made to an LA Provider do not give rise to Subsidy;
- 4.3.2 notwithstanding anything in this Agreement, the GLA shall only provide any Named Project Grant to the extent that such payment does not give rise to Unlawful Subsidy;
- 4.3.3 notwithstanding Conditions 4.3.1 and 4.3.2 of this Agreement if any Named Project Grant is found to constitute Unlawful Subsidy (or is under investigation or subject to judicial proceedings in relation to Unlawful Subsidy) then:
  - (a) the GLA and the Relevant Consortium Member acting in good faith will promptly seek to restructure the arrangements surrounding the Named Project Grant and the terms of this Agreement to the extent necessary to ensure that no Unlawful Subsidy subsequently arises from it; and/or
  - (b) the GLA and the Relevant Consortium Member shall promptly cooperate in good faith to provide evidence that the Named Project Grant (or the restructured Named Project Grant) does not or will not give rise to Unlawful Subsidy; and
- 4.3.4 if any Named Project Grant is found to constitute Unlawful Subsidy and/or is not capable of being restructured so as to be compliant then the Relevant Consortium Member must repay any sum of Unlawful Subsidy plus such interest as is prescribed by the United Kingdom Competition Requirements within fifteen (15) Business Days of the GLA issuing it with a written demand for payment.
- 4.4 If Legislation requires the GLA to amend this Agreement to comply with the United Kingdom Competition Requirements then the GLA may, acting reasonably, provide written notice to the Lead Partner to vary this Agreement to the extent necessary to comply with such change in law.
- 5 **Indicative Proposals**
- 5.1 The Lead Partner confirms that such details of the Consortium's proposals for the development of a specified number of further SR Dwellings, LLR Dwellings and/or SO Dwellings, including delivery timescales, as are required by the GLA have been uploaded onto OPS by the date of this Agreement.
- 5.2 Where the proposals referred to in Condition 5.1 are accepted by the GLA through OPS, they will become Indicative Proposals for the purposes of this Agreement with effect from the date of their acceptance by the GLA in OPS and the provisions Conditions 5.3 to 5.11 (inclusive) shall apply.
- 5.3 The Consortium must ensure that the Indicative Proposals are worked up by the Lead Partner so that the Annual Committed Number of Unprofiled Indicative Dwellings are:
  - 5.3.1 Profiled into Named Projects on OPS in accordance with the procedures set out in Condition 6.1; and

- 5.3.2 achieve Start on Site in the relevant Start Year.
- 5.4 If the Consortium fails (or in the opinion of the GLA, acting reasonably, is likely to fail) to comply with its obligations under Condition 5.3, the GLA shall (without prejudice to its other rights under this Agreement) be entitled to:
- 5.4.1 reduce the Indicative Allocation by the Reduction Amount and shall have no further obligation to the either any Consortium Member in relation to any Non Start Indicative Dwelling (or any aggregation thereof); and/or
- 5.4.2 instigate an Interim Reconciliation Exercise.
- 5.5 Once Unprofiled Indicative Dwellings have been Profiled into one or more Named Projects on OPS in accordance with Condition 6.1.2 and accepted by GLA, the Indicative Allocation shall be reduced by an amount equal to the Named Project Grant allocated to those Named (Indicative) Projects.
- 5.6 Any reduction in the Indicative Allocation made pursuant to Condition 5.4 will result in a commensurate reduction in the Allocated Total Grant.
- 5.7 Each Consortium Member confirms that it has received (either through OPS or through the Lead Partner) confirmation of the Average Grant Rate for each Tenure. Each Consortium Member acknowledges and agrees that they will use all reasonable endeavours to ensure that by the date that the final Unprofiled Indicative Dwelling is Profiled into a Named Project in accordance with the requirements of this Agreement, the average of the grant rates (set out on OPS) applied to all AHP Dwellings comprised in Named (Indicative) Projects by Tenure Type will be equal to or less than the Average Grant Rate for that Tenure Type.
- 5.8 The Lead Partner (on behalf of the Consortium Members) may, with the consent of the GLA (to be provided in its absolute discretion), be entitled to upload additions to the Indicative Proposals on OPS.
- 5.9 In accepting any additions to the Indicative Proposals, the GLA shall be entitled to adjust OPS to reflect the additions to the Indicative Proposals including adjustment to:
- 5.9.1 the Allocated Net Grant;
- 5.9.2 the Average Grant Rates;
- 5.9.3 the Indicative Allocation; and
- 5.9.4 the Annual Committed Number for the applicable Start Year(s).
- 5.10 If the GLA (in its absolute discretion) rejects the submission of additions to the Indicative Proposals on OPS, such additions shall be disregarded and the Agreement shall continue on the basis of the Indicative Proposals set out on OPS prior to the submission of any additions pursuant to Condition 5.8.
- 5.11 If the GLA has exercised its rights under Condition 5.4.1, such Non Start Indicative Dwellings shall be deemed to be removed from the Indicative Proposals.

## 6 **Named Projects**

### 6.1 The Lead Partner must ensure:

- 6.1.1 that it has uploaded such details as are required for each proposed Named Project forming part of the Original Approved Bid onto OPS prior to the date of this Agreement; and
- 6.1.2 that the Annual Committed Number of Unprofiled Indicative Dwellings within a Start Year are incorporated into one or more Named Projects and uploaded onto OPS by no later than the 30 June in the relevant Start Year

in each case such details to include (but not be limited to) the anticipated Development Costs, the relevant grant rates for each Tenure Type, the proposed Milestones and where the relevant project is accepted by the GLA through OPS, it will become a Named Project for the purposes of this Agreement with effect from the date of its acceptance by the GLA in OPS.

### 6.2 In permitting the Lead Partner to submit details of a proposed Named Project, the Relevant Consortium Member represents and warrants to the GLA in relation to each Named Project that:

#### 6.2.1 the Named Project:

- (a) is in its opinion (acting reasonably) deliverable in accordance with the Named Project Delivery Timetable; and
- (b) comprises no Public Sector Funding beyond that identified in the Named Project Details;

#### 6.2.2 it:

- (a) possesses or will possess a Secure Legal Interest in the Site;
- (b) has obtained all necessary Consents as are then required for the lawful development and/or Rehabilitation of the Named Project and for the delivery of the Named Project in accordance with the Named Project Details;
- (c) has complied with all applicable requirements of the Affordable Housing Capital Funding Guide in relation to the Named Project;
- (d) if it is an LA provider:
  - i it is not subject to any Section 15 Direction nor do any circumstances exist which would permit such a direction to be issued; and
  - ii it has not nor have any of its officers made a Section 114 Report nor is it aware of any circumstances which would give rise to the making of a Section 114 Report;

6.2.3 the rent levels for any:

- (a) SR Dwelling within the Named Project shall be set at or below a rent calculated in accordance with the formula for calculating social rents set out in Legislation and (to the extent applicable) in the Rent Standard applicable at the point of letting; and
- (b) LLR Dwelling within the Named Project will be set at or below the LLR Rent Levels applicable at the point of letting;

6.2.4 the Additionality Condition is satisfied and the Affordable Percentage Condition is or will be satisfied at Practical Completion;

6.3 In submitting a proposed Named Project pursuant to Condition 6.1 on its own behalf, the Lead Partner is deemed to represent and warrant to the GLA in the terms set out in Condition 6.2.

6.4 In submitting any Named Project pursuant to Condition 6.1, the Lead Partner represents and warrants:

6.4.1 the Consortium is making proper progress against its Indicative Allocation, assessed by reference to the Consortium's progress against:

- (a) the annual Profiling of the Annual Committed Number set out on OPS;
- (b) the number of AHP Dwellings comprised within Named (Indicative) Projects which have achieved Start on Site; and

6.4.2 the grant attributed to each AHP Dwelling comprising any Named (Indicative) Project will not prejudice the ability of the Consortium to ensure that the average of the grant rates for the AHP Dwellings delivered or to be delivered would be consistent with the Average Grant Rate for each Tenure Type having regard to paragraph 16 of the Agreed Principles.

6.5 The GLA may in its absolute discretion vary the percentages attributed to Acquisition Tranche Grant, Start on Site Tranche Grant and Practical Completion Tranche Grant from time to time save that, subject to Condition 6.6, no such variation will take effect in relation to any Tranche which has already been paid.

6.6 In exceptional circumstances, the GLA may consider providing an additional tranche of funding for a Named Project outside of the Tranches. In allowing the Lead Partner (on behalf of the Relevant Consortium Member) to claim an additional tranche (which shall be in GLA's absolute discretion), the GLA shall be entitled to require the Relevant Consortium Member to make additional representations and warranties as a condition of such claim. Any claim for additional tranche shall have due regard to paragraph 12 of Part 1 of Schedule 1 and GLA's rights under Condition 6.5.

6.7 Under no circumstances shall the GLA be obliged to accept any Named Project if the GLA (acting reasonably) believes that it does not, will not or is unlikely to have sufficient financial resources available to it (taking account inter alia of its commitments under the AHP 2021-26 or other programme commitments) to provide Named Project Grant in relation to the relevant project.

- 6.8 The GLA shall not be obliged to accept any project uploaded onto OPS pursuant to Condition 6.1.2 where any Consortium Member is failing to perform against the Approved Bid and/or any Previous AHP Programme.

**7 Changes to Named Projects and Required Affordable Percentage**

The Lead Partner, the GLA and the Relevant Consortium Member may from time to time agree changes to the Named Project Details and/or the Required Affordable Percentage and where such changes are agreed they shall be implemented by the Lead Partner (on behalf of the Relevant Consortium Member) amending the Named Project Details and/or the Required Affordable Percentage in OPS and the confirmation of that amendment by the GLA through OPS and in default of agreement the parties will be bound by the Named Project Details and/or the Required Affordable Percentage as they existed prior to the changes proposed under this Condition 7.

**8 Time extensions**

- 8.1 Where a Milestone Failure occurs or is in the opinion of the GLA reasonably likely to occur (having regard to any information provided pursuant to any of Conditions 10.1.4, 11.3 or 12) and:

8.1.1 where such failure is directly caused by a Milestone Extension Event the GLA shall, subject always to Condition 8.3, extend the relevant Milestone Date and associated Named Project Completion Date by such period as it (acting reasonably) considers appropriate to take account of the delay caused or likely to be caused by the Milestone Extension Event; or

8.1.2 where such failure is not directly caused by a Milestone Extension Event, the GLA shall notify the Lead Partner of the Milestone Failure and the GLA shall within thirty (30) Business Days of such notification seek to agree revised Milestone Dates with the Lead Partner on behalf of the Relevant Consortium Member and:

(a) where revised Milestone Dates are agreed within such period the Lead Partner (on behalf of the Relevant Consortium Member) shall promptly amend the Milestone Dates on OPS in accordance with Condition 7; or

(b) where revised Milestone Dates are not agreed within such period the Milestone Failure shall be treated for grant recovery purposes as a Project Default under Condition 20.2.17.

- 8.2 The GLA shall not be obliged to extend a Milestone Date:

8.2.1 unless a Milestone Extension Event exists; or

8.2.2 in circumstances where such extension would (when taken individually or together with other extensions in relation to the Consortium) in the GLA's reasonable opinion materially and adversely affect the delivery of the Approved Bid or (when taken individually or together with other extensions allowed in relation to the Consortium or other grant recipients of the AHP 2021-26) materially and adversely affect the GLA's projected expenditure profile in relation to any year of the AHP 2021-26 and in particular (but without limitation)

such expenditure profile in relation to the last Quarter of the relevant Financial Year.

- 8.3 Save where GLA has accepted a later date on OPS, the GLA shall not under any circumstances be required or obliged to extend a Named Project Start Date beyond 31 March 2026 and/or a Named Project Practical Completion Date beyond 31 March 2028 but may in its absolute discretion elect to do so.

## 9 **Additional Projects**

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

- 9.2 Where Condition 9.1 applies, the Lead Partner shall submit to the GLA through OPS such details of the proposed Additional Project as the GLA may require. In submitting such details, the Lead Partner on behalf of the Relevant Consortium Member is deemed to make makes the same representations and warranties in relation to the proposed Additional Project as it makes to the GLA pursuant to Condition 6.2.

- 9.3 The GLA shall consider the Additional Project and if the GLA (in its absolute discretion) is satisfied:

9.3.1 with the information provided;

9.3.2 the level of grant funding requested;

9.3.3 with the each Consortium Member's performance in relation to the Approved Bid and any Previous AHP Programme;

9.3.4 that no Default Event subsists; and

9.3.5 with such other matters as the GLA may from time to time determine,

the GLA shall be entitled (but not obliged) to accept the Additional Project into the Approved Bid and shall confirm such acceptance to the Lead Partner through OPS.

- 9.4 With effect from the Additional Project Acceptance Date:

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

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

9.4.3 each of the Lead Partner and the Relevant Consortium Member must ensure that it complies with all of its obligations under this Agreement as they apply to such new Named Project.

- 9.5 If the GLA agrees to make available any grant funding in relation to an Additional Project, the Allocated Total Grant will be deemed to be adjusted by the Total Project Grant agreed by the GLA in OPS in relation to the new Named Project but the Indicative Allocation will remain unchanged.

## 10 Delivery Obligations

### 10.1 The Relevant Consortium Member must in relation to each Named Project:

- 10.1.1 carry out the acquisition of the Site (where applicable), procure and diligently pursue the completion of the Works so that:
  - (a) the Named Project is (subject to Condition 8.1) constructed, delivered and/or Rehabilitated (as applicable) in accordance with the Named Project Delivery Timetable;
  - (b) when delivered, the Named Project fully complies with the Named Project Details; and
  - (c) any applicable requirements of Procurement Law and of the Consents are satisfied;
- 10.1.2 actively market or allocate the SO Dwellings and LLR Dwellings with a view to ensuring (as far as practicable) the disposal or letting of such dwellings to individuals as AHP Housing at Practical Completion (or as soon as reasonably possible thereafter);
- 10.1.3 advertise all SO Dwellings and LLR Dwellings through the portal at <https://www.london.gov.uk/what-we-do/housing-and-land/homes-londoners/search/> or such other website address notified by the GLA to the Lead Partner from time to time;
- 10.1.4 promptly notify the GLA in writing of any failure or likely failure to comply with this Condition 10.1; and
- 10.1.5 procure that prior to any AHP Dwelling comprised in such Named Project being occupied, any certifications required under any building safety legislation arising out of the Building Safety Bill 2021 in respect of the Named Project (or any part thereof) are obtained (including certification that the AHP Dwelling has passed "Gateway 3", if implemented).

### 10.2 Where a Named Project is an Estate Regeneration Project:

- 10.2.1 the Relevant Consortium Member must comply with the obligations set out in Section 8 of the Affordable Housing Capital Funding Guide; and
- 10.2.2 the Lead Partner must provide GLA with either:
  - (a) the Compliance Checklist, where the Resident Ballot Requirement applies; or
  - (b) in any other circumstances, the Exemption Certificate

before the Start on Site Tranche Grant is claimed pursuant to Condition 14.4.

### 10.3 Where the Relevant Consortium Member is a RP Provider, it must (subject to any contrary Legislation) offer and continue to offer the Right to Shared Ownership to the current resident of each AHP Dwelling other than any RTSO Exempted Dwelling in accordance



with any applicable requirements of the RTSO Guidance and the Affordable Housing Capital Funding Guide.

- 10.4 The Relevant Consortium Member must deliver the Named Projects in compliance with the Certified Standards.
- 10.5 Each Consortium Member acknowledges that until 31 March 2023 (or such other date as the GLA determines as necessary), the GLA will be piloting the implementation of a DQHAP and/or POE process in respect of its AHP 2021-26 funding arrangements and agrees that, if GLA deems the pilot to be successful, each Consortium Member will (unless notified otherwise by GLA to the Lead Partner in writing) comply with any subsequent requirements of GLA in respect of the implementation and operation of DQHAP and POE processes and in particular:
  - 10.5.1 where the Lead Partner is notified by GLA in writing (including through electronic means), the Lead Partner will provide GLA with a copy of a DQHAP from each Relevant Consortium Member within such timeframe as is specified in the notice;
  - 10.5.2 each Relevant Consortium Member will implement the DQHAP and the Lead Partner will provide evidence (satisfactory to GLA, acting reasonably) of such implementation within 12 months from the date of acceptance of the DQHAP by GLA or within such other timeframe that GLA agrees in its absolute discretion;
  - 10.5.3 where the Lead Partner is notified by GLA in writing (including through electronic means), each Relevant Consortium Member specified in such notice will carry out a POE (at its own cost) within the timeframes set out in such notification; and
  - 10.5.4 the Lead Partner will provide the results of a POE to GLA as soon as practicable following the conclusion of the POE pursuant to Condition 10.5.3.
- 10.6 Where in the GLA's opinion (acting reasonably) a Consortium Member fails to comply with the provisions of Condition 10.5 (a **DQHAP/POE Breach**):
  - 10.6.1 the Lead Partner on behalf of the Relevant Consortium Member must submit for approval the Relevant Consortium Member's proposed remediation plan (the **Remediation Plan**) to the GLA within fifteen (15) Business Days of the GLA's written notice of the requirement for such Remediation Plan setting out the Relevant Consortium Member's proposals for the steps to be taken to remedy or mitigate the effects of the DQHAP/POE Breach and a basis for testing whether this has been achieved within the three month period following the DQHAP/POE Breach;
  - 10.6.2 the GLA will notify the Lead Partner on behalf of the Relevant Consortium Member as to whether the Remediation Plan is approved as submitted within ten (10) Business Days of its receipt;
  - 10.6.3 if the Remediation Plan is not approved, senior representatives of the Lead Partner, the Relevant Consortium Member and the GLA must meet as soon as practicable (and in any event within ten (10) Business Days of the GLA's notification under Condition 10.6.2 or such later date as the GLA may agree) to

try to agree a revised Remediation Plan. In default of agreement, or where no Remediation Plan is submitted to GLA within the requisite timeframe, Condition 17.1.16 shall apply;

10.6.4 if the Remediation Plan is approved, the Relevant Consortium Member must comply with the obligations set out in the Remediation Plan; and

10.6.5 within five (5) Business Days of the end of the three month period from the date of the DQHAP/POE Breach, senior representatives of the Relevant Consortium Member and the GLA must meet to review the efficacy of the Remediation Plan in remedying or mitigating the effects of the breach. If in the opinion of the GLA (acting reasonably) the Remediation Plan has not been effective or has not been complied with, the GLA shall be entitled in its absolute discretion either to extend the timeframe for the Remediation Plan's operation or to declare that the Remediation Plan has failed in which case Condition 17.1.16 shall apply.

10.7 Each Consortium Member acknowledges that data collected as a result of the POE will be published by GLA on the London Datastore and each Consortium Member consents to such publication.

## 11 **Operational Obligations**

11.1 In delivering the Named Projects and in operating and administering the Named Project after Practical Completion, the Relevant Consortium Member must observe and comply with Legislation, the applicable terms of the Affordable Housing Capital Funding Guide, the Recovery Determination and the Consents.

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

11.3 The Relevant Consortium Member must notify the GLA in writing (save in respect of Conditions 11.3.1 and 11.3.2, where notification is required to be given through OPS by the Lead Partner):

11.3.1 immediately once a Milestone has been achieved with respect to each Named Project;

11.3.2 immediately, in the event of the receipt by it of any other Public Sector Funding or guarantees of it, or the offer of the same, in respect of a Named Project (or any part of it) beyond any amount of Public Sector Funding notified to the GLA by the Lead Partner pursuant to Condition 6.1 or Condition 9.2;

11.3.3 immediately upon becoming aware of any event or circumstance which may have a Material Adverse Effect;

11.3.4 in the case of the Relevant Consortium Member being a RP Provider, promptly of any Restructure relating to the Relevant Consortium Member which it anticipates will occur in the next following six month period;

- 11.3.5 promptly of any Change in Control relating to the Relevant Consortium Member which it anticipates will occur in next following six month period;
  - 11.3.6 in the case of the Relevant Consortium Member being a Profit Making Organisation, promptly of any change in the board of management of the Relevant Consortium Member;
  - 11.3.7 of any other event or circumstance in relation the Named Project as the GLA may reasonably require from time to time and within such timeframes as the GLA may reasonably require; and
  - 11.3.8 immediately as soon as the Relevant Consortium Member becomes aware that the Additionality Condition or the Affordable Percentage Condition will no longer be satisfied.
- 11.4 Without prejudice to Condition 11.1, the Relevant Consortium Member must in operating and administering the Named Project after Practical Completion:
- 11.4.1 not use the AHP Dwellings for any purpose other than the Agreed Purposes without the GLA's prior written consent;
  - 11.4.2 subject always to compliance with the applicable LLR Rent Level, not charge a higher initial rent in relation to a LLR Dwelling than the London Living Rent as set out in the relevant Named Project Details, review the LLR Rent Levels each Financial Year and ensure that the rent for each LLR Dwelling:
    - (a) continues to be:
      - i set and charged in accordance with the criteria of the London Living Rent; and
      - ii increased by no more than the percentage increase in CPI over the twelve (12) month period which ends three (3) calendar months prior to the relevant rent increase date; and
    - (b) on any re-let is set in accordance with the then applicable LLR Rent Level (or lower);
  - 11.4.3 subject to any contrary requirement of Legislation comply with the Rent Standard in respect of the SR Dwellings;
  - 11.4.4 comply with the Tenancy Standard in respect of the SR Dwellings and the LLR Dwellings;
  - 11.4.5 observe and comply with the requirements of the Affordable Housing Capital Funding Guide (and where applicable the SO Consultation Outcome and, where the Relevant Consortium Member is an RP Provider, the RTSO Guidance) in relation to:
    - (a) any disposal of an SO Dwelling and ensure that such disposal takes effect only at arm's length and on market terms;

- (b) (save where expressly agreed with the prior written consent of the GLA, in its absolute discretion) the form and content of any Shared Ownership Lease granted by or to be granted by the Relevant Consortium Member in relation to an AHP Dwelling, including, where the Relevant Consortium Member is an RP Provider, through the Right to Shared Ownership;
  - (c) the purpose, target group (including any eligibility requirement), letting, rents, management or disposal of SR Dwellings and/or LLR Dwellings (as applicable);
  - (d) the operation of the Right to Shared Ownership (where the Relevant Consortium Member is an RP Provider); and
  - (e) the nature of the housing and/or housing product (as described in the Affordable Housing Capital Funding Guide) being funded pursuant to this Agreement;
- 11.4.6 comply at its own cost with the GLA's requirements in relation to Compliance Audit;
- 11.4.7 in relation to AHP Housing, participate in the CORE system from time to time (including recording any lettings made together with any sales of stock including outright sales and shared ownership sales but excluding any sales of additional equity to the current shared owner);
- 11.4.8 in relation to each SR Dwelling use the most appropriate form of tenancy having regard to the terms of the Tenancy Standard and the efficient use of public funds;
- 11.4.9 ensure that all LLR Dwellings are made available solely to LLR Tenants as LLR Dwellings and ensure that prior to any change to that purpose or to any disposal they are offered for sale to the then current LLR Tenant;
- 11.4.10 ensure that all SR Dwellings are made available on terms which comply with the applicable requirements of the Affordable Housing Capital Funding Guide, Legislation and any other relevant guidance issued by the Regulator (as any of the same may be amended or updated from time to time);
- 11.4.11 ensure that where a Named Project is subject to the Resident Ballot Requirement, the proposals set out in the Landlord Offer are complied with; and
- 11.4.12 comply with any Legislation, instructions, direction, conditions, regulations and guidance issued by any Regulatory Body which are in force and apply in England in relation to building safety.
- 11.5 The Relevant Consortium Member shall ensure that the GLA's requirements from time to time in relation to public relations and publicity for capital projects (including Site signage) as notified to the Lead Partner from time to time or otherwise as included in the Affordable Housing Capital Funding Guide are observed and implemented in respect of each Named Project.

- 11.6 In discharging its obligations or making any representation or warranty under this Agreement, each Consortium Member must act at all times with the utmost good faith, with the intent to deliver the Approved Bid and with proper regard to the need for efficiency in the use of public funds.
- 11.7 Each Consortium Member must comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 and comply with the GLA's anti-fraud and corruption policies, a copy of which is available here: <https://www.london.gov.uk/about-us/governance-and-spending/good-governance/our-procedures>, in each case as the GLA or the relevant industry body may update from time to time.
- 11.8 Where a Consortium Member is aware that it is in breach of an obligation under this Condition 11 it must promptly notify the GLA of the fact and take all such steps as are appropriate in the circumstances to remedy the breach.
- 12 **Review, Monitoring and Reporting**
- 12.1 Each Consortium Member must promptly advise GLA when any circumstance occurs which may:
- 12.1.1 impact adversely on its ability to deliver any Named Project in accordance with the terms of this Agreement; and/or
  - 12.1.2 in the case of a Consortium Member that is an LA Provider, gives rise to the making of a Section 114 Report or the issue of a Section 15 Direction; and/or
  - 12.1.3 impact adversely on its ability to Profile the Unprofiled Indicative Dwellings into Named Projects; and/or
  - 12.1.4 constitute a Default Event or a breach of any term of this Agreement.
- 12.2 The Lead Partner shall attend a review meeting when required to do so by the GLA acting reasonably and the GLA shall provide the Lead Partner with written details of the matters to be discussed at the review meeting timeously in advance of such meeting.
- 12.3 The Lead Partner shall provide the GLA as soon as reasonably practicable with such information as the GLA shall reasonably require to support or facilitate the discussions referred to in this Condition 12 and shall use all reasonable endeavours to ensure the accuracy of any information provided and each Consortium Member must provide the Lead Partner with such information as the Lead Partner requires in order to allow it to discharge its obligations under this Condition 12.
- 12.4 The Lead Partner must keep OPS fully updated and ensure that it accurately reflects the agreed Approved Bid and Named Project Details from time to time.
- 12.5 Each Consortium Member which is an RP Provider shall ensure that it and any Affiliate (at its or their cost) co-operates with the GLA during an SPEI Review and it shall if requested promptly provide the GLA with SPEI Information and such other information, evidence and/or explanation as the GLA may reasonably require.
- 12.6 Each Consortium Member shall promptly:

- 12.6.1 participate in any evaluation of AHP 2021-26 that DLUHC or GLA or its or their agents may require from time to time; and
- 12.6.2 supply to the Lead Partner (subject always to its data protection obligations under Condition 22) any information and data required by DLUHC, GLA or its or their agents in respect of any such evaluation, which may include information/data pertaining to any AHP Dwellings (including, inter alia, addresses and tenures of such dwellings) and, on receipt, the Lead Partner shall promptly supply this information to the GLA.
- 12.7 The Lead Partner shall promptly update OPS accurately with such information as may be requested by GLA from time to time (acting reasonably) in connection with the terms of this Agreement and each Consortium Member must promptly provide the Lead Partner with such information as the Lead Partner requires in order to allow it to discharge its obligations under this Condition 12.7.
- 12.8 The GLA is entitled from time to time to conduct a review and reconciliation exercise (**Interim Reconciliation Exercise**) to:
  - 12.8.1 assess the Lead Partners progress in the Profiling of the Unprofiled Indicative Dwellings to Named Projects on behalf of the Consortium Members and the Consortium's progress in delivering the resulting Named (Indicative) Projects as against each Annual Committed Number; and/or
  - 12.8.2 assess the average of the grant rates applied to the AHP Dwellings of each Tenure Type comprised in each Named (Indicative) Project against the Average Grant Rates.
- 12.9 If, as a result of an Interim Reconciliation Exercise, the GLA determines, acting reasonably, that either:
  - 12.9.1 the Lead Partner (on behalf of the Consortium) is failing, or in the opinion of the GLA (acting reasonably) is likely to fail, to Profile the Annual Committed Number into Named Projects in any Start Year in accordance with the timeframes set out in Condition 6.1 or is unlikely to achieve Start on Site in respect of the Annual Committed Number in any Start Year; or
  - 12.9.2 it is unlikely in the opinion of the GLA that by 31 March 2026 the average of the grant rates attributed to the AHP Dwellings (by Tenure Type) in the Named (Indicative) Projects will equal or be lower than the Average Grant Rates for each Tenure Type,

a default shall be deemed to occur (**Interim Reconciliation Default**) and the provisions of Condition 20.7 and 20.8 shall apply.
- 12.10 Within 3 months following 31 March 2028 (or such later date as GLA may specify), the GLA shall carry out a final reconciliation exercise (**Final Reconciliation Exercise**) to determine whether:
  - 12.10.1 the figure which results from the aggregate grant paid and any RCGF Funds used in respect of the LLR Dwellings in all Named (Indicative) Projects being divided by the number of LLR Dwellings actually delivered in all Named

(Indicative) Projects is equal to or less than the Average Grant Rate for an LLR Dwelling specified on OPS;

- 12.10.2 the figure which results from the aggregate grant paid and any RCGF Funds used in respect of the SO Dwellings in all Named (Indicative) Projects being divided by the number of SO Dwellings actually delivered in all Named (Indicative) Projects is equal to or less than the Average Grant Rate for a SO Dwelling specified on OPS; and
- 12.10.3 the figure which results from the aggregate grant paid and any RCGF Funds used in respect of the SR Dwellings in all Named (Indicative) Projects being divided by the number of SR Dwellings actually delivered in all Named (Indicative) Projects is equal to or less than the Average Grant Rate for an SR Dwelling specified on OPS.

- 12.11 Where the reconciliation exercise carried out under Condition 12.10 confirms that the average of the actual grant paid and RCGF Funds used across the Named (Indicative) Projects delivered for a Tenure Type is more than the Average Grant Rate allocated to that Tenure Type (**Grant Rate Default**), the provisions of Condition 18.2.8 shall apply.
- 12.12 The GLA and the Lead Partner acknowledge and agree that GLA may from time to time review whether the Lead Partner continues to meet the requirements for Investment Partner status and the Lead Partner will co-operate with such review and will provide GLA with such further information, evidence and/or explanation with respect to any such review as GLA may request.
- 12.13 The Lead Partner shall, having consulted with the Consortium Members and on request from GLA, upload such details GLA may require onto OPS (or provide such details in another format as agreed by the GLA in its absolute discretion) of any Additional Affordable Housing Dwellings being delivered by any Consortium Member.

## 13 **Disposals**

- 13.1 The Relevant Consortium Member must provide the GLA with a Disposal Notification prior to a Disposal taking place.
- 13.2 The Lead Partner must:
  - 13.2.1 use all reasonable endeavours to ensure that that any person providing the Disposal Notification, Compliance Checklist or any other notifications or certificates to the GLA (the **Relevant Notifications**) is a senior officer of the Lead Partner with access to the information and knowledge needed accurately to give the information required; and
  - 13.2.2 where applicable provide any Exemption Certificate received by the Lead Partner from the GLA in respect of a Named Project to the Relevant Consortium Member;
  - 13.2.3 notify the GLA if it becomes aware that:
    - (a) any Relevant Notification is erroneous in any material respect;

- (b) the facts or circumstances upon which a Compliance Checklist or Exemption Certificate was provided (as applicable) have changed so that such document is no longer correct in all material respects; or
- (c) an Exemption Certificate expires.

### 13.3 The Relevant Consortium Member:

13.3.1 must use all reasonable endeavours to ensure that that any person providing the Disposal Notification and/or any other notifications or certificates from the Relevant Consortium Member to the GLA is a senior officer of the Relevant Consortium Member with access to the information and knowledge needed accurately to give the information required; and

13.3.2 notify the GLA if it becomes aware that:

- (a) any of the confirmations set out in clause 13.3.1 above are erroneous in any material respect;
- (b) any Relevant Notification is erroneous in any material respect;
- (c) the facts or circumstances upon which a Compliance Checklist or Exemption Certificate was provided (as applicable) have changed so that such document is no longer correct in all material respects; or
- (d) an Exemption Certificate expires.

## 14 Grant Claim Procedures

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

14.2 In permitting the Lead Partner to submit an application pursuant to Condition 14.1, the Relevant Consortium Member is deemed to:

- 14.2.1 represent and warrant to the GLA that it possesses a Secure Legal Interest;
- 14.2.2 represent and warrant to the GLA that the Acquisition Milestone has been achieved and that such date is no later than that submitted in OPS by the Lead Partner and accepted by GLA (in its absolute discretion);
- 14.2.3 repeat the representations and warranties set out in Condition 6.2;
- 14.2.4 represent and warrant to the GLA that all notifications, confirmations and certifications made or to be made by the Lead Partner in OPS in relation to the Named Project have been, are or will be correct in all material respects;
- 14.2.5 represent and warrant to the GLA that it is a Registered Provider;



- 14.2.6 represent and warrant to the GLA that no Withholding Event or Default Event has occurred or arisen and the Relevant Consortium Member is in compliance with the terms of this Agreement in all material respects;
  - 14.2.7 represent and warrant that, save where otherwise agreed with the GLA (in its absolute discretion), the Named Project is or will be compliant with the Minimum Building Safety Standard;
  - 14.2.8 represent and warrant that the Named Project is or will be compliant with the Certified Standards; and
  - 14.2.9 represent and warrant that it is not aware of any circumstance which may materially impact the ability of the Consortium to deliver the Annual Committed Number within each Start Year.
- 14.3 In submitting an application pursuant to 14.1 on its own behalf the Lead Partner is deemed to represent and warrant to the GLA:
- 14.3.1 in the terms set out in Conditions 14.2.1 to 14.2.3 (inclusive) and 14.2.5 to 14.2.9 (inclusive); and
  - 14.3.2 that all confirmations and certifications made or to be made by it in OPS in relation to the Named Project have been or will be correct in all material respects.
- 14.4 Subject to a Named Project having reached the Start on Site Tranche Payment Date and where such Named Project is an Estate Regeneration Project, the Estate Regeneration Funding Condition having been satisfied, the Lead Partner may apply to the GLA for the Start on Site Tranche Grant payable in respect of that Named Project to be paid to it. The Lead Partner must make its application through OPS in accordance with the requirements of OPS from time to time and in compliance with the applicable procedures set out in the Affordable Housing Capital Funding Guide.
- 14.5 In permitting the Lead Partner to submit an application pursuant to Condition 14.4 or in the case where Start on Site has been achieved but no sum is payable by way of Start on Site Tranche Grant as determined through OPS, the Relevant Consortium Member is deemed to:
- 14.5.1 repeat the representations and warranties set out in Condition 6.2 (save for Condition 6.2.2(a);
  - 14.5.2 represent and warrant to the GLA that it possesses a Secure Legal Interest;
  - 14.5.3 represent and warrant to the GLA that Start on Site has been achieved and that such date is no later than that submitted in OPS;
  - 14.5.4 represent and warrant to the GLA that all notifications, confirmations and certifications made or to be made by the Lead Partner on behalf of the Relevant Consortium Member pursuant to Condition 12 or otherwise in OPS in relation to the Named Project have been, are or will be correct in all material respects;
  - 14.5.5 represent and warrant to the GLA that it is a Registered Provider;

- 14.5.6 represent and warrant to the GLA that no Withholding Event or Default Event has occurred or arisen and it is in compliance with the terms of this Agreement in all material respects;
- 14.5.7 represent and warrant to the GLA that either:
- (a) the Named Project is not an Estate Regeneration Project; or
  - (b) the Estate Regeneration Requirement has been or will be complied with and to the best of its knowledge (having made all reasonable and proper enquiries):
    - i no material facts or circumstances exist which prejudice such compliance or mean that the Compliance Checklist or the Exemption Certificate (as applicable) is no longer correct in all material respects; and
    - ii the Exemption Certificate remains extant and has not been withdrawn by the GLA;
- 14.5.8 represent and warrant that the Additionality Condition is satisfied and the Affordable Percentage Condition will be satisfied by Practical Completion of a Named Project;
- 14.5.9 represent and warrant that it is likely to meet its Annual Committed Number for each Start Year; and
- 14.5.10 represent and warrant that the Named Project is or will be compliant with the Certified Standards.
- 14.6 In submitting an application pursuant to Condition 14.4 on its own behalf the Lead Partner is deemed to represent and warrant to the GLA:
- 14.6.1 in the terms set out in Conditions 14.5.1 to 14.5.3 (inclusive) and 14.5.5 to 14.5.10 (inclusive); and
  - 14.6.2 all notifications, confirmations and certifications made or to be made by it pursuant to Condition 12 or otherwise in OPS in relation to the Named Project have been, are or will be correct in all material respects.
- 14.7 Subject to a Named Project having reached the relevant Final Claim Stage by the Practical Completion Tranche Payment Date, the Lead Partner may apply to the GLA for the Practical Completion Tranche Grant payable in respect of that Named Project to be paid to it. The Lead Partner must make its application through OPS and in accordance with the requirements of OPS from time to time and in compliance with the applicable procedures set out in the Affordable Housing Capital Funding Guide.
- 14.8 In permitting the Lead Partner to submit an application pursuant to Condition 14.7 or in the case where Practical Completion has been achieved but no sum is payable by way of Practical Completion Tranche Grant as determined through OPS, the Relevant Consortium Member is deemed to repeat the representations and warranties set out in

Condition 14.5 (save for Condition 14.5.2 and 14.5.8) and to further represent and warrant to the GLA that:

- 14.8.1 the Named Project has been procured, designed, constructed and delivered (as applicable) in accordance with the requirements of this Agreement (including in compliance with the Certified Standards);
- 14.8.2 the Named Project has reached Practical Completion;
- 14.8.3 all confirmations and certifications made or to be made by the Lead Partner in OPS in relation to the Named Project have been or will be correct in all material respects;
- 14.8.4 it is a Registered Provider;
- 14.8.5 it has obtained all Consents necessary for the lawful development of the Named Project in accordance with the Named Project Details as are then required or to the extent that they are not obtained that it has taken all necessary steps to obtain them, is waiting only for the Relevant Authority to issue them and is not aware (having made all reasonable enquiries) of any reason why such Consents will not be given or issued;
- 14.8.6 it possesses a Completed Interest in the Site;
- 14.8.7 the Named Project satisfies the Additionality Condition and the Affordable Percentage Condition;
- 14.8.8 in the case of a Consortium Member which is a LA Provider:
  - (a) it is not subject to any Section 15 Direction nor do any circumstances exist which would permit such a direction to be issued; and
  - (b) it has not nor have any of its officers made a Section 114 Report nor is it aware of any circumstances which would give rise to the making of a Section 114 Report.

14.9 In submitting an application pursuant to Condition 14.7 on its own behalf the Lead Partner is deemed to represent and warrant to the GLA:

- 14.9.1 in the terms set out in Conditions 14.8.1, 14.8.2 and 14.8.4 to 14.8.9 (inclusive); and
- 14.9.2 that all confirmations and certifications made or to be made by it in OPS in relation to the Named Project have been or will be correct in all material respects.

14.10 Where any Named Project is identified on OPS as being an MMC Project, the GLA and the Lead Partner may agree alternative dates for the payment of Named Project Grant and/or Milestones (which better reflect the nature and characteristics of Modern Methods of Construction) in OPS or in such other medium as GLA may specify and where this Condition 14.10 applies the GLA reserves the right to:

- 14.10.1 require that the Relevant Consortium Member makes additional representations and warranties as a condition of any claim for Named Project Grant; and
- 14.10.2 include any additional delivery obligations having regard to the use of the Modern Methods of Construction.
- 14.11 In submitting any application pursuant to this Condition 14, the Lead Partner is deemed to represent and warrant that it is an Investment Partner.
- 15 **Payment of Grant**
- 15.1 Subject to:
  - 15.1.1 the GLA (acting reasonably) being satisfied with the Lead Partner's application for payment including the information warranted pursuant to Conditions 14.2, 14.3, 14.5, 14.6, 14.8, 14.9 and 14.11 (as relevant);
  - 15.1.2 Conditions 15.3 and 17; and
  - 15.1.3 the Condition Precedent having been satisfied in relation to a LA Project (where applicable),

the GLA shall (resources permitting) pay the Acquisition Tranche Grant, Start on Site Tranche Grant or the Practical Completion Tranche Grant (as applicable) to the Lead Partner within fifteen (15) Business Days of receipt of a relevant and satisfactory application.
- 15.2 If the GLA is not satisfied with the Lead Partner's application for payment, it must notify the Lead Partner in writing as soon as reasonably practicable and in any event within ten (10) Business Days of receipt of the application for payment identifying the reason for its dissatisfaction. The GLA must allow the Lead Partner a period of up to ten (10) Business Days to address the issues identified in the notification and to resubmit or amend its application accordingly in which case the provisions of Condition 14 and this Condition 15 (as applicable) will be reapplied to the Lead Partner's resubmitted or amended application for payment.
- 15.3 The GLA shall not be obliged to pay the Lead Partner in respect of a Named Project any:
  - 15.3.1 Acquisition Tranche Grant before the Acquisition Tranche Payment Date (as confirmed by the GLA through OPS) has occurred;
  - 15.3.2 Start on Site Tranche Grant before the Start on Site Tranche Payment Date (as confirmed by the GLA through OPS) has occurred;
  - 15.3.3 Practical Completion Tranche Grant before the Practical Completion Tranche Payment Date (as confirmed by the GLA through OPS) has occurred;
  - 15.3.4 Tranche if the Named Project has not been accepted by the GLA through OPS;
  - 15.3.5 Tranche if the Named Project has not reached:
    - (a) the Acquisition Milestone; or

(b) Start on Site; or

(c) Practical Completion,

by the Milestone Date identified in OPS (subject to any extension to such date pursuant to Condition 8.3); or

15.3.6 Tranche if the Named Project does not satisfy the Additionality Condition or is unlikely (in the opinion of GLA acting reasonably and having regard to the relevant Planning Permission relating to delivery of the dwellings on the Development Site) to satisfy the Affordable Percentage Condition.

15.4 Where the GLA pays Named Project Grant to the Lead Partner, the Allocated Net Grant shall be reduced by a commensurate amount.

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

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

## 16 **Records and Accounting**

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

16.1.1 all data, materials, documents and accounts of any nature created, acquired or brought into existence in any manner whatsoever by or on behalf of each Consortium Member (including where the source was created by and/or is held by any Consortium Member Party (or its consultants)) for the purposes of or in connection with this Agreement; and

16.1.2 all such data, materials, documents and accounts created, acquired or brought into existence by each Consortium Member's officers, employees, agents or consultants relating to the Named Projects and which have been supplied to each of them for the purposes of this Agreement,

and each Consortium Member shall co-operate with any request made by the Lead Partner for such data, materials, documents and accounts in order to facilitate the Lead Partner's compliance under its obligations under this Condition 16.1.

16.2 On the expiry of this Agreement or (if earlier) upon termination thereof, each Consortium Member shall if requested to do so deliver up to the GLA all the data, materials, documents and accounts referred to in this Condition 16 which it has in its possession, custody or control and shall procure the handing over to the GLA such data, materials, documents and accounts referred to in Condition 16.1.2 or as otherwise directed by the GLA.

- 16.3 Each Consortium Member must for a period of ten (10) years from the date upon which it receives or uses the Total Project Grant retain all of the data, documents, materials and accounts referred to in this Condition 16 and each Consortium Member may retain such data, documents, materials and accounts in electronic form only.
- 16.4 Each Consortium Member acknowledges that The Comptroller and Auditor General shall have rights of access to the information referred to in this Condition 16 pursuant to the National Audit Act 1983 and the Government Resources and Accounts Act 2000.
- 16.5 Each Consortium Member shall co-operate fully and in a timely manner with any reasonable request from time to time of:
- (a) any auditor (whether internal or external) of the GLA; and/or
  - (b) the GLA where the GLA is required under any Legislation to provide any document relating to the Named Projects to any person.

**17 Withholding of grant**

- 17.1 Notwithstanding any other term of this Agreement the GLA shall not be obliged to make any payment to the Lead Partner whether by way of Acquisition Tranche Grant, Start on Site Tranche Grant or Practical Completion Tranche Grant or otherwise where:
- 17.1.1 the Named Project has not been delivered in accordance with the Named Project Details or in accordance with the Named Project Delivery Timetable (in circumstances, where applicable, in which the GLA was unable to agree revised Milestone Dates);
  - 17.1.2 the Lead Partner or the Relevant Consortium Member is unable to give the confirmations or certifications required by OPS or to make the representations and give the warranties referred to in Conditions 14.2, 14.3, 14.5, 14.6, 14.8, 14.9 and 14.11 (in any case in whole or in part);
  - 17.1.3 a Prohibited Act has been committed by or on behalf of a Consortium Member (in respect of which the Waiver Condition has not been satisfied);
  - 17.1.4 an Insolvency Event has occurred;
  - 17.1.5 a Consortium Member has ceased to operate;
  - 17.1.6 a Consortium Member's status as a Registered Provider is removed or withdrawn;
  - 17.1.7 any Consortium Member that is a LA Provider is or becomes subject to a Section 15 Direction or a Section 114 Report which has or will have a Material Adverse Effect;
  - 17.1.8 the Lead Partner's Investment Partner status is lost, removed or relinquished;
  - 17.1.9 the Regulator directs the GLA not to give grant to the Lead Partner or to the Relevant Consortium Member or formally recommends to it that it should not do so;

- 17.1.10 a Consortium Member is in material breach of this Agreement and has not taken steps to remedy it to the GLA's satisfaction (acting reasonably);
- 17.1.11 a Consortium Member (either by its own actions or omissions or those of its contractors or agents) harms the GLA's, the AHP 2021-26's or the Mayor of London's reputation or brings the GLA, the AHP 2021-26's or the Mayor of London into disrepute;
- 17.1.12 a Consortium Member has breached its obligations under any of Conditions 12 or 18;
- 17.1.13 it has become apparent to the GLA that a Consortium Member is unable to deliver its element of the Approved Bid or the Consortium Members collectively are unable to deliver the Approved Bid;
- 17.1.14 It has become apparent to the GLA that Additionality Condition or Affordable Percentage Condition is not or will not be satisfied in relation to a Named Project;
- 17.1.15 the GLA is not satisfied (acting reasonably) with the information provided pursuant to Condition 20.7; or
- 17.1.16 a Consortium Member has failed to submit or, in the opinion of the GLA, failed to implement a Remediation Plan within the requisite timeframes pursuant to Conditions 10.6 or 24.4.

## 18 **Repayment of grant**

- 18.1 The parties acknowledge and agree that notwithstanding any other term of this Agreement:
  - 18.1.1 the Recovery Determination has effect (mutatis mutandis) in respect of grant paid under this Agreement and that each party has the respective rights and obligations described in such determination;
  - 18.1.2 for the purposes of the Recovery Determination the terms of this Agreement represent the conditions attached to the making of Capital Grant; and
  - 18.1.3 on the occurrence of a Relevant Event the Relevant Consortium Member must recycle or repay (as applicable) the Capital Grant Recoverable in each case in accordance with the terms of the Recovery Determination.
- 18.2 Without prejudice to any other term of this Agreement, the GLA reserves the right whether following termination of this Agreement or otherwise (which right each Consortium Member expressly acknowledges and agrees) at its discretion to recover from the Relevant Consortium Member such sum or such part or aggregation thereof as is determined in accordance with Condition 18.3 (the **Recoverable Amount**) in circumstances where:
  - 18.2.1 the relevant Tranche has been paid to the Lead Partner or RCGF Funds have been applied to the Named Project on the basis of a misrepresentation made by

or on behalf of the Relevant Consortium Member other than in the circumstances specified in Condition 18.2.3;

- 18.2.2 the GLA has made an overpayment in relation to a Named Project or has made a payment in error to the Lead Partner;
- 18.2.3 the relevant Tranche has been paid to the Lead Partner or RCGF Funds have been applied to the Named Project but the GLA becomes aware (whether following the completion of a Compliance Audit or otherwise) that the Relevant Consortium Member has failed to deliver the relevant Named Project in accordance with the agreed Named Project Details;
- 18.2.4 the Relevant Consortium Member has breached its obligations under any of Conditions 10, 12, or 21;
- 18.2.5 a General Termination Event has occurred;
- 18.2.6 a Project Termination Event has occurred; or
- 18.2.7 the GLA exercised its rights under Condition 20.8.3;
- 18.2.8 a Grant Rate Default has occurred; or
- 18.2.9 an Estate Regeneration Default has occurred.

18.3 In the circumstances set out in:

- 18.3.1 Condition 18.2.5, the Recoverable Amount shall be a sum equivalent to the Agreement Funding;
- 18.3.2 Conditions, 18.2.1, 18.2.4, 18.2.6 or 18.2.9 the Recoverable Amount shall be a sum equivalent to the Total Project Grant for any affected Named Project;
- 18.3.3 Conditions 18.2.2, the Recoverable Amount shall be a sum equal to the amount of the overpayment or the sum paid in error as applicable;
- 18.3.4 Condition 18.2.3, subject always to Condition 18.4 the Recoverable Amount shall be determined in accordance with the following procedure:
  - (a) the parties (acting in good faith) shall seek to agree within fifteen (15) Business Days of the Non Compliance Notification Date a revised figure for the Total Project Grant figure reflecting the changed nature of the delivered Named Project as against that described in the Named Project Details;
  - (b) where a revised figure for Total Project Grant is agreed, the Recoverable Amount shall be the product of the following calculation:

$$RA = TPG - RTPG$$

where

RA is the Recoverable Amount;



TPG is the Named Project Grant paid pursuant to Condition 15.1 together with the RCGF Funds applied in respect of the relevant Named Project; and

RTPG is the revised Total Project Grant figure agreed pursuant to Condition 18.3.4(a);

- (c) the Lead Partner shall immediately amend the relevant information on OPS to reflect any agreement reached made pursuant to Condition 18.3.4(a);
- (d) where the parties are unable to agree a revised Total Project Grant figure in accordance with Condition 18.3.4(a) the GLA shall be entitled to terminate this Agreement in accordance with Condition 20.6.1 and the Recoverable Amount shall be an amount equal to the Total Project Grant paid pursuant to Condition 15.1 in respect of the relevant Named Project.

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

18.3.5 Condition 18.2.7, the Recoverable Amount shall be:

- (a) for any Named (Indicative) Project where Practical Completion Tranche Grant has been paid or utilised, an amount equal to:
  - i the sum of the applicable Deduction Amount (based on Tenure Type), if any, for each AHP Dwelling within such Named (Indicative) Project where GLA has exercised its rights under Condition 20.8.1; or
  - ii the difference between the Grant Allocated and the Revised Grant Amount (as defined in limb (b) below) where GLA has exercised its rights under Condition 20.8.2; and
- (b) for any Named (Indicative) Project in respect of which Practical Completion Tranche Grant has not been paid or utilised, an amount equal to the product of the following calculation:

$$RA = Grant\ Paid - \left( \left( \frac{Grant\ Paid}{Grant\ Allocated} \right) \times Revised\ Grant\ Amount \right)$$

Where

RA means the Recoverable Amount

Grant Paid is the amount equal to the Named Project Grant that has been paid and RCGF Funds utilised in respect of the Named (Indicative) Project

Grant Allocated is the amount of the Total Grant that was allocated to the Named (Indicative) Project prior to the Interim Reconciliation Exercise

Revised Grant Amount is the revised Named Project Grant amount as a result of the Interim Reconciliation Exercise

18.3.6 Condition 18.2.8, the Recoverable Amount shall be the product of the following calculation:

$$RA = \text{Total London Living Rent} + \text{Total Shared Ownership} + \text{Total Social Rent}$$

Where:

RA is the Recoverable Amount

$$\text{Total London Living Rent} = \text{LLR Paid} - (\text{Average LLR} \times \text{LLR Delivered})$$

LLR Paid is the total grant paid and RCGF Funds used in respect of all LLR Dwellings within each completed Named (Indicative) Project at the date of the Final Reconciliation Exercise

Average LLR is the Average Grant Rate attributed to the London Living Rent Tenure Type on OPS

LLR Delivered means the number of LLR Dwellings that have achieved Practical Completion within each completed Named (Indicative) Project at the date of the Final Reconciliation Exercise

$$\text{Total Shared Ownership} = \text{SO Paid} - (\text{Average SO} \times \text{SO Delivered})$$

SO Paid is the total grant paid and RCGF Funds used in respect of all SO Dwellings that have achieved Practical Completion within each completed Named (Indicative) Project at the date of the Final Reconciliation Exercise

Average SO is the Average Grant Rate attributed to the Shared Ownership Lease terms Tenure Type on OPS

SO Delivered means the number of SO Dwellings that have achieved Practical Completion within each completed Named (Indicative) Project at the date of the Final Reconciliation Exercise

$$\text{Total Social Rent} = \text{SR Paid} - (\text{Average SR} \times \text{SR Delivered})$$

SR Paid is the total grant paid and RCGF Funds used in respect of all SR Dwellings that have achieved Practical Completion within each completed Named (Indicative) Project at the date of the Final Reconciliation Exercise

Average SR is the Average Grant Rate attributed to the Social Rent Tenure Type on OPS

SR Delivered means the number of SR Dwellings that have achieved Practical Completion within each completed Named (Indicative) Project at the date of the Final Reconciliation Exercise

**Provided always that** if Total London Living Rent, Total Shared Ownership or Total Social Rent is a negative number, it shall be deemed to be zero

- 18.4 Where the GLA (acting reasonably) considers that the Relevant Consortium Member acted fraudulently or dishonestly in claiming (or permitting the Lead Partner to claim) the Named Project Grant for or in applying the RCGF Funds to the relevant Named Project, such claim shall be deemed to be a Prohibited Act and the GLA will not be bound by the terms of Condition 18.3.4.
- 18.5 The Relevant Consortium Member must pay the Recoverable Amount to the GLA within ten (10) Business Days of demand together with Interest such Interest to run from the date upon which the Named Project Grant (or relevant part thereof) overpayment or payment in error was paid to the Lead Partner and/or the RCGF Funds were applied to the Named Project by the Relevant Consortium Member until the date upon which the GLA receives the repayment required from the Relevant Consortium Member under this Condition 18.
- 18.6 Each Consortium Member acknowledges and agrees that the Disposal or letting of an AHP Dwelling to any person for any purpose other than the relevant Agreed Purpose constitutes a failure to comply with a condition attached to the making of Capital Grant for the purposes of paragraph 8(e) of the Recovery Determination.
- 18.7 The parties acknowledge that the Late Payment of Commercial Debts (Interest) Act 1998 does not apply to this Agreement.
- 18.8 Notwithstanding any other term of this Condition 18, where a payment has been made following an administrative error by the GLA, the Relevant Consortium Member shall not be liable for interest on the amount repayable under Condition 18.5.
- 18.9 Save where the GLA agrees (in writing) to the contrary, the GLA hereby directs the Relevant Consortium Member (where it is a Profit Making Organisation) to pay the Uplift Amount to the GLA within ten (10) Business Days of the occurrence of a Relevant Event.

## 19 **Changes to Consortium Membership**

- 19.1 A Consortium Member shall be released from its obligations pursuant to Condition 2.2 where:
- 19.1.1 a Deed of Release has been completed in accordance with the provisions of Condition 19.2; and
- 19.1.2 either:
- (a) following information supplied and/or representations made by the Consortium, the GLA is satisfied (acting reasonably) that the Consortium is capable of delivering the Approved Bid without the need for a change to the Approved Bid; or
  - (b) any change to the Approved Bid (as a result of the proposed withdrawal of the Outgoing Consortium Member) requested by the Lead Partner

does not materially and adversely affect the delivery of the Approved Bid and the GLA has given its prior written consent to such change,

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

- 19.2 Subject to the proviso in Condition 19.1, on and from the date that the Outgoing Consortium Member provides to the GLA the Completion Authority and the Deed of Release duly executed by it and all other Consortium Members, the Outgoing Consortium Member shall no longer be a party to this Agreement.
- 19.3 Subject to Condition 19.4, on and from the date that a New Consortium Member provides to the GLA the Completion Authority and the Deed of Adherence, duly executed by it and the other Consortium Members, the New Consortium Member shall become a Party to this Agreement and be bound by the obligations of a Consortium Member as herein provided.
- 19.4 Where a New Consortium Member is a LA provider, it must also provide a Legal Opinion to the GLA with the documents provided pursuant to Condition 19.3.

## 20 **Default Events and Termination**

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

- 20.1.1 an Insolvency Event has occurred in relation to a Consortium Member;
- 20.1.2 a Consortium Member which is an LA Provider is subject to a Section 15 Direction which has or will have a Material Adverse Effect;
- 20.1.3 a Prohibited Act has been committed by or on behalf of a Consortium Member (in respect of which the Waiver Condition has not been satisfied);
- 20.1.4 a Consortium Member ceases operating;
- 20.1.5 a Consortium Member's status as a Registered Provider is lost or removed;
- 20.1.6 the Lead Partner's Investment Partner status is lost or removed; or
- 20.1.7 a Consortium Member has made any representation or given any warranty under Part 2A or Part 2B of Schedule 1 (as applicable) that is inaccurate, untrue or misleading in any material respects.

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

- 20.2.1 failure by the Relevant Consortium Member to comply with its obligations in Conditions 12 or 13 and/or any information supplied in connection with its obligations in Conditions 12 or 13, whether in relation to the Open Book Obligations or otherwise, is materially deficient, misleading or inaccurate;
- 20.2.2 a breach of the Open Book Obligations;

- 20.2.3 the Relevant Consortium Member is unable to make the applicable representations and give the warranties set out in this Agreement and there is a resulting Material Adverse Effect;
- 20.2.4 the Regulator directs or recommends that grant is not to be paid to the Lead Partner or to the Relevant Consortium Member;
- 20.2.5 a Consortium Member (either by its own actions or omissions, or those of its contractors or agents) harms the GLA's, the AHP 2021-26's or the Mayor of London's reputation or brings the GLA, the AHP 2021-26's or the Mayor of London into disrepute;
- 20.2.6 failure by the Relevant Consortium Member to comply with any repayment obligation under this Agreement;
- 20.2.7 failure or inability of the Relevant Consortium Member to comply with the requirements of Conditions 14.1 to 14.11 (inclusive);
- 20.2.8 a breach of Condition 10;
- 20.2.9 failure by the parties to agree the matter referred to in Condition 18.3.4(d);
- 20.2.10 any other breach of or failure to comply with the Agreement which has a Material Adverse Effect;
- 20.2.11 any of the following events or circumstances occur:
- (a) a breach of the Estate Regeneration Requirement;
  - (b) the Relevant Consortium Member has failed to comply with the Estate Regeneration Requirement in circumstances where in the GLA's reasonable opinion the Estate Regeneration Requirement ought to have been complied with (having regard to Section 8 of the Affordable Housing Capital Funding Guide);
  - (c) having regard to any planning permission obtained for the Site or reports issued to residents affected by the delivery of a Named Project, in the GLA's reasonable opinion, a breach of the Estate Regeneration Requirement is likely to occur; or
  - (d) in the GLA's opinion the Relevant Consortium Member has partitioned a Site in order to avoid the application of the Resident Ballot Requirement;
- 20.2.12 the facts or circumstances upon which a Compliance Checklist or Exemption Certificate was provided (as applicable) change so that such certificate is no longer correct in all material respects;
- 20.2.13 an Exemption Certificate expires or is withdrawn by the GLA;
- 20.2.14 the Relevant Consortium Member has failed to satisfy the Additionality Condition in respect of a Named Project;

- 20.2.15 the Relevant Consortium Member fails to satisfy or, in the opinion of GLA acting reasonably, is unlikely (having regard to the relevant Planning Permission relating to delivery of the dwellings on the Development Site) to satisfy the Affordable Percentage Condition in respect of a Named Project;
  - 20.2.16 the Relevant Consortium Member has made any representation or given any warranty under Condition 6.2 that is inaccurate, untrue or misleading; or
  - 20.2.17 failure to agree revised Milestone Dates pursuant to Condition 8.1.2(b).
- 20.3 The Relevant Consortium Member must notify the GLA immediately in writing on the occurrence of a Default Event.
- 20.4 Without prejudice to Conditions 20.5 or 20.6, in the event of the occurrence of Default Event and for so long as that Default Event subsists (or another Default Event has occurred and is continuing) the GLA shall be entitled to reject the submission of any Named Project on OPS.
- 20.5 Subject always to Condition 20.10 and Condition 39, on the occurrence of a General Default the GLA shall on the service of written notice to the Lead Partner and the Relevant Consortium Member be entitled forthwith and without any liability to any Consortium Member to terminate this Agreement.
- 20.6 Where a Project Default is:
- 20.6.1 an occurrence specified in Condition 20.2.5, 20.2.8, 20.2.9, 20.2.16 and 20.2.17, the GLA shall on the service of written notice to the Lead Partner and the Relevant Consortium Member be entitled forthwith and without any liability to any Consortium Member but without determining the whole of this Agreement to terminate the Agreement (subject always to Condition 39):
    - (a) insofar as it relates to the Named Project to which the Project Default relates; and/or
    - (b) insofar as it relates to the Relevant Consortium Member responsible for the Project Default
  - 20.6.2 an occurrence specified in Condition 20.2.1, 20.2.2, 20.2.3, 20.2.4, 20.2.6, 20.2.7 or 20.2.10 to 20.2.15 inclusive the GLA may serve notice on the Lead Partner (with a copy provided to the Relevant Consortium Member) requiring the Lead Partner to procure that the Relevant Consortium Member remedies the breach and if within a period of thirty (30) Business Days following service of such notice:
    - (a) the breach has not been remedied or is not capable of remedy;
    - (b) the Relevant Consortium Member has not given an undertaking to remedy the breach on terms satisfactory to the GLA where it has been permitted to do so by the GLA; or
    - (c) if it becomes apparent that the Project Default is incapable of remedy either within such period or at all,

the GLA shall be entitled on giving not less than ten (10) Business Days' notice to the Lead Partner and the Relevant Consortium Member and without any liability to any Consortium Member but without determining the whole of this Agreement to terminate the Agreement (subject always to Condition 39):

(d) insofar as it relates to the Named Project to which the Project Default relates; and/or

(e) insofar as it relates to the Relevant Consortium Member responsible for the Project Default.

20.7 On an occurrence of an Interim Reconciliation Default the GLA may serve notice on the Lead Partner requiring the Lead Partner to provide evidence to GLA, in a form satisfactory to GLA, within a period of thirty (30) Business Days following service of such notice:

20.7.1 when the Lead Partner (on behalf of the Consortium) will Profile any Unprofiled Indicative Dwellings into Named Projects; and

20.7.2 how, once all Named Projects have been delivered, the average of the grant rates which have been or will be allocated for the Named (Indicative) Projects by Tenure Type will not exceed the Average Grant Rates.

20.8 If the GLA is not satisfied (acting reasonably) with the information provided pursuant to Condition 20.7 the GLA shall be entitled (in its absolute discretion) on giving not less than ten (10) Business Days' notice to the Lead Partner, to:

20.8.1 reduce the Named Project Grant allocated to each AHP Dwelling on OPS by Tenure Type and comprised in a Named (Indicative) Project by an amount equal to the sum of the following calculation (**Deduction Amount**) (or such other calculation as may be agreed in writing between the parties from time to time):

**For each LLR Dwelling** comprised within a Named (Indicative) Project:

$$\text{Deduction Amount} = \frac{\text{Total London Living Rent} - \text{Average London Living Rent}}{\text{Number of London Living Rent}}$$

Where:

Total London Living Rent means the aggregate Named Project Grant allocated at the date of the Interim Reconciliation to the LLR Dwellings within all Named (Indicative) Projects

Average London Living Rent means the Average Grant Rate for the LLR Dwellings multiplied by the aggregate number of LLR Dwellings comprised within all Named (Indicative) Projects

Number of London Living Rent means the aggregate number of LLR Dwellings comprised within all Named (Indicative) Projects

**For each SO Dwelling** comprised within a Named (Indicative) Project:

$$\text{Deduction Amount} = \frac{\text{Total Shared Ownership} - \text{Average Shared Ownership}}{\text{Number of Shared Ownership}}$$

Where:

Total Shared Ownership means the aggregate Named Project Grant allocated at the date of the Interim Reconciliation to the SO Dwellings within all Named (Indicative) Projects

Average Shared Ownership means the Average Grant Rate for the SO Dwellings multiplied by the aggregate number of SO Dwellings comprised within all Named (Indicative) Projects

Number of Shared Ownership means the aggregate number of SO Dwellings comprised within all Named (Indicative) Projects

**For each SR Dwelling** comprised within a Named (Indicative) Project:

$$\text{Deduction Amount} = \frac{\text{Total Social Rent} - \text{Average Social Rent}}{\text{Number of Social Rent}}$$

Where:

Total Social Rent means the aggregate Named Project Grant allocated at the date of the Interim Reconciliation to the SR Dwellings within all Named (Indicative) Projects

Average Social Rent means the Average Grant Rate for the SR Dwellings multiplied by the aggregate number of SR Dwellings comprised within all Named (Indicative) Projects

Number of Social Rent means the aggregate number of SR Dwellings comprised within all Named (Indicative) Projects

**Provided always that**, if the Deduction Amount for any Tenure Type is a negative number, it shall be deemed to be zero for that Tenure Type; or

- 20.8.2 reduce the Named Project Grant allocated to any or all Named (Indicative) Projects by an aggregate amount equal to the Total Deduction Amount, such reduction being in such proportion as GLA (in its absolute discretion) requires and in exercising its rights under this Condition 20.8.2 GLA shall take into consideration the extent to which the AHP Dwellings comprised in any Named (Indicative) Projects have been allocated Named Project Grant at or below the Average Grant Rate. The Total Deduction Amount is calculated as follows<sup>3</sup>:

$$\text{Total Deduction Amount} = (\text{Total London Living Rent} - \text{Average London Living Rent}) + (\text{Total Shared Ownership} - \text{Average Shared Ownership Total}) + (\text{Total Social Rent} - \text{Average Social Rent})$$

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<sup>3</sup> Whilst the GLA is entitled to reduce the Named (Indicative) Projects by the Deduction Amount equally, the GLA recognises that some Named (Indicative) Projects will have been delivered at or below the Average Grant Rate for the relevant Tenure Type. This limb is intended to allow GLA the flexibility to take this into account when exercising its rights under this clause. GLA assumes that the Consortium will deal with any financial consequence of the application of this provision for its members through its underlying arrangements with its consortium members.



where each defined term has the meaning given to it in Condition 20.8.1 above; and/or

20.8.3 recover Named Project Grant paid and RCGF Funds used in respect of Named (Indicative) Projects (in which case, Conditions 18.2.7 and 18.3.5 shall apply); and/or

20.8.4 without incurring any liability to the Consortium Members and without determining the whole of this Agreement to terminate the Agreement in so far as it relates to any Indicative Proposals; and/or

20.8.5 adjust:

(a) the Indicative Allocation; and/or

(b) Average Grant Rate; and

(c) the Indicative Proposals having regard to the amendments made to the Indicative Allocation and/or the Average Grant Rates, if any, pursuant to (a) and (b) above,

and for illustrative purposes and to aid interpretation only, a worked example of the operation of this Condition 20.8 is set out at Appendix 1.

20.9 Where an Interim Reconciliation Default has occurred, the GLA shall be entitled to suspend the acceptance of any further Named (Indicative) Projects on OPS until such time as GLA is satisfied with evidence provided under Condition 20.7.

20.10 The GLA's right to terminate this Agreement pursuant to Condition 20.5 shall be suspended for the duration of the Remediation Period. Where on or before the expiry of the Remediation Period:

20.10.1 the General Default related to or was committed or caused by a Consortium Member other than the Lead Partner and the Relevant Consortium Member has been released from the Consortium in accordance with the procedures set out in Condition 19.1 and 19.2; or

20.10.2 the General Default related to or was committed or caused by the Lead Partner and:

(a) the Lead Partner has (save where the General Default relates to the loss or removal of the Lead Partner's Investment Partner status) been released from the Consortium in accordance with the procedures set out in Condition 19; and

(b) the remaining Consortium Members have agreed with the GLA (acting reasonably (taking account of the requirement that the Replacement Lead Partner must have Investment Partner status)) the identity of the Replacement Lead Partner from among their number,

the GLA's right under Condition 20.5 shall lapse in respect of the particular Default Event which gave rise to the implementation of the Remediation Period.

20.11 In the event that the GLA's right to terminate this Agreement does not lapse as a result of the operation of Condition 20.10, the GLA shall on the service of written notice to the Lead Partner and the Relevant Consortium Member be entitled forthwith and without any liability to any Consortium Member to (subject always to Condition 39):

20.11.1 terminate this Agreement in its entirety; or

20.11.2 in GLA's absolute discretion, terminate this Agreement in so far as it relates to the Consortium Member(s) which committed or caused the relevant General Default.

## 21 **Open Book Obligations**

21.1 Each Relevant Consortium Member shall on an Open Book Basis:

21.1.1 at all times maintain a full record of particulars of all the income (including Public Sector Funding) received and Development Costs incurred by the Relevant Consortium Member in respect of each Named Project;

21.1.2 at all times when reasonably required to do so by the GLA, provide a summary of any of the income and Development Costs referred to in Condition 21.1.1 as the GLA may reasonably require to enable it to monitor the performance by the Relevant Consortium Member of its obligations under this Agreement; and

21.1.3 at all times provide such access or facilities as the GLA may reasonably require for its representatives to visit any place where the records are held and examine the records maintained under this Condition 21.

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

21.2.1 income (including Public Sector Funding and receipts);

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

21.2.3 payments made to Subcontractors;

21.2.4 capital and revenue expenditure;

21.2.5 VAT incurred on all items of expenditure where the Relevant Consortium Member 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 Relevant Consortium Member of such VAT as input tax from HM Revenue & Customs or other Relevant Authority; and

21.2.6 such other items as the GLA may reasonably require to conduct (itself or through a third party) cost audits for verification of income, cost expenditure or

estimated expenditure, for the purpose of any of the provisions of this Agreement,

and the Relevant Consortium Member shall have (and procure that to the extent expressly agreed the Subcontractors shall have) the books of account evidencing the items listed in this Condition available for inspection by the GLA (and any person appointed pursuant to the dispute resolution provisions at Condition 28 to determine a dispute or otherwise authorised by the GLA) upon reasonable notice, and shall submit a report of these to the GLA as and when requested.

- 21.3 The Relevant Consortium Member must provide the GLA with access on an Open Book basis to all information held by it, its Affiliates, Subcontractors and consultants which relates to the viability of the Development Site and such other information as the GLA may reasonably require to conduct (itself or through a third party) to verify income, expenditure or estimated expenditure for the purposes of any of the provisions of this Agreement.

**22 Data Protection, Freedom of Information, Confidentiality and Transparency**

- 22.1 The parties acknowledge that they will each act in the capacity of Data Controller in respect of any Personal Data processed under this Agreement and each will Process the Personal Data as independent Data Controllers.
- 22.2 Each Consortium Member (including their employees agents or officers) shall at all times during the period of this Agreement comply with the provisions and obligations imposed by this Condition 22 and the Data Protection Legislation generally, including any requirement to obtain registrations, consents, and provide notifications and relevant privacy information to Data Subjects as required for the purposes of their obligations under this Agreement.
- 22.3 Whilst each party shall be responsible for responding to any complaint in relation to the Personal Data Processed pursuant to this Agreement, or any request by individuals to exercise the Data Subject's rights, the parties will co-operate with each other and provide reasonable assistance with any request, proceedings or inquiry by any affected Data Subject and/or the Information Commissioner.
- 22.4 Each party shall notify the other without undue delay on becoming aware of any breach of the Data Protection Legislation in relation to the Personal Data Processed under this Agreement.
- 22.5 Each Consortium Member represents and warrants that they have in place appropriate technical and organisational measures to protect the Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, and which provide a level of security appropriate to the risk represented by the processing and the nature of the data to be protected.
- 22.6 The GLA and any Consortium Members which are LA Provider(s) are FOIA Authorities and each Consortium Member acknowledges that the GLA and any Consortium Members which are LA Provider(s):
- 22.6.1 are subject to legal duties which may require the release of Information under FOIA and/or EIR; and

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

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

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

22.7.2 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 an 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.

22.8 Subject to Condition 22.9 below, each party acknowledges that the Relevant FOIA Authority may be obliged under FOIA or EIR to disclose Information:

22.8.1 without consulting them (or any one of them); or

22.8.2 following consultation with them (or any one of them) and having taken (or not taken, as the case may be) their (or its) views into account.

22.9 Without in any way limiting Condition 22.7 or Condition 22.8, in the event that the Relevant FOIA Authority receives an RFI, the Relevant FOIA Authority will, where appropriate, as soon as reasonably practicable notify the other parties.

22.10 Each party will assist and co-operate with the Relevant FOIA Authority as requested by the Relevant FOIA Authority to enable the Relevant FOIA Authority to comply with its disclosure requirements under FOIA and EIR within the prescribed periods for compliance and in particular without limitation will (and shall procure that its agents contractors and sub-contractors will), at their own cost:

22.10.1 transfer any RFI received by the Relevant FOIA Authority to the GLA as soon as practicable after receipt and in any event within two (2) Business Days of receiving a RFI;

22.10.2 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;

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

22.10.4 permit the Relevant FOIA Authority to inspect such as requested from time to time.

22.11 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.

22.12 Subject to Conditions 22.6 to 22.11, 22.13 and/or 22.14 the parties shall keep confidential any information exchanged between the parties which either party has specified as confidential or which would be likely to prejudice the interests of either party commercially or otherwise.

22.13 The obligations under Condition 22.12 above shall not apply to:

22.13.1 information which at the time of disclosure is in the public domain;

22.13.2 information which is required to be disclosed by law; or

22.13.3 information which is disclosed with the consent of the disclosing party.

22.14 Each Consortium Member acknowledges and agrees that the GLA:

22.14.1 is subject to the Transparency Commitment and accordingly, notwithstanding Condition 22.12, each Consortium Member hereby gives its consent for the GLA to publish the Agreement Information to the general public; and

22.14.2 the GLA may in its absolute discretion redact all or part of the Agreement Information prior to its publication. In so doing and in its absolute discretion the GLA may take account of the exemptions/exceptions that would be available in relation to information requested under FOIA. The GLA may in its absolute discretion consult with the Lead Partner on behalf of the Consortium Member regarding any redactions to the Agreement Information to be published pursuant to this Condition 22.14. The GLA shall make the final decision regarding publication and/or redaction of the Agreement Information.

22.15 For the avoidance of doubt in the event that the GLA consents to a Relevant Consortium Member's disposal or cessation of use of a Site relating to a Named Project the Relevant Consortium Member shall ensure all data collected used or in any way related to or connected with the Named Project is erased (so that it cannot be recovered there from) from the Site to which such consent relates.

22.16 Each Consortium Member acknowledges and agrees by entering into this Agreement that it consents to the GLA sharing such information as GLA considers appropriate in connection with this Agreement with a local authority, the Regulator and DLUHC.

## 23 **Intellectual Property**

23.1 Subject to Condition 23.5 each Consortium Member shall, to the extent that it is able to do so without incurring material cost, grant to the GLA a perpetual, transferable, non-exclusive, royalty-free licence (carrying the right to grant sub-licences) to copy and use (from computer disk or otherwise) all and any Intellectual Property Rights in any, drawings, reports, specifications, calculations and other documents provided by it or which are or become owned by it and which relate to the Named Projects, for any purpose relating to this Agreement.

- 23.2 To the extent that any of the data, materials and documents referred to in Condition 23.1 are generated by or maintained on a computer or in any other machine readable format, each Consortium Member shall if requested by the GLA use its reasonable endeavours (without having to incur material cost) procure for the benefit of the GLA for the duration of this Agreement at the cost of that Consortium Member the grant of a licence or sub-licence and supply any relevant software and/or database to enable the GLA making such request to access and otherwise use such data for the purposes referred to in Condition 23.1.
- 23.3 No party shall infringe any third party's Intellectual Property Rights in connection with this Agreement.
- 23.4 Each Consortium Member shall fully indemnify the GLA within five (5) Business Days of demand under this Condition 23.4 against any action, claim, demand, proceeding, cost, charge or expense arising from or incurred by it by reason of any infringement or alleged infringement of any Intellectual Property Rights of any third party by the activities described in this Condition 23, any breach by that Consortium Member of this Condition 23 and against all costs and damages of any kind which the GLA may incur in connection with any actual or threatened proceedings before any court or adjudication body.
- 23.5 A Consortium Member shall only be entitled to revoke the licence granted to the GLA under Condition 23.1 in the following circumstances and upon the following terms:
- 23.5.1 on the termination of the whole of this Agreement in circumstances where no Allocated Total Grant has been paid to the Lead Partner or utilised by the Relevant Consortium Member; or
- 23.5.2 on the termination of this Agreement (in whole or in part) in circumstances where some Allocated Total Grant has been paid to the Lead Partner or utilised by the Relevant Consortium Member **provided that** nothing in this Condition 23.5.2 shall entitle a Consortium Member to revoke such licence insofar as it relates to Named Projects in respect of which Named Project Grant has been paid or in respect of which a valid entitlement to claim Named Project Grant has arisen or RCGF Funds have been used.

## 24 **Equality, Diversity and Inclusion**

- 24.1 Within 12 months from the notification of the Consortium's funding allocation for AHP 2021-26 on OPS (the **Deadline**), unless otherwise agreed with GLA (in its absolute discretion), each Consortium Member must:
- 24.1.1 comply (and thereafter continue to comply) with the five minimum equality, diversity and inclusion standards found on the following website: <https://www.london.gov.uk/what-we-do/housing-and-land/homes-londoners-affordable-homes-programmes/homes-londoners-affordable-homes-programme-2021-2026/guidance-meeting-edi-funding-conditions>; and
- 24.1.2 develop, publish and implement on a continuing basis, an equality, diversity and inclusion action plan which complies with the guidance found on the following website <https://www.london.gov.uk/what-we-do/housing-and-land/homes-londoners-affordable-homes-programmes/homes-londoners-affordable-homes-programme-2021-2026/guidance-meeting-edi-funding-conditions> (**EDI Action Plan**).

- 24.2 The Lead Partner on behalf of each Consortium Member shall provide evidence satisfactory to GLA (acting reasonably) of each Consortium Member's:
- 24.2.1 compliance with Condition 24.1 within the five (5) Business Days following the Deadline; and
  - 24.2.2 continuing compliance with Condition 24.1, such evidence to be provided no later than 12 months but no earlier than 10 months from the date the last evidence was provided pursuant to this Condition 24.2 or within such other timeframes as required by GLA (acting reasonably).
- 24.3 Each Consortium Member:
- 24.3.1 must comply in all material respects with all relevant Legislation including but not limited to Legislation relating to equality and diversity and will use its reasonable endeavours to procure that all parties engaged by it in the delivery of the AHP Dwellings funded pursuant to this Agreement do likewise;
  - 24.3.2 must have due regard to the public sector equality duty under Part 11 of the Equality Act 2010 insofar as its activities under this Agreement could reasonably be deemed to be functions of a public nature for the purposes of that Part and shall take reasonable steps to promote equality of opportunity in respect of access to the AHP Dwellings funded pursuant to this Agreement; and
  - 24.3.3 must take reasonable steps to monitor the representation of those who share Protected Characteristics within its undertaking and shall take appropriate steps to remedy any under-representation in its workforce (of those sharing a Protected Characteristic as compared to the population of London) involved in projects within London funded (partly or wholly) by the GLA.
- 24.4 Where in the GLA's opinion (acting reasonably) a Consortium Member commits a breach of this Condition 24 (a **EDI Breach**):
- 24.4.1 the Lead Member on behalf of the Relevant Consortium Member must submit for approval its proposed remediation plan (the **Remediation Plan**) to the GLA within fifteen (15) Business Days of the GLA's written notice of the requirement for such Remediation Plan setting out the Relevant Consortium Member's proposals for the steps to be taken to remedy or mitigate the effects of the EDI Breach and a basis for testing whether this has been achieved within the three month period following the EDI Breach;
  - 24.4.2 the GLA will notify the Lead Partner as to whether the Remediation Plan is approved as submitted within ten (10) Business Days of its receipt and the Lead Partner shall immediately notify the Relevant Consortium Member of GLA's decision;
  - 24.4.3 if the Remediation Plan is not approved, senior representatives of the Relevant Consortium Member, the Lead Partner and the GLA must meet as soon as practicable (and in any event within ten (10) Business Days of the GLA's notification under Condition 24.4.2 or such later date as the GLA may agree) to try to agree a revised Remediation Plan. In default of agreement, or where no

Remediation Plan is submitted to GLA within the requisite timeframe, Condition 17.1.16 shall apply;

24.4.4 if the Remediation Plan is approved, the Relevant Consortium Member must comply with the obligations set out in the Remediation Plan; and

24.4.5 within five (5) Business Days of the end of the three month period from the date of the EDI Breach, senior representatives of the Relevant Consortium Member and the GLA must meet to review the efficacy of the Remediation Plan in remedying or mitigating the effects of the breach. If in the opinion of the GLA (acting reasonably) the Remediation Plan has not been effective or has not been complied with, the GLA shall be entitled in its absolute discretion either to extend the timeframe for the Remediation Plan's operation or to declare that the Remediation Plan has failed in which case Condition 17.1.16 shall apply.

24.5 Each Consortium Member acknowledges that the GLA is under a public sector equality duty pursuant to Section 149 of the Equality Act 2010 and it will assist and co-operate with the GLA in respect of the GLA's compliance with such duty including in respect of any amendment or re-enactment of Section 149 of the Equality Act 2010 and/or any guidance, enactment, order, regulation or instrument made pursuant to the same.

## 25 **Health and Safety**

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

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

25.2.1 where the Relevant Consortium Member is engaging consultants and a contractor or contractors as Subcontractors to deliver the Named Project the Relevant Consortium Member elects to be the only client in relation to such Named Project; or

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

and the GLA hereby agrees to such election.

25.3 The Relevant Consortium Member shall not seek to withdraw, terminate or in any manner derogate from such election pursuant to Condition 25.2.1 or (if appropriate) shall procure that any developer/employer shall not withdraw, terminate or in any manner derogate from any election pursuant to Condition 25.2.2 without the GLA's prior written consent, which the GLA may in its absolute discretion withhold.



25.4 Each Consortium Member shall at all times comply with all obligations, requirements and duties arising under the HS Act, the regulations under the HS Act, RIDDOR and the CDM Regulations in connection with the Works for each Named Project for which is Landlord.

25.5 Each Consortium Member will procure that all its Subcontractors and Professional Team comply at all times with the HS Act, the regulations under the HS Act, RIDDOR and the CDM Regulations.

## 26 **Construction Industry Scheme**

26.1 In this Condition 26, the following definitions shall apply:

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

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

**HMRC** means HM Revenue & Customs.

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

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

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

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

27.2 No Consortium Member shall be entitled to transfer or assign all or part of this Agreement without prior written consent from the GLA (to be provided or withheld in GLA's absolute discretion).

## 28 **Dispute resolution**

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

28.1.1 In the event that a Consortium Member (the **Disputing Consortium Member**) or the GLA consider that a Dispute exists, such party shall serve a notice upon the other party (a Notice of Dispute) giving brief details of the Dispute and in the first instance the parties shall use their reasonable endeavours to resolve such Dispute amicably and in good faith and in accordance with this Condition 28.

- 28.1.2 Representatives of the Disputing Consortium Member and the GLA 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.
- 28.1.3 Where either no representatives of both parties are available to meet within the period set out in Condition 28.1.2 or the representatives fail to agree a unanimous resolution of the Dispute at such meeting, the Dispute shall be referred to the chief executive officers (or nominated deputies) of the Disputing Consortium Member and the GLA (the **Senior Executives**).
- 28.1.4 The Senior Executives shall meet within ten (10) Business Days (or such other longer period not exceeding twenty (20) Business Days as the Disputing Consortium Member and the GLA may agree) of such referral to attempt to resolve the Dispute. Any unanimous resolution of the Senior Executives shall be recorded in writing and signed by them and shall be final and binding unless the parties agree otherwise.
- 28.1.5 If the Dispute remains unresolved after ten (10) Business Days following referral to the Senior Executives, such Dispute must be dealt with in accordance with Condition 28.2.
- 28.2 In the circumstances contemplated in Condition 28.1.5, the Disputing Consortium Member and the GLA will attempt to settle the Dispute by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed by the parties, the mediator will be nominated by CEDR. The parties agree that:
  - 28.2.1 to initiate the mediation a party must give notice in writing (**ADR Notice**) to the other party to the Dispute requesting a mediation. A copy of the request should be sent to CEDR;
  - 28.2.2 the mediation shall start not later than twenty eight (28) days after the date of the ADR Notice; and
  - 28.2.3 except where the right to issue proceedings would be prejudiced by a delay, no party may commence any court proceedings in relation to any dispute arising out of this Agreement until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation.

## 29 Notices

- 29.1 Any notice to be given hereunder shall be in writing and shall be sufficiently served if:
  - 29.1.1 sent by electronic mail (but not by facsimile) in the case of one party to the other parties' email address set out in Condition 29.3 provided that the party includes in the subject line of the email words sufficient to identify the contents of the email as a notice given under this Agreement; or
  - 29.1.2 delivered by hand and receipted for by the recipient; or
  - 29.1.3 sent by a recorded delivery service addressed:

- (a) in the case of the GLA, to City Hall, Kamal Chunchie Way, London E16 1ZE
- (b) in the case of each Consortium Member, to its registered office as set out at the beginning of this Agreement; or
- (c) to such other addresses as either party may from time to time notify to the other by email or in writing provided that such other address is within England and Wales.

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

29.2.1 if sent by email, on the date that the email is received at the relevant email address set out in Condition 29.3;

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

29.2.3 if delivered by a recorded delivery service, three Business Days after delivery including the date of postage;

provided that if the delivery or receipt is on a day which is not a Business Day or is after 4 pm it is to be regarded as received at 9 am on the following Business Day.

29.3 The email addresses for service of notices given pursuant to Condition 29.2 are:

29.3.1 for the GLA:

- (a) email address: affordablehomes@london.gov.uk.

29.3.2 for the Lead Partner:

(a) email address: [ ]

(b) email address: [ ]

29.3.3 for each Consortium Member (excluding the Lead Partner):

*[Named of Consortium Member]*

(a) email address: [ ]<sup>4</sup>

(b) email address: [ ]

*[Named of Consortium Member]*

(a) email address: [ ]

(b) email address: [ ]

or to such other email addresses as each party may from time to time notify to the other in writing to the other party's email addresses set out in this Condition 29.3.

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<sup>4</sup> Each Consortium Member should provide two email addresses.

30        **Further assurance and power of attorney**

30.1        At any time upon the written request of the GLA each Consortium Member:

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

- (a)        for the purpose of obtaining for the GLA the full benefit of this Agreement and of the rights and powers herein granted; and/or
- (b)        to give effect to any variations to this Agreement agreed in writing by the Consortium in compliance with the process in Condition 34.1; and/or
- (c)        to facilitate or effect the admission or release of an existing Consortium Member to or from this Agreement in accordance with Conditions 19,

and each Consortium Member (other than any LA Provider) hereby irrevocably appoints the GLA as its attorney solely for those purposes;

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

31        **No fetter on statutory functions**

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

32        **No agency**

32.1        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.

32.2        Nothing in this Agreement shall be construed as creating the relationship of employer and employee between the GLA and the Consortium Members or any of them. Neither the Consortium Members nor any of their employees shall at any time hold themselves out to be an employee of the GLA.

33        **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.

34        **Entire Agreement**

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

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

## 35 **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.

## 36 **Cumulative rights and enforcement**

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

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

## 37 **Waiver**

37.1 Neither the failure of any party at any one time to enforce any provision of this Agreement nor the payments by the GLA of Named Project Grant under Condition 15.1 in any way affects the relevant party's right thereafter to require complete performance by the other party, nor may the waiver of any breach or any provision be taken or held to be a waiver of any subsequent breach of any provision or be a waiver of the provision itself.

37.2 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.

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

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

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

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

## 38 **VAT**

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

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

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

38.2 Each Consortium Member considers that the payment of grant funding under or in connection with this Agreement is outside the scope of VAT. In the event that the GLA is the recipient of a supply or supplies of specified services (as such term is defined in the Value Added Tax (Section 55A) (Specified Services and Excepted Supplies) Order 2019 (the **Order**)) under or in connection with this Agreement, the GLA confirms that the requirements specified in article (8)(1)(b) of the Order are satisfied in respect of the supply or supplies with the result that section 55A(6) of the Value Added Tax Act 1994 will not apply to such supply or supplies. Each Consortium Member acknowledges that it will account for and pay any VAT on any taxable supply or supplies it makes to the GLA under or in connection with this Agreement.

## 39 **Survival of this Agreement**

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

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

39.3 Without limitation the provisions of any of Conditions 3, 7, 10 to 14 (inclusive), 16 to 22 (inclusive), 28, 36, 37, 41, 43 this Condition 39 and such other provisions of this Agreement as are necessary to give effect to such Conditions are expressly agreed by the parties to survive the termination or expiry of this Agreement.

## 40 **London Living Wage**

40.1 Without prejudice to any other provision of this Agreement, each Consortium Member shall (and will ensure that its consultants, contractors and sub-contractors shall):

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

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

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

## 41 **Execution**

This Agreement may be executed:

- 41.1 by the electronic application of a party's authorised signatory's signature and provision of an electronic copy of the same; and
- 41.2 in any number of counterparts and each counterpart will when executed be an original of this Agreement and all counterparts together will constitute one instrument.

42 **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 28 the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

43 **Liability**

The parties acknowledge and agree that notwithstanding that this Agreement has been entered into as a simple contract and without prejudice to any other timescales set out in this Agreement, any action under this Agreement may be brought by the parties at any time before the expiry of twelve (12) years from the date on which the relevant cause of action occurs.

## **Schedule 1**

### **Acknowledgements, Representations and Warranties**

#### **Part 1**

##### **Agreed Principles**

- 1 The provisions of this Agreement represent the conditions upon which the GLA:
  - 1.1 makes the Allocated Net Grant available to the Lead Partner; and
  - 1.2 permits the Relevant Consortium Member to use the Allocated RCGF Funds.
- 2 The GLA has made the Allocated Net Grant available to the Lead Partner and permitted the use of the Allocated RCGF Funds by the Relevant Consortium Member on the express understanding that they are applied solely for the purposes of funding the Development Costs in respect of AHP Dwellings which are to be let or sold to individuals as AHP Housing.
- 3 All RCGF Funds identified in the Named Project Details must be applied solely for the purposes of funding the Development Costs in respect of the relevant Named Project and used in accordance with the applicable requirements of the Affordable Housing Capital Funding Guide.
- 4 The Public Sector Funding in respect of a Named Project may not exceed an amount equal to the Actual Development Costs incurred by the Relevant Consortium Member in respect of the delivery of that Named Project nor may the Public Sector Funding in respect of the Approved Bid exceed an amount equal to the aggregated Actual Development Costs in respect of the delivery of the Approved Bid.
- 5 All Named Project Grant paid under this Agreement is:
  - 5.1 social housing assistance as defined in Section 32(13) HRA 2008; and
  - 5.2 subject to the provisions of Sections 30, 34 and 333ZE of the Greater London Authority Act 1999 and any determinations made under such provisions, and the provisions of Condition 18 represent the events and principles determined by the GLA for the purposes of Sections 31-34 of the HRA 2008.
- 6 All RCGF Funds used for the purposes of funding (in whole or in part) the Development Costs constitute social housing assistance for the purposes of Section 32 of the HRA 2008 and are subject to the terms of the Recovery Determination.
- 7 Any failure by any Consortium Member to comply with the terms of this Agreement or the occurrence of a Default Event or Withholding Event constitutes a failure to comply with a condition attached to the making of Capital Grant for the purposes of paragraph 8(e) of the Recovery Determination.
- 8 The terms of the Affordable Housing Capital Funding Guide are incorporated within this Agreement (*mutatis mutandis*).



- 9 Each Relevant Consortium Member must hold Registered Provider status at the point at which any SR Dwelling or LLR Dwelling provided pursuant to this Agreement is made available for rent.
- 10 Without prejudice to any other term of this Agreement, the parties expressly acknowledge that any LLR Dwellings delivered pursuant to this Agreement constitute "intermediate rent accommodation" for the purposes of the Rent Standard;
- 11 The parties acknowledge and agree that the LLR Dwellings delivered pursuant to this Agreement are a rent to buy product for the purposes of the AHP 2021-26.
- 12 The aggregate of the Acquisition Tranche Grant, Start on Site Tranche Grant, the Practical Completion Tranche Grant and any other tranche approved by GLA (having regard to Condition 6.5) in each Named Project will represent one hundred per centum (100%) of the Named Project Grant.
- 13 In exceptional circumstances the GLA may in its absolute discretion agree to provide grant funding for the delivery of Other Affordable Housing. Any Other Affordable Housing to be delivered under this Agreement shall be submitted on OPS as an Additional Project in compliance with the procedures set out in Condition 9.
- 14 For the purposes of Condition 9.3.5, the other matters which GLA needs to be satisfied of (in its absolute discretion) when considering an Additional Project containing any Other Affordable Housing, (**OAH Project**) include (but shall not be limited to):
- 14.1.1 the dates for payment of Named Project Grant;
  - 14.1.2 the Secure Legal Interest required to be held by the Relevant Consortium Member on a claim for each Tranche of Named Project Grant in respect of the OAH Project; and
  - 14.1.3 the Milestones for the OAH Project,
- and where this paragraph 14 applies the GLA reserves the right to:
- 14.1.4 require that the Relevant Consortium Member makes additional representations and warranties as a condition of any claim for Named Project Grant in respect of the OAH Project; and
  - 14.1.5 include any additional delivery or operational obligations having regard to the use of the Other Affordable Housing; and
  - 14.1.6 to enter into such documentation as GLA may deem necessary to reflect any of GLA's requirements under this paragraph 14.
- 15 Each Consortium Member acknowledges that on completion of the final Named (Indicative) Project to be delivered under this Agreement, the average of the grant rates attributed to all AHP Dwellings (by Tenure Type) within the Named (Indicative) Projects must equal the Average Grant Rate for each Tenure Type.
- 16 Each Consortium Member acknowledges that, pursuant to the programme requirements of the AHP 2021-26, where a Relevant Consortium Member possesses or will possess a SLI (Rented Accommodation) in the form of a lease, the unexpired term of such lease must be

of the longest duration that the Relevant Consortium Member can reasonably negotiate and comply with any applicable requirements of the Affordable Housing Capital Funding Guide.

## Part 2A

### Representations and Warranties – RP Providers

#### 1 Powers, vires and consents

- 1.1 It is duly incorporated under the law of England and Wales and has the corporate power to own its assets and to carry on the business which it conducts or proposes to conduct.
- 1.2 It has the power to enter into and to exercise its rights and perform its obligations under this Agreement and has taken all necessary action to authorise the execution by it of and the performance by it of its obligations under this Agreement.
- 1.3 It is not subject and will not become subject to any other obligation, compliance with which will or is likely to, have a Material Adverse Effect in relation to the Approved Bid or any Named Project.
- 1.4 Its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with its terms.
- 1.5 The execution, delivery and performance by it of this Agreement do not:
  - 1.5.1 insofar as it is aware contravene any applicable law or directive or any judgement, order or decree of any court having jurisdiction over it;
  - 1.5.2 conflict with, or result in any breach of any of the terms of, or constitute a default under, any agreement or other instrument to which it is a party or any licence or other authorisation to which it is subject or by which it or any of its property is bound; or
  - 1.5.3 contravene or conflict with its memorandum and articles of association or rules (as applicable) from time to time.
- 1.6 All consents, required by it in connection with the execution, delivery, issue, validity or performance or enforceability of this Agreement have been obtained and have not been withdrawn.
- 1.7 So far as it is aware, it is not in breach of or in default under any agreement to which it is a party or which is binding on it or any of its assets which has or could have a Material Adverse Effect.
- 1.8 To the best of its knowledge, no claim is presently being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge, pending or threatened against it or any of its assets which will or might have a Material Adverse Effect in relation to the Approved Bid or any Named Project.
- 1.9 To the best of its knowledge, no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator or similar officer in relation to any of its assets or revenues and without limitation no Insolvency Event has occurred in relation to it.
- 1.10 It has not committed any Prohibited Act.

## 2 **Deliverability**

- 2.1 No person having any Security over the property or any other assets of the Relevant Consortium Member has enforced or given notice of its intention to enforce such Security.
- 2.2 It has obtained or will by Practical Completion of a Named Project have obtained all Consents and to the extent that such Consents have been obtained they have not been withdrawn.
- 2.3 It is not aware, after due enquiry, of anything which materially threatens the success or successful completion of the intention or purpose of this Agreement.
- 2.4 No Default Event has occurred and is continuing.
- 2.5 All information supplied by or on behalf of it to the GLA or its agents or employees in connection with the initial application for grant funding or in the course of the subsequent discussions was at the time of submission and as far as it was aware (or ought to have been aware) having made all reasonable and proper enquiries true, complete and accurate in all respects.
- 2.6 It has informed the GLA of any material change that has occurred since:
  - 2.6.1 the date of submission of the proposed Approved Bid prior to the date of this Agreement; and
  - 2.6.2 the Approved Bid, as the same may be amended, added to, supplemented, substituted or varied in accordance with this Agreement, on each occasion of its amendment, addition, supplementation, substitution or variation of which it is aware (or ought to be aware) having made all reasonable and proper enquiries which would render such information untrue, incomplete or inaccurate in any material respect including without limitation the provision or offer of any additional Public Sector Funding.
- 2.7 It is not aware of any material fact or circumstance that has not been disclosed to the GLA and which might, if disclosed materially, adversely affect the decision of anyone considering whether or not to contract with it.
- 2.8 The level of rent for any LLR Dwellings will be set at the LLR Rent Levels and it will review and, if applicable, adjust the rent of any LLR Dwelling in accordance with Condition 11.4.2 each Financial Year in respect of any Named Project in relation to which it is the Landlord.
- 2.9 All data or other information supplied to the Regulator or the GLA in connection with, or related to the Approved Bid or this Agreement is accurate.
- 2.10 It will own and be the landlord of the AHP Dwellings to be provided pursuant to this Agreement in respect of any Named Project in respect of which it is or will be the Relevant Consortium Member.
- 2.11 The AHP Dwellings funded under this Agreement meet the Additionality Condition.
- 2.12 All information supplied by or on behalf of it to the GLA or its agents or employees in connection with this Agreement (through OPS or otherwise) was at the time of submission

and as far as it was aware (or ought to have been aware) having made all reasonable and proper enquiries true, complete and accurate in all respects.

### **3 Application of Approved Bid Capacity**

- 3.1 None of the AHP Dwellings provided pursuant to this Agreement are being subsidised by RTB Funds.
- 3.2 Save where expressly agreed by the GLA, no Named Project which is a Section 106 Project is being subsidised by Named Project Grant or RCGF Funds.
- 3.3 Save where expressly agreed by the GLA, all AHP Dwellings in respect of which it is or will be the Landlord have been let or disposed of (as applicable) in accordance with the terms of the Approved Bid.
- 3.4 So far as it is aware (having made all reasonable enquiries) the Approved Bid (including, inter alia, all projected Start on Site and Practical Completion dates) is capable of being delivered without the need for a change to the Approved Bid.
- 3.5 It will comply with the Good Practice Guide to Estate Regeneration where applicable.

### **4 Authority of Lead Partner's Representative**

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

### **5 Propriety**

- 5.1 None of its members, employees, agents or consultants or those of any of its partner organisations has any personal, proprietary or pecuniary interest in:
  - 5.1.1 any person from whom it is purchasing land or property for the purposes of or in connection with this Agreement;
  - 5.1.2 any contractor engaged or to be engaged by it in connection with this Agreement;
  - 5.1.3 any land or other property to be acquired or developed refurbished or improved by the Relevant Consortium Member for the purposes of or in connection with this Agreement.
- 5.2 None of its members, employees, agents or consultants or those of any of its partner organisations is, has or will be entitled to any preferential treatment by virtue of their position or associations whether in terms of:
  - 5.2.1 access to properties developed, Rehabilitated or, disposed of pursuant to this Agreement; or
  - 5.2.2 the prices at which such properties are let or disposed of.

## **Part 2B**

### **Representations and Warranties – LA Provider**

#### **1 Powers, vires and consents**

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

#### **2 Deliverability**

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

- 2.3 No Default Event has occurred and is continuing.
- 2.4 All information supplied by or on behalf of it to the GLA or its agents or employees in connection with the initial application for grant funding or in the course of the subsequent discussions was at the time of submission and as far as it was aware (or ought to have been aware) having made all reasonable and proper enquiries true, complete and accurate in all respects.
- 2.5 It has informed the GLA of any material change that has occurred since:
- 2.5.1 the date of submission of the proposed Approved Bid prior to the date of this Agreement; and
- 2.5.2 the Approved Bid, as the same may be amended, added to, supplemented, substituted or varied in accordance with this Agreement, on each occasion of its amendment, addition, supplementation, substitution or variation of which it is aware (or ought to be aware) having made all reasonable and proper enquiries which would render such information untrue, incomplete or inaccurate in any material respect including without limitation the provision or offer of any additional Public Sector Funding.
- 2.6 It is not aware of any material fact or circumstance that has not been disclosed to the GLA and which might, if disclosed materially, adversely affect the decision of anyone considering whether or not to contract with it.
- 2.7 The level of rent for any LLR Dwellings will be set at the LLR Rent Levels and it will review and, if applicable, adjust the rent of any LLR Dwelling in accordance with Condition 11.4.2 each Financial Year in respect of any Named Project in relation to which it is the Landlord.
- 2.8 All data or other information supplied to the Regulator or the GLA in connection with, or related to the Approved Bid or this Agreement is accurate.
- 2.9 It will own and be the landlord of the AHP Dwellings to be provided pursuant to this Agreement in respect of any Named Project in respect of which it is or will be the Relevant Consortium Member.
- 2.10 The AHP Dwellings funded under this Agreement meet the Additionality Condition.
- 2.11 All information supplied by or on behalf of it to the GLA or its agents or employees in connection with this Agreement (through OPS or otherwise) was at the time of submission and as far as it was aware (or ought to have been aware) having made all reasonable and proper enquiries true, complete and accurate in all respects.
- 3 Application of Approved Bid Capacity**
- 3.1 None of the AHP Dwellings provided pursuant to this Agreement are being subsidised by RTB Funds.
- 3.2 Save where expressly agreed by the GLA, no Named Project which is a Section 106 Project is being subsidised by Named Project Grant or RCGF Funds.

- 3.3 Save where expressly agreed by the GLA, all AHP Dwellings in respect of which it is or will be the Landlord have been let or disposed of (as applicable) in accordance with the terms of the Approved Bid.
- 3.4 So far as it is aware (having made all reasonable enquiries) the Approved Bid (including, inter alia, all projected Start on Site and Practical Completion dates) is capable of being delivered without the need for a change to the Approved Bid.
- 3.5 It will comply with the Good Practice Guide to Estate Regeneration where applicable.
- 4 **Authority of Lead Partner's Representative**
- The Lead Partner's Representative is empowered to act on behalf of each of the Consortium Members for all purposes connected with this Agreement.
- 5 **Propriety**
- 5.1 None of its members, employees, agents or consultants or those of any of its partner organisation have any personal, proprietary or pecuniary interest in:
- 5.1.1 any person from whom it is purchasing land or property for the purposes of or in connection with this Agreement;
- 5.1.2 any contractor engaged or to be engaged by it in connection with this Agreement;
- 5.1.3 any land or other property to be acquired or developed refurbished or improved by the Relevant Consortium Member for the purposes of or in connection with this Agreement.
- 5.2 None of its members, employees, agents or consultants or those of any partner organisations is, has or will be entitled to any preferential treatment by virtue of their position or associations whether in terms of:
- 5.2.1 access to properties developed, Rehabilitated or, disposed of pursuant to this Agreement; or
- 5.2.2 the prices at which such properties are let or disposed of.
- 6 **Local Government Act 1999**
- 6.1 It is not subject to any Section 15 Direction nor do any circumstances exist which would permit such a direction to be issued.
- 7 **Local Government Finance Act 1988**
- 7.1 No Section 114 Report has been made nor is it aware of any circumstances which would give rise to the making of a Section 114 Report.



## **Schedule 2**

### **Development Costs**

#### **Part 1**

### **Development Costs**

#### **Heads of expenditure**

##### **1 Acquisition**

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

##### **2 Works Costs**

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

##### **3 On costs**

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

- 3.9 Borrowing administration charges (including associated legal and valuation fees).
- 3.10 An appropriate proportion of the Relevant Consortium Member's development and administration costs as set out in Note 3 below.
- 3.11 Irrecoverable VAT on the above.

**Note 1**

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

**Note 2**

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

Examples of these are as follows:

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

**Note 3**

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

## **Part 2**

### **Costs which are not Development Costs**

- 1 Capital costs incurred:
  - 1.1 which are not eligible for social housing assistance as defined in Section 32(13) HRA 2008;
  - 1.2 on land (forming part of the total site acquired) which will not be used exclusively for housing provision purposes directly related to the Named Project;
  - 1.3 on estate offices, factories, letting offices;
  - 1.4 on stores;
  - 1.5 on medical or dental surgeries, clinics;
  - 1.6 on police stations, public libraries, bus shelters;
  - 1.7 on shops, restaurants, public houses, offices;
  - 1.8 on transformer and other related buildings;
  - 1.9 on maintenance depots, tools, plant and vehicles;
  - 1.10 on garages (other than integral garages on market purchase scheme types) and greenhouses; and
  - 1.11 on separate commercial laundry blocks and related equipment.

**Schedule 3**  
**Legal Opinion**

[TO BE TYPED ON COUNCIL NOTEPAPER]

Our ref

Your ref

Date

Email address

Greater London Authority  
City Hall  
Kamal Chunchie Way  
London  
E16 1ZE

To: Greater London Authority (the **GLA**)

Dear GLA,

**Legal Opinion re Grant Agreement and related matters**

I refer to the proposed Consortium Grant Agreement in relation to the Homes for Londoners: Affordable Homes Programme 2021-26 to be entered into between [ ] (the **Council**) [INSERT OTHER PARTIES] and the GLA (the **Agreement**) for the purposes of, inter alia, providing affordable housing which is dated on or about the date hereof. In connection with the giving of this opinion, I have examined:

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

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

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

relevant consents and approvals (statutory or otherwise) to authorise the execution and delivery of the Agreement and the performance and validity of the obligations under it.

Neither the execution and the delivery of, nor the performance by the Council of its obligations under the Agreement will violate any provisions of any existing application law, rule, regulation or agreement binding on the Council, and the Agreement constitutes a valid and legally binding obligation on the Council enforceable in accordance with its terms. I have given this opinion, taking into account the common law and statutory duties applicable to the exercise of power by the Council.

The above opinions are subject to the reservation that under English law, the power of the court to order or pursue performance of an obligation and any other equitable remedies is discretionary and, accordingly, an English court might make an award of damages where specific performance of an obligation at work or remedy is sought.

This opinion is given by virtue of my position as Solicitor to the Council and is only given as the holder of that office. I am not giving this opinion in a personal capacity, nor do I accept any private or personal liability for any error or omission in it or which may arise therefrom and the recipient, in seeking to place reliance on the contents of this letter, must duly acknowledge the same if any error or omission is later to be found. This opinion is addressed to the GLA and is solely for its benefit. It may not be disclosed to or relied upon by any other person or made public in any way without my prior consent. This opinion is limited to matters addressed herein and is not to be read as an opinion with respect to any other matter.

Yours faithfully

Council Solicitor

There follows the specimen signatures and titles of those who will or may attest the execution of the Agreement referred to above.<sup>5</sup>

.

Name	Title	Specimen Signature

<sup>5</sup> Please note that the Legal Opinion will not be in a form satisfactory to the GLA unless the person executing the Agreement is identified in this table.

## Schedule 4

### Relevant Consortium Member – Obligations Matrix

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

Condition Number	Applicable to Landlord of Named Project	Applicable to Consortium Member responsible for the relevant breach	Other
<b>Condition 1.1:</b>			
(a) "Acquisition Milestone"	✓		
(b) "Actual Development Costs"	✓		
(c) "Additional Project"	✓		
(d) "Building Contract"	✓		
(e) "Building Contractor"	✓		
(f) "Development Costs"	✓		
(g) "Disposal Notification"	✓		
(h) "DQHAP"	✓		
(i) "Legal Opinion"	✓ Where the Consortium Member is a LA Provider		
(j) "Milestone Extension Event"	✓		
(k) "Milestone Failure"	✓		
(l) "Professional Team"	✓		
(m) "Public Sector Funding"	✓		
(n) "RCGF"	✓		
(o) "RCGF Funds"	✓		
(p) "Relevant Authority"	✓		
(q) "Secure Legal Interest"	✓		
(r) "SLI (SO/LLR Accommodation)"	✓		
(s) "SLI (Rented Accommodation)"	✓		
(t) "SPEI Allowable Costs"	✓		
(u) "SPEI Revenue"	✓		
(v) "Subcontractor"	✓		
(w) "Total Project Grant"		✓	

Condition Number	Applicable to Landlord of Named Project	Applicable to Consortium Member responsible for the relevant breach	Other
(x) "Waiver Condition"		✓	
Condition 1.2.13			✓ Relevant Consortium Member means the Landlord as the context requires or the Lead Partner
Condition 2.1.2	✓		
Condition 4.2	✓ Where the Relevant Consortium Member is a RP Provider		
Condition 4.3	✓ Where the Relevant Consortium Member is a LA Provider		
Condition 6.2	✓		
Condition 6.6	✓		
Condition 7	✓		
Condition 8.1.2		✓	
Condition 9.2	✓		
Condition 9.4.3	✓		
Condition 10.1 – 10.2 (inclusive)	✓		
Condition 10.3	✓ Where the Relevant Consortium Member is a RP Provider		
Condition 10.4	✓		
Condition 10.5			✓ Relevant Consortium Member means the Consortium Members notified by GLA to the Lead Partner as required to comply with the DQHAP or POE pursuant to Condition 10.5
Condition 10.6		✓	
Condition 11.1 – 11.2 (inclusive)	✓		
Condition 11.3.1 – 11.3.3	✓		

Condition Number	Applicable to Landlord of Named Project	Applicable to Consortium Member responsible for the relevant breach	Other
(inclusive)			
Condition 11.3.4	✓ Where the Relevant Consortium Member is a RP Provider		
Condition 11.3.5	✓		
Condition 11.3.6	✓ Where the Relevant Consortium Member is a Profit Making Organisation		
Condition 11.3.7 – 11.3.8 (inclusive)	✓		
Condition 11.4.1 – 11.4.4 (inclusive)	✓		
Condition 11.4.5	✓		
Condition 11.4.6 – 11.4.12 (inclusive)	✓		
Condition 11.5	✓		
Condition 13.1 – 13.2 (inclusive)	✓		
Condition 13.3	✓ Relevant Consortium Member means the Lead Partner in relation to the Disposal Notification but the Landlord of Named Project for any other notification or certificate		
Condition 14.2	✓		
Condition 14.5	✓		
Condition 14.8	✓		
Condition 14.10	✓		
Condition 17.1.2		✓	
Condition 17.1.9		✓	
Condition 18.1.3		✓	
Condition 18.2.1			✓ Relevant Consortium Member means the Consortium Member responsible for the breach and/or any



Condition Number	Applicable to Landlord of Named Project	Applicable to Consortium Member responsible for the relevant breach	Other
			other Consortium Member who was complicit in such breach whether by any act or omission
Condition 18.2.2 – 18.2.4 (inclusive)		✓	
Condition 18.2.5			✓ Relevant Consortium Member means each Consortium Member on a joint and several basis <sup>6</sup>
Condition 18.2.6		✓	
Condition 18.2.7			✓ Relevant Consortium Member means the Landlords of each Named (Indicative) Project in respect of which the GLA has exercised its rights to reduce Named Project Grant pursuant to Condition 20.8.1 or Condition 20.8.2
Condition 18.2.8			✓ Relevant Consortium Member in the context of recovery means each Consortium Member on a joint and several basis
Condition 18.2.9		✓	
Condition 18.4			✓ Relevant Consortium Member means the Consortium Member responsible for the breach and/or any other Consortium

<sup>6</sup> It is assumed that the Consortium will make arrangements for the allocation between Consortium Members of liability for repayment of the Recoverable Amount under its own Consortium arrangements

Condition Number	Applicable to Landlord of Named Project	Applicable to Consortium Member responsible for the relevant breach	Other
			Member who was complicit in such breach whether by any act or omission
Condition 18.5		✓	
Condition 18.8		✓	
Condition 18.9		✓ Where the Relevant Consortium Member is a Profit Making Organisation	
Condition 20.2.1		✓	
Condition 20.2.3 – 20.2.4 (inclusive)		✓	
Condition 20.2.6 – 20.2.7 (inclusive)		✓	
Condition 20.2.11		✓	
Condition 20.2.14 – 20.2.16 (inclusive)		✓	
Condition 20.3		✓	
Condition 20.5		✓ Relevant Consortium Member means the Consortium Member responsible for the relevant breach which excludes Lead Partner.	
Condition 20.6.1		✓ Relevant Consortium Member means the Consortium Member responsible for the relevant breach which excludes Lead Partner.	
Condition 20.6.2		✓ Relevant Consortium Member means the Consortium Member responsible for the relevant breach which includes the Lead Partner where applicable.	
Condition 20.10.1		✓	

Condition Number	Applicable to Landlord of Named Project	Applicable to Consortium Member responsible for the relevant breach	Other
Condition 20.11		✓ Relevant Consortium Member means the Consortium Member responsible for the relevant breach which excludes Lead Partner.	
Condition 21.1 – 21.3 (inclusive)	✓		
Condition 22.15	✓		
Condition 23.5	✓		
Condition 24.4		✓	
Condition 25.2 – 25.3 (inclusive)	✓		
Condition 26.2 – 26.3 (inclusive)	✓		
Schedule 1, Part 1 (all references)	✓		
Schedule 1, Part 2A (all references)	✓ Where the Relevant Consortium Member is a RP Provider		
Schedule 1, Part 2B (all references)	✓ Where the Relevant Consortium Member is a LA Provider		
Schedule 2, Part 1 (all references)	✓		

## Schedule 5

### Deed of Release

This deed is made the                      day of                      20[     ]

#### Between

- (1)            [                      ] ("**Outgoing Consortium Member**")
- (2)            [                      ], [                      ], [                      ] ("**Remaining Consortium Members**")
- (3)            **Greater London Authority** of City Hall, Kamal Chunchie Way, London, E16 1ZE (the **GLA**).

#### WHEREAS

- (A)            Together, the Remaining Consortium Members and the Outgoing Consortium Member entered into an agreement with the GLA dated [                      ] (the **Consortium Grant Agreement**) as the same may be varied amended or supplemented in accordance with its terms in connection with inter alia the delivery of affordable housing pursuant to the Affordable Homes Programme 2021-2026.
- (B)            It has been agreed that the Outgoing Consortium Member shall cease to be a Consortium Member and Party to the Consortium Grant Agreement upon the terms and conditions hereinafter appearing.

IT IS NOW HEREBY AGREED as follows:

#### 1            **Interpretation**

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

#### 2            **Release**

With effect from the date of this Deed ("the **Effective Date**") the Outgoing Consortium Member shall cease to be a Consortium Member for the purposes of, and a Party to, the Consortium Grant Agreement.

The Remaining Consortium Members agree that from the Effective Date they shall continue to be liable for each of their obligations under the Consortium Grant Agreement.

#### 3            **Allocation of Grant**

The Outgoing Consortium Member acknowledges that the amount of grant allocated in respect of each Named Project where it is the Landlord is as follows:

***[Insert Relevant Details]***

**4 Continuing Obligations/Rights of the Outgoing Consortium Member**

4.1 Notwithstanding the fact that the Outgoing Consortium Member shall from the Effective Date no longer be a Consortium Member nor a Party to the Consortium Grant Agreement:

4.1.1 the Outgoing Consortium Member shall continue to be bound by:

(a) Conditions 3, 4, 10, 11, 12.3, 12.5, 13.3, 14, 18, 20 to 26, 28, 30, 36, 37.2, 38, 39 and 42 of the Consortium Grant Agreement and such other provisions of the Consortium Grant Agreement as are necessary to give effect to such Conditions and Schedules; and

(b) Schedules 1 and 3 (where applicable);

4.1.2 the Outgoing Consortium Member shall, until such time as the Regulator prescribes otherwise, be entitled to continue to charge a Social Rent in respect of those AHP Dwellings where it is the Landlord.

**5 Further assurance**

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

**6 Governing Law and Jurisdiction**

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

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

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

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

[EXECUTION CLAUSES]

## Schedule 6

### Deed of Adherence to Consortium Grant Agreement

This deed is made the                      day of                      20[   ]

#### Parties

- (1)            [            ] ("**Incoming Consortium Member**");
- (2)            [            ], [            ], [            ] ("**Original Consortium Members**");
- (3)            **Greater London Authority** of City Hall, Kamal Churchie Way, London, E16 1ZE (the **GLA**).

#### WHEREAS

- (A)            The Original Consortium Members entered into a Consortium Grant Agreement with the GLA dated [            ] (the **Consortium Grant Agreement**) as the same may be varied amended or supplemented in accordance with its terms in connection with inter alia the delivery of affordable housing pursuant to the Affordable Homes Programme 2021-2026.
- (B)            The Incoming Consortium Member has agreed to assume and be bound by the same obligations liabilities and duties of the Consortium Members under the Consortium Grant Agreement upon the terms and conditions hereinafter appearing.

IT IS NOW HEREBY AGREED as follows:

#### 1            **Interpretation**

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

#### 2            **Observance**

2.1            The Incoming Consortium Member confirms that it has been given a copy of the Consortium Grant Agreement together with each and every variation amendment or supplement thereto.

2.2            With effect from the date of this Deed (the **Effective Date**) the Incoming Consortium Member agrees to observe adhere to perform and be fully bound by all of the provisions of the Consortium Grant Agreement in all respects as if it was an original party to the Consortium Grant Agreement and was referred to therein as a Consortium Member.

#### 3            **Address for Notices**

The address for notices to the Incoming Consortium Member for the purposes of clause 29 (Notices) of the Consortium Grant Agreement is:

Address: [Address]

Email address: [REDACTED]<sup>7</sup>

Attention: [Attention]

**4 Further assurance**

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

**5 Governing Law and Jurisdiction**

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

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

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

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

[EXECUTION CLAUSES]

---

<sup>7</sup> Each Incoming Consortium Member should provide two email addresses.

In witness of the above the parties have executed and delivered this Agreement on the date stated at the beginning of it.

**Signed** )  
for and on behalf of the )  
**GREATER LONDON AUTHORITY** by: )

Authorised Signatory  
.....

NAME (BLOCK)  
.....

Position  
.....

**Signed** )  
for and on behalf of )  
**[CONSORTIUM MEMBER]** by: )

Authorised Signatory  
.....

NAME (BLOCK)  
.....

Position  
.....

**Signed** )  
for and on behalf of )  
**[CONSORTIUM MEMBER]** by: )

Authorised Signatory  
.....

NAME (BLOCK)  
.....



Position

.....

## Appendix 1

### Indicative Proposals Worked Example

- 1 Thames River Consortium had an Indicative Allocation of £2.4m to deliver 20 homes, all of which were Social Rent homes. The Average Grant Rate for the Social Rent homes was £120,000.
- 2 Potters Fields HA is a member of the Thames River Consortium. It is the only Consortium Member to utilise Thames River Consortium's Indicative Allocation. Potters Fields HA profiled 15 homes into two Named (Indicative) Projects on OPS. GLA approved the two Named (Indicative) Projects at the following rates:
  - Project 1:
    - 7 Social Rent homes at grant rates of £120k per home
    - £840,000 grant in total
    - The scheme had reached Practical Completion and 100 per cent of grant had been paid.
  - Project 2:
    - 8 Social Rent homes at grant rates of £140k per home
    - £1,120,000 grant in total
    - The scheme had achieved Start on Site and 50 per cent of the grant had been paid.
- 3 Potters Fields HA therefore had a remaining Indicative Allocation of £440,000 to deliver 5 Social Rent homes. This equated to £88,000 per home. Over the course of the programme, the GLA developed concerns about Potters Fields' ability to profile the 5 remaining Social Rent homes into Named (Indicative) Project(s) with its remaining Indicative Allocation, and reviewed this with the partner via an Interim Reconciliation Exercise as set out in condition 12.8.
- 4 Following this Interim Reconciliation Exercise, it was determined that Potters Fields would be unlikely to profile out the remaining Social Rent homes at a level of £88,000 (or less) by 31 March 2026. This meant that the average grant rate of all the Social Rent homes in Potters Fields' Named (Indicative) Projects would be above the £120,000 Average Grant Rate agreed for Social Rent homes at the start of programme. This constituted an Interim Reconciliation Default as defined in condition 12.9.2.
- 5 Following a service of notice by the GLA, Potters Fields failed to provide satisfactory information as required under condition 20.7, and therefore the provisions of condition 20.8 applied. The grant level on each Social Rent home within Potters Fields' Named (Indicative) Projects on OPS was reduced by the Deduction Amount to bring the total level of funding in line with the Average Grant Rate for Social Rent homes.

#### *Calculating the Deduction Amount*

- 6 The Deduction Amount, which is per home, was calculated in line with the formula set out in condition 20.8.1:

$$\text{Deduction Amount} = \frac{\text{Total Social Rent} - \text{Average Social Rent}}{\text{Number of Social Rent}}$$

In this example:

Total Social Rent = total grant allocated to all Social Rent homes in all Named (Indicative) Projects = £840,000 (for project 1) + £1,120,000 (for project 2) = £1,960,000.

Average Social Rent = Average Grant Rate for Social Rent x total number of Social Rent homes in all Named (Indicative) Projects = £120,000 x 15 = £1,800,000

Number of Social Rent = total number of Social Rent homes in all Named (Indicative) Projects = 15

$$\text{Deduction Amount} = \frac{£1,960,000 - £1,800,000}{15}$$

$$\text{Deduction Amount} = \frac{£160,000}{15}$$

$$\text{Deduction Amount} = £10,667 \text{ per Social Rent home}^8$$

#### *Amending Named (Indicative) Project grant on OPS*

- 7 As per condition 20.8.1, the Named Project Grant for each Named (Indicative) Project was reduced by the Deduction Amount per Social Rent Home.
- 8 For Project 1, the Named Project Grant allocated to the project on OPS was reduced by £10,667 x 7 = £74,667.
- 9 For Project 2, the Named Project Grant allocated to the project on OPS was reduced by £10,667 x 8 = £85,333.

#### *Calculating the Recovery Amount*

- 10 As per condition 20.8.2, the GLA recovered grant in line with conditions 18.2.7 and 18.3.5.
- 11 Project 1 had completed, and 100 per cent of the grant had been paid by the GLA. The approach outlined in condition 18.3.5 (a) was therefore used to calculate the Recovery Amount:
- The Recovery Amount for Project 1 was £10,667 x 7 = £74,667
- 12 Project 2 had only started on site, and therefore only 50 per cent of the grant had been paid by the GLA. The approach outlined in condition 18.3.5 (b) was therefore used to calculate the Recovery Amount:

$$RA = \text{Grant Paid} - \left( \left( \frac{\text{Grant Paid}}{\text{Grant Allocated}} \right) \times \text{Revised Grant Amount} \right)$$

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<sup>8</sup> Rounded to nearest £1.

Where:

RA = the Recovery Amount

And in this example:

Grant Paid = the total grant paid out = £560,000

Grant Allocated = the total grant allocated = £1,120,000

Revised Grant Amount = change in grant caused by Interim Reconciliation Exercise =  
£1,120,000 – (£10,667 x 8) = £1,120,000 - £85,333 = £1,034,667

$$RA = £560,000 - \left( \left( \frac{£560,000}{£1,120,000} \right) \times £1,034,667 \right)$$

$$RA = £560,000 - ((0.5) \times £1,034,667)$$

$$RA = £560,000 - £517,333$$

$$RA = £42,667$$

- The Recovery Amount for Project 2, against the 50 per cent tranche already paid, was therefore £42,667. The remaining 50 per cent grant payable at Practical Completion is now £517,333 (50 per cent of the revised grant amount).

13 In total therefore, Potters Fields HA repaid £117,333 in line with condition 18.5.

14 Note that if more than one Consortium Member had utilised Thames River Consortium's Indicative Allocation, and an Interim Reconciliation Default occurred, then the GLA would be entitled to (in its absolute discretion) reduce Named Project Grant in line with either 20.8.1 or 20.8.2.