



dated 24 JANUARY 20178

Greater London Authority

and

Peabody Trust

and

Peabody Enterprises Limited, Family Mosaic Housing, Family Mosaic Home Ownership Limited and Charlton Triangle Homes Limited

Approved Provider Consortium Grant Agreement (Mixed Consortium)

in relation to the Affordable Homes Programme 2016-2021

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Grant Agreement

dated 24 JANUARY 2018

Parties

- (1) **Greater London Authority** of City Hall, The Queen's Walk, More London SE1 2AA (the **GLA**); and
- (2) **Peabody Trust** (a registered society as defined in section 1 of the Co-operative and Community Benefit Societies Act 2014) (7223) whose registered office is at 45 Westminster Bridge Road, London, SE1 7JB (the **Lead Partner**); and
- (3) **Peabody Enterprises Limited** (company) (04190129) whose registered office is at 45 Westminster Bridge Road, London, SE1 7JB, **Family Mosaic Housing** (company) (IP30093) whose registered office is at Albion House, 20 Queen Elizabeth Street, London, SE1 2RJ, **Family Mosaic Home Ownership Limited** (company) (IP26804R) whose registered office is at Albion House, 20 Queen Elizabeth Street, London, SE1 2RJ and **Charlton Triangle Homes Limited** (company) (03698401) whose registered office is at Albion House, 20 Queen Elizabeth Street, London, SE1 2RJ (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 construction of affordable housing.
- (C) The GLA has agreed to advance grant funding to the Consortium Members pursuant to the GLA's Affordable Homes Programme 2016-2021 to facilitate the delivery of certain affordable housing projects subject to and in accordance with the terms of this Agreement.
- (D) Grant 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.
- (E) This Agreement, together with any other relevant GLA decisions, places a public service obligation on the Consortium Members to provide affordable homes for such persons who are failed by the housing market and require accommodation suited for their needs.
- (F) This Agreement together with statutory and other instruments constitutes an entrustment (within the meaning of the SGEI Decision) from the GLA to the Consortium to provide suitable accommodation for families and residents in London who are failed by the housing market.
- (G) The grant funding provided under this Agreement is (at its date) made in compliance with the requirements set out in the European Commission's Decision of 20 December 2011 concerning public service compensation granted for Services of General Economic Interest (2012/21/EU).

1 Definitions and interpretation

1.1 Definitions

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

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 13.2.3 and Condition 13.5.4;

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 8 in addition to those projects comprised within the Original Approved Bid;

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

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

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

Affordable Starts Certificate means a certificate in the form set out in Part 1 of Annexure 2;

Affordable Starts Condition means at least fifty per centum (50%) of all of the Consortium's and the Consortium Member Affiliate's (if applicable) Housing Starts in aggregate in London over the Assessment Period are for Affordable Housing dwellings;

Affordable Starts Final Certificate means a certificate in the form set out in Part 2 of Annexure 2;

Aggregate Development Costs means the aggregate of the Development Costs incurred by the Consortium Members under or in connection with this Agreement;

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

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

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

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

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

AHP Dwelling means:

- (a) a house, flat or maisonette which was developed with the benefit of Fund Proceeds 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; and
- (b) a Nil Grant Unit;

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

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

in accordance with the terms of this Agreement;

Allocated Fund Proceeds means the Fund Proceeds the parties have agreed 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 Net Grant means £156,310,963, being the maximum amount of grant payable by the GLA to the Lead Partner 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 Total Grant means the aggregate of the Allocated Net Grant and Allocated Fund Proceeds;

AP Grant Rates means:

- (a) the sum of £60,000 (inclusive of Fund Proceeds) per LAR Dwelling let or to be let at or below Benchmark Rent Levels;
- (b) the sum of £28,000 (inclusive of RCGF Funds) per LLR Dwelling;
- (c) the sum of £28,000 (inclusive of RCGF Funds) per SO Dwelling;

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);

ASC Remediation Period means 30 Business Days from the date upon which the GLA serves an Election Notice on the Lead Partner;

ASC Removed Consortium Member means a Consortium Member removed pursuant to Conditions 19.15.1 and 19.15.2;

Assessment Period means the period commencing on 1 April 2015 and ending on 31 March 2021;

Benchmark Rent Levels means the rent levels set out below as the same are updated and increased for each successive Financial Year in accordance with Condition 3.2:

Number of bedrooms	2017/2018 Benchmark Rent Level (weekly rent, exclusive of service charges)
Bedsit and one bedroom	£144.26
Two bedrooms	£152.73
Three bedrooms	£161.22
Four bedrooms	£169.70
Five bedrooms	£178.18
Six or more bedrooms	£186.66

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 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;

Committed Number has the meaning ascribed to it in limb (b) of the definition of "Indicative Proposals";

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);

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

Confidential Information means in respect of each of the GLA and the Consortium Members all information relating to those bodies (as applicable) or the existence or terms of this Agreement or any agreement associated with this Agreement (**Associated Agreement**) in respect of which any party hereto becomes aware in its capacity as a party to this Agreement or which is received by such party in relation to this Agreement or any Associated Agreement from the GLA, the Consortium Members (as applicable) or any of the GLA's or the Consortium Members advisers (as applicable) or from any third party if the information was obtained by that third party directly or indirectly from the GLA, the Consortium Members or their respective advisers (in each case as applicable) in whatever form in either case (including information given orally and any document electronic file or other means of recording or representing information which includes derives or is copied from such information) and in the case of the Consortium Member means such specific information as the Lead Partner shall have identified to the GLA in writing prior to the date hereof as confidential information for the purposes of this Agreement;

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

Consortium means the Consortium Members jointly;

Consortium Agreement means the agreement (as adhered to by New Consortium Members from time to time) entered into or to be entered into between the Consortium Members regulating (amongst other things) the manner in which the delivery of the Approved Bid will be implemented between them;

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

Consortium Member Party means:

- (a) the Consortium Member, any Building Contractor, any member of the Professional Team, agent employee or subcontractor of that Consortium Member; and
- (b) 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; and
- (c) where the Consortium Member is a LA Provider:
 - i 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 2017/18 (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; or
 - ii any subsidiary (which, for the avoidance of doubt, does not include a joint venture) in which a local authority, either itself or through another entity,:
 - A holds a majority of the voting rights; or
 - B is a member and has the right to appoint or remove a majority of its board of directors or trustees; or
 - C is a member and unilaterally controls alone, pursuant to an agreement with other members, a majority of the voting rights;

Consortium Members means, subject to Condition 18, the Original Consortium Members and any New Consortium Member and **Consortium Member** shall be construed accordingly;

Continuing Named Project means a Named Project approved by the GLA on OPS and in respect of which the Start on Site Date has or will have occurred at the date of the service of the notice referred to in Condition 19.12.1;

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 DPA;

Decision 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 SGEI Decision of operating the AHP Housing as affordable housing;

Decision Net Costs means under the SGEI Decision the maximum amount of aid which may be provided without Unlawful State Aid arising;

Decision Revenue means all income (including all Public Sector Subsidy but excluding any part of the Agreement Funding) which the Relevant Consortium Member or a Consortium Member Affiliate receives for the purposes of or earns from the AHP Housing;

Deed of Adherence means the deed referred to in Condition 8.3 and in the form set out in Schedule 6;

Deed of Release means the deed referred to in Condition ^{19.2}8.2 and in the form set out in Schedule 5;

Default Event means a General Default or a Project Default;

Developer-led Principles means the principles, rates and illustrations set out (inter alia) in paragraphs 47 to 52, 78 to 80, 103 to 110 (inclusive) of the Funding Guidance;

Development Costs means the costs relating to Site acquisition and Works in relation to a Named Project incurred or to be incurred 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;

Differential Sum means the figure (expressed as a positive amount) representing the difference between zero and the negative figure referred to in Condition 19.12;

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 title in any AHP Dwelling or property comprised in a Named Project on which any AHP Dwellings have been or are to be developed (as the case may be) transfers to becomes vested in or is leased to or reverts to another person;

Disposal Notification means a written notification sent by the Lead Partner 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 donee 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 allocated 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;

DPA means the Data Protection Act 1998;

DPF means the Disposal Proceeds Fund maintained by a Relevant Consortium Member that is a RP Provider in accordance with the requirements of Section 177 of the HRA 2008 or any successor or replacement provision;

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

Early Start Project means a Named Project where Start on Site is projected to occur between 1 April 2017 and 31 March 2019;

Early Start Project Default means the failure of any Early Start Project to achieve Start on Site by 31 March 2019;

EIR means the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such statutory instrument;

EIR Exemption means any applicable exemption to EIR;

Election Notice means a notice in writing indicating the GLA's intention to exercise its rights under Condition 19.12;

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

EU Competent Authority means:

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

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

Exiting Projects means the Named Projects which have or would have been delivered by the ASC Removed Consortium Member;

Final Claim Stage means:

- (a) in respect of a Named Project which achieves Start on Site during the financial year 2017/2018, the Start on Site Date; and
- (b) in respect of all other Named Projects, the date at which the relevant Named Project reaches Practical Completion;

Financial Confirmation means a confirmation substantially in the form set out in Annexure 1 (as the same may be substituted, amended or updated from time to time);¹

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

First Payment Date means in relation to a Named Project:

- (a) falling within column A of the Table, the date referred to in column B of the Table; or
- (b) such other date as the GLA may have accepted in OPS;

First Tranche Grant means subject to Condition 5.3 such sum as is equivalent to fifty per centum (50%) of the Named Project Grant or such other percentage agreed by GLA through OPS;

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

FOIA Exemption means any applicable exemption to FOIA;

Fully-funded Project means a Named Project in respect of which the Total Project Grant has been paid to the Lead Partner and/or utilised by the Relevant Consortium Member (as applicable), and for the avoidance of doubt, for the purposes of Condition 19.12.1(c), a Fully-funded Project cannot be treated as a Continuing Named Project or an Early Start Project;

Fund Proceeds means the RCGF Funds and/or DPF Funds utilised by the Relevant Consortium Member (as applicable) in meeting in whole or in part the Development Costs;

Funding Guidance means the document entitled "Homes for Londoners - Affordable Homes Programme 2016-21 Funding Guidance" issued by the GLA in November 2016 (as the same may be substituted, amended or updated from time to time);

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

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

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

¹ The GLA may from time to time notify the Lead Partner in writing of a variation to the form and contents of the Financial Confirmation and the Lead Partner shall promptly ensure that any subsequent Financial Confirmation complies with such variation.

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

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

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);

Housing Moves means the scheme operated by the GLA to facilitate the mobility within London of existing tenants of London Boroughs or Registered Providers or such other scheme as the GLA shall designate from time to time;

Housing Start means the occurrence of all of the following in relation to a dwelling:

- (a) a building contract has been entered into between the Relevant Consortium Member or a Consortium Member Affiliate (as applicable) and a contractor or a development agreement has been entered into between the Relevant Consortium Member or a Consortium Member Affiliate (as applicable) and a developer covering the construction or development of such dwelling;
- (b) such building contractor or developer has taken possession of the site on which such dwelling will be delivered; and
- (c) the Start on Site Works to such site have commenced;

HRA 2008 means the Housing and Regeneration Act 2008;

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

Indicative Allocation means such part of the Allocated Total Grant attributed to the Indicative Proposals in OPS;

Indicative Dwelling means an LLR Dwelling or SO Dwelling forming part of the Indicative Proposals;

Indicative Proposals means the proposals comprised within the Original Approved Bid for the development of a specified number of further LLR Dwellings and/or SO Dwellings as set out in OPS 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 **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 6 of the DPA 1998;

Insolvency Event means the occurrence of any of the following in relation to the any Consortium Member that 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;
 - vi other than any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within ten (10) Business Days of commencement; or
- (e) any expropriation, attachment, sequestration, distress or execution affecting any of its 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 per centum (2%) above the base rate from time to time of the Royal Bank of Scotland plc;

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

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 Rent Guidance means "Guidance on Rents for Social Housing" issued by the Secretary of State for Communities and Local Government on 23 May 2014 as such document and/or associated guidance may be amended, updated or replaced from time to time by such Secretary of State or any successor body with similar or equivalent jurisdiction or authority;

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

Land Acquisition Date means the later of:

- (a) the date upon which the Relevant Consortium Member acquires or acquired a Secure Legal Interest in the Site and for the purposes of this definition the parties acknowledge and agree that limb (d) of the definition of Secure Legal Interest shall be disregarded and of no effect; and
- (b) the date of the Lead Partner's application for payment of First Tranche Grant in respect of the relevant Named Project pursuant to Condition 13.1;

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;

LAR Dwelling means an AHP Dwelling let or to be let at a London Affordable Rent to individuals in housing need and on terms which comply with the applicable provisions of Condition 10.4;

Law means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate Legislation or notice of any Regulatory Body;

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 subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978;
- (c) any exercise of the Royal Prerogative;

- (d) any enforceable EU right within the meaning of Section 2 of the European Communities Act 1972;

in each case in the United Kingdom; and

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

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 10.4;

LLR Rent Level means a rent which does not exceed the rent level published by GLA at 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 Affordable Rent means a weekly rent which does not exceed the Benchmark Rent Level (exclusive of service charges) for an equivalent property of the relevant size and number of bedrooms such rent to be assessed and set in accordance with the applicable requirements of the Affordable Housing Capital Funding Guide, Legislation, the Rent Standard (for RP Providers), the Rent Guidance (for LA Providers) 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 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 of £9.75 (before tax, other deductions and any increase for overtime) as may be updated from time to time by the Resolution Foundation, overseen by the Living Wage Commission, or any successor body carrying out the relevant calculation;

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

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

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

Milestone Extension Event means any of the following:

- (a) exceptionally adverse weather conditions;

- (b) delay in receipt of any necessary permission or approval of any statutory body or other person which the 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;
- (l) any material failure by the Building Contractor under the terms of the Building Contract 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;

Named Project means each project for the development of AHP Dwellings as has been fully detailed in OPS and accepted by the GLA through OPS as a Named Project as at the date hereof or in accordance with any of Conditions 5.1, 8.4 or 19.6.3;

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

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

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

Named Project Grant means the amount of grant payable by the GLA in respect of a Named Project as set out in the relevant Named Project Details and which, save as provided in Condition 19.12.1(c)iv, excludes Fund Proceeds;

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 18;

NHBC means the National House-Building Council;

Nil Grant Unit means a house, flat or maisonette comprised within a Named Project in respect of which the Relevant Consortium Member did not (a) seek grant funding under the AHP 2016/21 or (b) utilise any Fund Proceeds;

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 Dwelling means an 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 SGEI Decision;

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

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

Original Approved Bid means the aggregate of the Named Projects and Indicative Proposals (if any) accepted by the GLA pursuant to Condition 5.1.1;

Outgoing Consortium Member means a Consortium Member complying with the provisions of Conditions 18.1 and 18.2;

Overpaid Sum means such amount as represents the difference between the Total Project Grant and the Recalculated Grant Sum;

Permitted Disposal means any of the following:

- (a) the grant of a tenancy (compliant with Condition 10.4) in respect of an LAR Dwelling or a LLR 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);
- (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 s106 or s299A of the TCPA 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 DPA;

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

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

Process has the meaning ascribed to it in the DPA;

Procurement Law means (as the case may be):

- (a) prior to the date on which the United Kingdom ceases to be a Member State of the European Union all applicable United Kingdom and European Union procurement Legislation and any implementing measures including European Union Directives 2014/23/EU (on the award of concession contracts) and 2014/24/EU (on Public Procurement); the Public Contracts Regulations 2015, the Concession Contracts Regulations 2016 insofar as the same are applicable; and
- (b) on or after the date the United Kingdom ceases to be a Member State of the European Union the Public Contracts Regulations 2015, the Concession Contracts Regulations 2016 (insofar as the same are applicable) together with any statutory modification or replacement regulations or Legislation on procurement by public bodies (including Registered Providers);

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

Profit Making Organisation means a body designated on the Register as a profit-making organisation as such term is defined under s.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
- (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 19.2;

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

Proposed Named Project means a project (excluding any Indicative Proposal) for the development of AHP which a Consortium Member proposes to deliver as a Named Project in accordance with the terms of this Agreement;

Public Sector Subsidy 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 the European Commission, government bodies (whether national or local) or bodies in receipt of lottery funds from the National Lottery Distribution Fund pursuant to the National Lotteries Acts 1993 and 1998 and any further funding by the GLA not provided under this Agreement;

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 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 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;

Recalculated Grant Sum (RGS) means the result of the following calculation:

$$\text{RGS} = \text{Number of AHP Dwellings identified in the Named Project Details (excluding Nil Grant Units)} \times \text{£28,000 (inclusive of any Fund Proceeds)}$$

Recover has the meaning set out in the Recovery Determination;

Recoverable Project Grant means the aggregate of the Named Project Grant paid to the Lead Partner and the RCGF Funds (if any) used by the Relevant Consortium Member in relation to a Named Project;

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 the result of the following calculation:

$$\text{Reduction Amount} = \text{number of Non Start Dwellings} \times \text{£28,000};$$

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

Regulator means the Homes and Communities Agency acting through the Regulation Committee established by it pursuant to Part 2 of the HRA 2008 or any similar future authority (including any statutory successor) carrying on substantially the same regulatory or supervisory functions;

Regulatory Body means any government departments or regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of

practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of the GLA;

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

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

Remediation Period means 30 Business Days from the date upon which the GLA serves the first notice on the Lead Partner pursuant to Condition 19.5 or 19.11 (as applicable)19.7;

Removed Consortium Member means a Consortium Member of the type removed in accordance with Condition 19.8.1 or 19.8.2, 19.15.1 or 19.15.2;

Rent Guidance means "Guidance on Rents for Social Housing" issued by the Secretary of State for Communities and Local Government on 23 May 2014 as such document and/or associated guidance may be amended, updated or replaced from time to time by such Secretary of State or any successor body with similar or equivalent jurisdiction or authority;

Rent Standard means any standard set by the Regulator (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 Conditions 19.8.2 and 19.15.2 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 Indicative Proposals, the Named Projects, this Agreement or any activities or business of the GLA;

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

Right to Acquire has the meaning given in Section 180 of the HRA 2008;

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;

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);

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

Second Payment Date means in relation to a Named Project:

- (a) falling within column A of the Table, the date referred to in column C of the Table; or
- (b) such other date as the GLA may have accepted in OPS;

Second Tranche Grant means subject to Condition 5.3 such sum as is equivalent to fifty per centum (50%) of the Named Project Grant or such other percentage agreed by GLA through OPS;

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 competent authority or body relating to other services;

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

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

Secure Legal Interest means the Relevant Consortium Member has in respect of the Site one of the following:

- (a) freehold title registered with title absolute;
- (b) leasehold title registered with title absolute where the lease has at least:
 - i 60 years unexpired duration; or
 - ii in the case of any Named Project comprising SO Dwellings or LLR Dwellings, 99 years unexpired duration from the projected Purchase Point;
- (c) either:
 - i freehold title registered with possessory title; or
 - ii leasehold title registered with good leasehold title where the lease has at least:
 - A 60 years unexpired duration; or
 - B in the case of any Named Project comprising SO Dwellings or LLR Dwellings, 99 years unexpired duration from the projected 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 Total Project Grant for that Site; or
- (d) a binding contract with the owner of the legal and beneficial interest in the Site to secure one of the interests in limbs (a) to (c) and that securing that interest is conditional only upon matters that are within the direct and unilateral control of the Relevant Consortium Member;

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

SGEI Decision means the European Commission's Decision on Services of General Economic Interest dated 20 December 2011 (2012/21/EU);

SGEI Decision Overpayment means the extent to which Public Sector Subsidy (including any proportion of Agreement Funding allocated to a Named Project) exceeds the Decision Net Costs;

SGEI Information means such information about or relating to the Decision Allowable Costs, the Decision Revenue, the Decision Net Costs and such other information as the GLA may reasonably request;

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

Shared Ownership Lease means a shared ownership lease that meets:

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

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

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

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

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

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

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

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

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

State Aid means (as the case may be):

- (a) any aid granted by a Member State of the European Union or through the resources of such Member State in any form whatsoever which distorts or threatens to distort competition by favouring a particular undertaking or the production of certain goods, in so far as such aid affects trade between European Union Member States; or
- (b) any aid benefit or advantage (which includes but is not limited to assets, rates, funds and land) granted by or through a public sector body which is subject to any United Kingdom Competition Requirements;

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

Table means the following table:

Column A	Column B	Column C
Named Project where Start on Site is projected to occur and does occur between:	First Payment Date	Second Payment Date
1 April 2017 – 31 March 2018	Land Acquisition Date	Start on Site Date
1 April 2018 – 31 March 2019	Land Acquisition Date	Named Project Completion Date
1 April 2019 – 31 March 2020	Start on Site Date	Named Project Completion Date
1 April 2020 – 31 March 2021	Start on Site Date	Named Project Completion Date;

TCPA means the Town and Country Planning Act 1990;

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;

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

Total Grant Sum means the Allocated Net Grant that has been paid to the Lead Partner and any RCGF Funds that have been used by the Consortium Members under or in connection with this Agreement;

Total Project Grant means the aggregate of the Named Project Grant paid to and the Fund Proceeds used by the Consortium Members under or in connection with a Named Project;

Tranche means either of the First Tranche Grant or the Second Tranche Grant;

United Kingdom Competent Authority means:

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

United Kingdom Competition Requirement means any Legislation which:

- (a) is in force and/or in effect and/or applies (in England) on or after the date the United Kingdom ceases to be a Member State of the European Union; and
- (b) which regulates any aid funding assets or advantage granted or directed by a public sector body to the extent that the same has the ability to threaten to or actually distort either competition or an economic market in the United Kingdom and/or in any part of the European Economic Area and/or in any other country or countries;

Unlawful State Aid means (as the case may be):

- (a) State Aid which has been granted in contravention of Article 108(3) Treaty on the Functioning of the European Union (**TFEU**), does not benefit from an exemption from notification and has not been approved by a decision of the European Commission under Article 107(2) or (3) TFEU;
- (b) State Aid which has been granted after the United Kingdom ceases to be a Member State of the European Union to the extent that the same is granted contrary to or is an infringement of any United Kingdom Competition Requirement;

Uplift Amount means an amount of the type described in the Recovery Determination and calculated for the purposes of Condition 17.10 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;

Voluntary Right to Buy means the disposal of a dwelling on voluntary terms by a RP Provider to an existing tenant at a discount equivalent to the Right to Buy discount;

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 16.1; and

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

1.2 Interpretation

- 1.2.1 Words denoting any gender include all other genders.
- 1.2.2 The singular includes the plural and vice versa.
- 1.2.3 Any reference in this Agreement to any condition, sub-condition, paragraph, schedule, section heading or annexure is, except where it is expressly stated to the contrary, a reference to such condition, sub-condition, paragraph, schedule, section heading or annexure of this Agreement.
- 1.2.4 Any reference to this Agreement or to any other document shall include (except where expressly stated otherwise) any variation, amendment or supplement to such document to the extent that such variation, amendment or supplement is not prohibited under the terms of this Agreement.
- 1.2.5 Any reference to any enactment, order, direction, determination, regulation or similar instrument shall (except where expressly stated otherwise) be construed as a reference to the enactment, order, direction, determination, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted.
- 1.2.6 A reference to a person includes firms, partnerships and corporate bodies and their successors and permitted assignees or transferees.
- 1.2.7 Headings are for convenience of reference only.
- 1.2.8 A party means a party to this Agreement.
- 1.2.9 The words includes or including are to be construed without limitation.
- 1.2.10 A paragraph in a schedule or annexure shall be construed as reference to a paragraph in that particular schedule.
- 1.2.11 A deliberate act or omission of any person shall exclude acts or omissions which were within the contemplation of the parties or which were otherwise provided for in this Agreement.
- 1.2.12 In any case where the consent or approval of the GLA (or any officer of the GLA) is required or a notice is to be given by the GLA, such consent or approval or notice shall only be validly given if it is in writing and signed by (if relevant) the officer stipulated in this Agreement or such other person as may be specified by the GLA by notice in writing to the Relevant Consortium Member.

- 1.2.13 An obligation to do anything includes an obligation to procure its being done.
- 1.2.14 Any restriction includes an obligation not to permit infringement of the restriction.
- 1.2.15 When there are two or more persons affected by the obligations under this Agreement such obligations are to bind each such person jointly and severally.
- 1.2.16 The terms "Site" and "Named Project" include each and every part of it.
- 1.2.17 Save where a contrary intention is shown, any reference to the GLA acting reasonably shall be interpreted as requiring the GLA to act in a commercially reasonable manner.
- 1.2.18 If there is any ambiguity or conflict between the implied terms and the express terms of this Agreement then the express terms shall prevail.
- 1.2.19 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.
- 1.2.20 Neither the giving of any approval, consent, examination, acknowledgement, knowledge of the terms of any agreement or document nor the review of any document or course of action by or on behalf of the GLA shall, unless otherwise expressly stated in this Agreement or agreed in writing by the GLA, relieve 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.
- 1.2.21 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.
- 1.2.22 The terms "Allocated Total Grant" "Allocated Net Grant" "Capital Grant", "Named Project Grant" "Recoverable Project Grant" "Total Grant Sum" and "Total Project Grant" shall (unless the context precludes such interpretation) include every Tranche thereof.

2 **Purpose**

2.1 The GLA has agreed to:

2.1.1 make the Allocated Net Grant available to the Lead Partner; and

2.1.2 permit the Relevant Consortium Member to use the Allocated Fund Proceeds

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 Indicative Proposals and 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.

3.2 The parties agree that the Benchmark Rent Levels shall be increased in accordance with the following:

- 3.2.1 subject to Condition 3.2.2, the Benchmark Rent Levels for each successive Financial Year (**New Financial Year**) after the Financial Year 2017/2018 shall be increased with effect from 1 April in such New Financial Year in accordance with the following formula:

$$\text{Benchmark Rent Level} = \text{ABRL} \times (\text{CPI}_x + 1.01)$$

Where

ABRL = the actual Benchmark Rent Level for the Financial Year prior to the New Financial Year for which the calculation is being carried out; and

CPI_x = the 12-month inflation rate figure (drawn from the CPI and expressed as a decimal) published for September in the Financial Year prior to the New Financial Year for which the calculation is being carried out.

- 3.2.2 If for any New Financial Year the calculation of (CPI_x + 1.01) produces a figure less than 1 the product of the calculation shall be deemed to equal 1.

4 Indicative Proposals

4.1 The Lead Partner confirms that such details of the Indicative Proposals as are required by the GLA have been uploaded onto OPS by the date of this Agreement.

4.2 If the Indicative Proposals are accepted by the GLA in OPS, the Lead Partner and the Relevant Consortium Member acknowledge that the terms of this Condition 4 apply from the date of that acceptance.

4.3 The Lead Partner and the Relevant Consortium Member must ensure that the Indicative Proposals are worked up so that the Committed Number of Indicative Dwellings are:

- 4.3.1 profiled into Named Projects on OPS in accordance with the procedures set out in Condition 5.1; and
- 4.3.2 achieve Start on Site in the relevant Start Year.

4.4 If the Lead Partner and/or Relevant Consortium Member fails to comply with its obligations under Condition 4.3 the GLA shall be entitled to reduce the Indicative Allocation by the Reduction Amount and shall have no further obligation to either the Lead Partner and/or

the Relevant Consortium Member in relation to any Non Start Dwellings whether profiled into a Named Project or otherwise.

- 4.5 Any reduction in the Indicative Allocation will result in a commensurate reduction in the Allocated Total Grant.

5 **Named Projects**

- 5.1 The Lead Partner must:

5.1.1 upload such details as are required for each Proposed Named Project forming part of the Consortium's bid onto the GLA's OPS within five (5) Business Days from the date of this Agreement, including but not limited to the anticipated Development Costs;

5.1.2 (subject to Conditions 4.4 to 4.5 (inclusive)) ensure that the Committed Number of Indicative Dwellings are incorporated into one or more prospective Named Projects and uploaded onto OPS by no later than the 31 December immediately prior to the Start Year

and where in either case the relevant project is accepted by the GLA through OPS, it will become a Named Project for the purposes of this Agreement with effect from the date of its acceptance by the GLA in OPS.

- 5.2 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:

- 5.2.1 the Named Project:

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

- 5.2.2 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) is not subject to any Section 15 Direction nor do any circumstances exist which would permit such a direction to be issued; and
- (e) has not nor have any of its officers made a Section 114 Report nor is it aware of any circumstances which would give rise to the making of a Section 114 Report;

- 5.2.3 the rent levels for any:

- (a) LAR Dwelling within the Named Project will be set at or below the Benchmark Rent Levels 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.

- 5.3 The GLA may at its absolute discretion vary the percentages attributed to First Tranche Grant and Second Tranche Grant from time to time save that no such variation will take effect in relation to any Named Project which has been confirmed as such by the GLA in OPS and in relation to which the First Tranche Grant has been paid.
- 5.4 Under no circumstances shall the GLA be obliged to accept any Named Project if the GLA (acting reasonably) believes that it does not, will not or is unlikely to have sufficient financial resources available to it (taking account inter alia of its commitments under the AHP 2016/21 or other programme commitments) to provide Named Project Grant in relation to the relevant project.
- 5.5 In submitting a Proposed Named Project pursuant to condition 5.1 on its own behalf, the Lead Partner is deemed to represent and warrant to the GLA in the terms set out in Condition 5.2.

6 Changes to Named Projects and Indicative Proposals

- 6.1 The Lead Partner, the GLA and the Relevant Consortium Member may from time to time agree changes to the Named Project Details or the Indicative Proposals 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 or the Indicative Proposals in OPS and the electronic confirmation of that amendment by the GLA through OPS and in default of agreement the parties will be bound by the Named Project Details or Indicative Proposals as they existed prior to the changes proposed under this Condition 6.1.
- 6.2 Until the Relevant Consortium Member achieves the first letting of a LLR Dwelling or grants a Shared Ownership Lease of a SO Dwelling, the Relevant Consortium Member may re-profile such a LLR Dwelling as a SO Dwelling (and vice versa) and any such change must be implemented and confirmed in accordance with Condition 6.1.

7 Time extensions

- 7.1 Where a Milestone Failure occurs or is in the opinion of the GLA reasonably likely to occur (having regard to any information provided pursuant to any of Conditions 9.1.4, 10.3 or 11) and:
 - 7.1.1 where such failure is directly caused by a Milestone Extension Event the GLA shall, subject always to Condition 7.3, extend the relevant Milestone Date and associated Named Project Completion Date by such period as it (acting reasonably) considers appropriate to take account of the delay caused or likely to be caused by the Milestone Extension Event; or
 - 7.1.2 where such failure is not directly caused by a Milestone Extension Event, the GLA shall notify the Lead Partner of the Milestone Failure and the GLA shall within fifteen (15) 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 6.1; or

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

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

7.2.1 unless a Milestone Extension Event exists; or

7.2.2 in circumstances where such extension would (when taken individually or together with other extensions in relation to any Consortium Member) 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 Relevant Consortium Member or other grant recipients of the AHP 2016/21) materially and adversely affect the GLA's projected expenditure profile in relation to any year of the AHP 2016/21 and in particular (but without limitation) such expenditure profile in relation to the last Quarter of the relevant Financial Year.

7.3 The GLA shall not under any circumstances be required or obliged to extend a Named Project Start Date beyond 31 March 2021 but may at its sole discretion elect to do so.

8 Additional Projects

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

8.2 Where Condition 8.1 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 the same representations and warranties in relation to the proposed Additional Project as it makes to the GLA pursuant to Condition 5.2.

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

8.4 With effect from the Additional Project Acceptance Date:

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

8.4.2 the details set out by the 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

8.4.3 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.

8.5 If the GLA agrees to make available any grant funding in relation to 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.

9 Delivery Obligations

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

- 9.1.1 carry out the acquisition of the Site, procure and diligently pursue the completion of the Works so that:
- (a) the Named Project is (subject to Condition 7.1) constructed, delivered and/or Rehabilitated (as applicable) in accordance with the Named Project Delivery Timetable;
 - (b) when delivered, the Named Project fully complies with the Named Project Details; and
 - (c) any applicable requirements of Procurement Law and of the Consents are satisfied;
- 9.1.2 actively market the SO Dwellings 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);
- 9.1.3 advertise all SO Dwellings and LLR Dwellings through the portal at www.sharetobuy.com/firststeps or such other website address notified by the GLA to the Lead Partner from time to time; and
- 9.1.4 promptly notify the GLA in writing of any failure or likely failure to comply with Condition 9.1.1(a).

10 Operational Obligations

- 10.1 In delivering the Named Project and in operating and administering the Named Project after Practical Completion, the 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.
- 10.2 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 he considers appropriate to inspect the progress of the Named Project and to monitor compliance by the Relevant Consortium Member with its obligations under this Agreement.
- 10.3 The Relevant Consortium Member must notify the GLA in writing (save in respect of Conditions 10.3.1 and 10.3.2, where notification is required to be given through OPS):
- 10.3.1 immediately once the Land Acquisition Date (as described in limb (a) of the definition of Land Acquisition Date), Start on Site (as applicable) and Practical Completion has occurred with respect to each Named Project;
 - 10.3.2 immediately, in the event of the receipt by it of any other Public Sector Subsidy or guarantees of it, or the offer of the same, in respect of a Named Project (or any part of it) beyond any amount of Public Sector Subsidy notified to the GLA by the Lead Partner pursuant to Condition 5.1 or Condition 8.2;
 - 10.3.3 immediately upon becoming aware of any event or circumstance which may have a Material Adverse Effect; and
 - 10.3.4 of any other event or circumstance in relation the Named Project as the GLA may reasonably require from time to time and within such timeframes as the GLA may reasonably require.
- 10.4 Without prejudice to Condition 10.1, the Relevant Consortium Member must in operating and administering the Named Project after Practical Completion:

- 10.4.1 not use the AHP Dwellings for any purpose other than the Agreed Purposes without the GLA's prior written consent;
- 10.4.2 subject always to compliance with the applicable Benchmark Rent Level, not charge a higher initial rent in relation to a LAR Dwelling than the London Affordable Rent as set out in the relevant Named Project Details and ensure that such rent continues to be set and charged in accordance with the criteria of the London Affordable Rent;
- 10.4.3 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 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;
- 10.4.4 subject to any contrary requirement of Legislation comply with the Rent Standard (if an RP Provider) or Rent Guidance (if a LA Provider) in respect of the LAR Dwellings;
- 10.4.5 comply with the Tenancy Standard in respect of the LAR Dwellings and the LLR Dwellings;
- 10.4.6 observe and comply with the requirements of the Affordable Housing Capital Funding Guide 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) 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; and
 - (c) the purpose, target group, letting, rents, management or disposal of LAR Dwellings and/or LLR Dwellings;
 - (d) the nature of the housing and/or housing product (as described in the Affordable Housing Capital Funding Guide) being funded pursuant to this Agreement;
- 10.4.7 comply at its own cost with the GLA's requirements in relation to Compliance Audit;
- 10.4.8 in relation to AHP Housing, participate in the CORE system from time to time (including recording any lettings made together with any sales of stock including outright sales and shared ownership sales but excluding any sales of additional equity to the current shared owner);
- 10.4.9 in relation to each LAR Dwelling use the most appropriate form of tenancy having regard to the terms of the Tenancy Standard and the efficient use of public funds; and
- 10.4.10 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.

- 10.5 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.
- 10.6 In discharging its obligations 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.
- 10.7 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](https://www.london.gov.uk/about-us/governance-and-spending/good-governance/our-procedures), in each case as the GLA or the relevant industry body may update from time to time.
- 10.8 Each Relevant Consortium Member must on the initial letting of LAR Dwellings offer through the Housing Moves service at least 5% of LAR Dwellings on each Site and at least 10% on each Site comprising 150 dwellings or more (or such other percentages notified in either case by the GLA to the Lead Partner from time to time following consultation).
- 10.9 Where any Consortium Member is aware that it is in breach of an obligation under this Condition 10 it must promptly notify the GLA of the fact and take all such steps as are appropriate in the circumstances to remedy the breach.
- 10.10 Notwithstanding any other provision of this Agreement the Relevant Consortium Member shall, unless otherwise agreed by the GLA, remain liable and responsible for the performance of its obligations under this Agreement in relation to each AHP Dwelling for which it is the Landlord.
- 11 Review, Monitoring and Reporting**
- 11.1 Each Consortium Member must promptly advise GLA when any circumstance occurs which may:
- 11.1.1 impact adversely on its ability to deliver any Named Project in accordance with the terms of this Agreement;
 - 11.1.2 in the case of an LA Provider, gives rise to the making of a Section 114 Report or the issue of a Section 15 Direction; and/or
 - 11.1.3 constitute a Default Event or a breach of Condition 9 or Condition 10.
- 11.2 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.
- 11.3 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 11 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 11.
- 11.4 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.

- 11.5 Each Consortium Member shall ensure that it and any Consortium Member Affiliate (at its or their cost) co-operates with the GLA during an SGEI Review and it shall if requested promptly provide the GLA with SGEI Information and such other information, evidence and/or explanation as the GLA may reasonably require.
- 11.6 The Lead Partner shall, by 31 March 2018 and then every two (2) years thereafter until Practical Completion of all the Named Projects delivered or to be delivered under this Agreement, confirm to the GLA (using the Financial Confirmation) that based on the current information (actual and projected) the Agreement Funding together with the aggregate Decision Revenue received by the Consortium Members shall not exceed the Aggregate Development Costs.
- 11.7 Within ten (10) Business Days of Practical Completion of a Named Project the Lead Partner shall submit to the GLA through OPS details of the Actual Development Costs and the projected or actual (as appropriate) Decision Revenue for each AHP Dwelling within that Named Project.
- 11.8 The Lead Partner must:
- 11.8.1 use all reasonable endeavours to ensure that that any person providing the Financial Confirmation, the Affordable Starts Certificate, the Affordable Starts Final Certificate (the **AHP Confirmations**) is a senior officer of the Lead Partner with access to the information and knowledge needed accurately to give the information required; and
 - 11.8.2 notify the GLA if it becomes aware that any AHP Confirmation is erroneous in any material respect.
- 11.9 The Relevant Consortium Member:
- 11.9.1 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
 - 11.9.2 notify the GLA if it becomes aware that any of the confirmations set out in clause 11.9.1 above are erroneous in any material respect.
- 12 **Disposals**
- The Relevant Consortium Member must provide the GLA with a Disposal Notification prior to a Disposal taking place.
- 13 **Grant Claim Procedures**
- 13.1 Subject to a Named Project having reached the relevant First Payment Date, the Lead Partner may apply to the GLA for the First 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.
- 13.2 In permitting the Lead Partner to submit an application pursuant to Condition 13.1 the Lead Partner represents and warrants that it is an Investment Partner and the Relevant Consortium Member is deemed to:
- 13.2.1 repeat the representations and warranties set out in Condition 5.2;

- 13.2.2 represent and warrant to the GLA that the First Payment Date has been reached and that such date is no later than that submitted in OPS;
- 13.2.3 represent and warrant to the GLA that all notifications, confirmations and certifications made or to be made by the Lead Partner pursuant to Condition 11.8 or otherwise in OPS in relation to the Named Project have been, are or will be correct in all material respects;
- 13.2.4 represent and warrant to the GLA that it is a Registered Provider;
- 13.2.5 represent and warrants to the GLA that no Withholding Event or Default Event has occurred or arisen; and
- 13.2.6 represents and warrants to the GLA that to the best of its knowledge (having made all reasonable and proper enquiries) no material facts or circumstances exist which threaten the satisfaction of the Affordable Starts Condition.
- 13.3 Subject to a Named Project having reached the relevant Final Claim Stage by the Second Payment Date, the Lead Partner may apply to the GLA for the Second 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.
- 13.4 In submitting an application pursuant to 13.1 in on its own behalf the Lead Partner is deemed to represent and warrant to the GLA:
 - 13.4.1 in the terms set out in Conditions 13.2.1, 13.2.2 and 13.2.4 to 13.2.6 (inclusive); and
 - 13.4.2 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.
- 13.5 In permitting the Lead Partner to submit an application pursuant to Condition 13.3 the Lead Partner represents and warrants that it is an Investment Partner and the Relevant Consortium Member is deemed to represent and warrant to the GLA that:
 - 13.5.1 in the case of a Named Project scheduled to achieve Start on Site in the Financial Year 2017/2018, that Start on Site has been achieved by the Start on Site Date;
 - 13.5.2 in the case of a Named Project other than one described in Condition 13.5.1, the Named Project will be or has been procured, designed, constructed and delivered (as applicable) in accordance with the requirements of this Agreement;
 - 13.5.3 the Named Project has reached Start on Site or Practical Completion (as applicable);
 - 13.5.4 all confirmations and certifications made or to be made by the Lead Partner on behalf of the Relevant Consortium Member in OPS in relation to the Named Project have been are or will be correct in all material respects;
 - 13.5.5 it is a Registered Provider;
 - 13.5.6 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;

- 13.5.7 if it has reached the Final Claim Stage described in limb (b) of the definition of Final Claim Stage, and it possesses a Secure Legal Interest in the Site and for the purposes of this Condition 13.5.7 the parties acknowledge and agree that limb (d) of the definition of Secure Legal Interest shall be disregarded and of no effect;
- 13.5.8 no Withholding Event or Default Event has occurred or arisen; and
- 13.5.9 to the best of its knowledge (having made all reasonable and proper enquiries) no material facts or circumstances exist which threaten the satisfaction of the Affordable Starts Condition.

14 Payment of Grant

14.1 Subject to:

- 14.1.1 the GLA (acting reasonably) being satisfied with the Lead Partner's application for payment including the information warranted pursuant to Conditions 13.2 and 13.4;
- 14.1.2 Conditions 6, 14.3, and 16; and
- 14.1.3 the Condition Precedent having been satisfied in relation to a LA Project (where applicable),

the GLA shall (resources permitting) pay the First Tranche Grant or the Second Tranche Grant (as applicable) to the Lead Partner within fifteen (15) Business Days of receipt of a relevant and satisfactory application.

- 14.2 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 13 and this Condition 14 (as applicable) will be reapplied to the Lead Partner's resubmitted or amended application for payment.

14.3 The GLA shall not be obliged to pay the Lead Partner:

- 14.3.1 the First Tranche Grant before the date identified in the Named Project Details as the forecast First Payment Date;
- 14.3.2 the Second Tranche Grant before the Second Payment Date (as confirmed by the GLA through OPS) has occurred;
- 14.3.3 any Tranche if the Named Project has not been accepted by the GLA through OPS;
- 14.3.4 any Tranche in respect of any Named Project which has not reached:
 - (a) the Start on Site Date or the Land Acquisition Date (as applicable); or
 - (b) (where applicable) Practical Completion by the Milestone Date identified in OPS (subject to any extension to such date pursuant to Condition 7.3).

- 14.4 Where the GLA pays Named Project Grant to the Lead Partner, the Allocated Net Grant shall be reduced by a commensurate amount.
- 14.5 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.
- 14.6 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.

15 Records and Accounting

- 15.1 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:

- 15.1.1 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
- 15.1.2 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 any Indicative Proposals or Named Projects and which have been supplied to each of them for the purposes of this Agreement; and
- 15.1.3 the elemental breakdown of the construction costs in relation to each Named Projects,

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 15.1.

- 15.2 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 15 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 15.1.2 or as otherwise directed by the GLA.
- 15.3 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 15 and the each Consortium Member may retain such data, documents, materials and accounts in electronic form only.
- 15.4 Each Consortium Member acknowledges that The Comptroller and Auditor General shall have rights of access to the information referred to in Condition 15 pursuant to the National Audit Act 1983 and the Government Resources and Accounts Act 2000.
- 15.5 Each Consortium Member shall promptly and fully 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.

16 Withholding of grant

16.1 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 First Tranche Grant or Second Tranche Grant or otherwise where:

- 16.1.1 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);
- 16.1.2 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 Condition 13.2 and Condition 13.4 (in any case in whole or in part);
- 16.1.3 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);
- 16.1.4 an Insolvency Event has occurred;
- 16.1.5 a Consortium Member has ceased to operate;
- 16.1.6 a Consortium Member's status as a Registered Provider is removed or withdrawn;
- 16.1.7 any Consortium Member that is a LA Provider is or becomes subject to a Section 15 Direction which has or will have a Material Adverse Effect.
- 16.1.8 the Lead Partner's Investment Partner status is lost, removed or relinquished;
- 16.1.9 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;
- 16.1.10 where a Consortium Member is in material breach of Condition 9 or Condition 10 and has not taken steps to remedy it to the GLA's satisfaction (acting reasonably);
- 16.1.11 a Consortium Member (either by its own actions or omissions or those of its contractors or agents) harms the GLA's, the AHP 2016/21's or the Mayor of London's reputation or brings the GLA, the AHP 2016/21's or the Mayor of London into disrepute; or
- 16.1.12 a Consortium Member has breached its obligations under any of Conditions 11, 17, 19.8 or 20.

17 Repayment of grant

17.1 The parties acknowledge and agree that:

- 17.1.1 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;
- 17.1.2 for the purposes of the Recovery Determination the terms of this Agreement represent the conditions attached to the making of Capital Grant; and

17.1.3 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.

17.2 Without prejudice to any other term of this Agreement, and subject to Condition 17.3, 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 17.3 (the **Recoverable Amount**) in circumstances where:

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

17.2.2 the relevant Tranche has been paid to the Lead Partner or Fund Proceeds 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 17.2.4;

17.2.3 the GLA has made an overpayment in relation to a Named Project or has made a payment in error to the Lead Partner;

17.2.4 the relevant Tranche has been paid to the Lead Partner or Fund Proceeds 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;

17.2.5 the Relevant Consortium Member has breached its obligations under any of Conditions 9, 10, 11, 19.8 or 20;

17.2.6 a General Termination Event has occurred;

17.2.7 a Project Termination Event has occurred;

17.2.8 an Early Start Project Default has occurred.

17.3 In the circumstances set out in:

17.3.1 Condition 17.2.1, the Recoverable Amount shall be a sum equivalent to the Total Grant Sum;

17.3.2 Conditions 17.2.2, 17.2.5, 17.2.7 or 17.2.8 the Recoverable Amount shall be a sum equivalent to the Recoverable Project Grant for any affected Named Project;

17.3.3 Conditions 17.2.3, the Recoverable Amount shall be a sum equal to the amount of the overpayment or the sum paid in error as applicable;

17.3.4 Condition 17.2.4, subject always to Condition 17.4 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 14.1 together with the Fund Proceeds applied in respect of the relevant Named Project; and

RTPG is the revised Total Project Grant figure agreed pursuant to Condition 17.3.4(a);

- (c) the Relevant Consortium Member must notify the Lead Partner of the revised figure for the Total Project Grant and the Lead Partner shall immediately amend the relevant information on OPS to reflect any agreement reached made pursuant to Condition 17.3.4(a);
- (d) where the parties are unable to agree a revised Total Project Grant figure in accordance with Condition 17.3.4(a) the GLA shall be entitled to terminate this Agreement in accordance with Condition 19.1 and the Recoverable Amount shall be an amount equal to the Recoverable Project Grant paid pursuant to Condition 14.1 in respect of the relevant Named Project.

Under no circumstances will the GLA be required to make any payment to the Lead Partner if the application of the calculation in Condition 17.3.4(b) results in RA being a negative figure.

17.3.5 Condition 17.2.6, the Recoverable Amount shall be a sum equivalent to the Total Grant Sum.

- 17.4 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 or in applying the Fund Proceeds 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 17.3.4.
- 17.5 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 17.
- 17.6 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.
- 17.7 The parties acknowledge that the Late Payment of Commercial Debts (Interest) Act 1998 does not apply to this Agreement.
- 17.8 Notwithstanding any other term of this Condition 17, 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 17.5.
- 17.9 If the Agreement Funding or any part thereof gives rise to an SGEI Decision Overpayment or otherwise constitutes Unlawful State Aid then the GLA shall be entitled to recover from

the Relevant Consortium Member the amount of such SGEI Decision Overpayment and/or Unlawful State Aid together with such interest as it is required by Legislation to recover and the Relevant Consortium Member must pay such amount(s) within ten (10) Business Days of the GLA requesting repayment.

- 17.10 Save where the GLA agrees (in writing) to the contrary, the GLA hereby directs any Relevant Consortium Member that 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.

18 **Changes to Consortium Membership**

- 18.1 A Consortium Member shall be released from its obligations pursuant to Condition 2.2 where:

18.1.1 a Deed of Release has been completed in accordance with the provisions of Condition 18.2; and

18.1.2 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.

- 18.2 Subject to the proviso in Condition 18.1, 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.

- 18.3 Subject to Condition 18.4, 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.

- 18.4 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 clause 18.3.

19 **Default Events and Termination**

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

19.1.1 an Insolvency Event has occurred in relation to a Consortium Member;

19.1.2 a Consortium Member that is an LA Provider is subject to a Section 15 Direction which has or will have a Material Adverse Effect;

- 19.1.3 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);
- 19.1.4 a Consortium Member ceases operating;
- 19.1.5 a Consortium Member's status as a Registered Provider is lost, relinquished or removed; or
- 19.1.6 the Lead Partner's Investment Partner status is lost, relinquished or removed.
- 19.2 Each of the following circumstances shall constitute a Project Default:
 - 19.2.1 failure by the Relevant Consortium Member to comply with its obligations in Condition 11 and/or any information supplied in connection with its obligations in Condition 11, whether in relation to the Open Book Obligations or otherwise, is materially deficient, misleading or inaccurate;
 - 19.2.2 a breach of the Open Book Obligations;
 - 19.2.3 the Relevant Consortium Member is unable to make the applicable representations and give the warranties set out in Schedule 1 (in any case in whole or in part) and there is a resulting Material Adverse Effect;
 - 19.2.4 the Regulator directs or recommends that grant is not to be paid to the Lead Partner or to the Relevant Consortium Member;
 - 19.2.5 a breach of the Relevant Consortium Member's obligations under Condition 12;
 - 19.2.6 any Early Start Project Default;
 - 19.2.7 a Consortium Member (either by its own actions or omissions, or those of its contractors or agents) harms the GLA's, the AHP 2016/21's or the Mayor of London's reputation or brings the GLA, the AHP 2016/21's or the Mayor of London into disrepute;
 - 19.2.8 failure by the Relevant Consortium Member to comply with any repayment obligation under this Agreement;
 - 19.2.9 failure or inability of the Relevant Consortium Member to comply with the requirements of Conditions 13.1 to 13.4 (inclusive);
 - 19.2.10 a breach of Condition 9 or 10;
 - 19.2.11 failure by the parties to agree the matter referred to in Condition 17.3.4(d);
 - 19.2.12 a breach of Condition 19.8;
 - 19.2.13 any other breach of or failure to comply with the Agreement which has a Material Adverse Effect;
- 19.3 The Relevant Consortium Member must notify the GLA immediately in writing on the occurrence of a Default Event.
- 19.4 Without prejudice to Conditions 19.5 or 19.6, in the event of the occurrence of Default Event and for so long as that Default Event subsists (or another Default Event has occurred and is continuing) the GLA shall be entitled to reject the submission of any Named Project or Additional Project on OPS.
- 19.5 On the occurrence of a General Default the GLA shall (subject to Condition 19.8) be entitled without any liability to any Consortium Member terminate this Agreement.

19.6 Where a Project Default is:

19.6.1 an occurrence specified in Condition 19.2.5, 19.2.7 or 19.2.11 the GLA shall be entitled forthwith and without any liability to any Consortium Member but without determining the whole of this Agreement to terminate the Agreement in so far as it relates to the Named Project to which the Project Default relates;

19.6.2 an occurrence specified in Condition 19.2.1, 19.2.2, 19.2.3, 19.2.4, 19.2.8, 19.2.9, 19.2.10 19.2.12 or 19.2.13 the GLA may serve notice on the Lead Partner 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 and without any liability to any Consortium Member but without determining the whole of this Agreement to terminate the Agreement insofar as it relates to the Named Project to which the Project Default relates;

19.6.3 an occurrence specified in Condition 19.2.6 the GLA shall be entitled to recover from the Relevant Consortium Member the Recoverable Amount specified in Condition 17.3.2 and this Agreement shall terminate insofar as it relates to the Early Start Project unless the Relevant Consortium Member and the GLA agree changes to the Named Project Details in accordance with Condition 6 (including a revised Named Project Delivery Timetable) whereupon the Early Start Project shall be deemed to be a Named Project and no longer an Early Start Project.

19.7 Each Consortium Member acknowledges that in order to benefit from the AP Grant Rates in relation to the AHP Dwellings to be funded under this Agreement, the Affordable Starts Condition must have been satisfied by 31 March 2021.

19.8 The GLA's right to terminate this Agreement pursuant to Condition 19.5 shall be suspended for the duration of the Remediation Period. Where on or before the expiry of the Remediation Period:

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

19.8.2 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 removed from the Consortium; 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.

19.8.3 the Removed Consortium Member has provided to the GLA a Deed of Release duly executed by it and the other Consortium Members together with the Completion Authority; and

19.8.4 either:

- (a) following information supplied and/or representations made by the Consortium (excluding the Removed Consortium Member) the GLA is satisfied (acting reasonably) that the Consortium is capable of delivering the Approved Bid without the need for a change to it; or
- (b) any change to the Approved Bid requested by the then Lead Partner as a result of the withdrawal of the Removed Consortium Member does not materially and adversely affect the delivery of the Approved Bid and the GLA has agreed such change in advance in writing

the GLA's right under Condition 19.5 shall lapse in respect of the particular Default Event which gave rise to the implementation of the Remediation Period.

19.9 In the event that the GLA's right to terminate this Agreement does not lapse as a result of the operation of Condition 19.8, the GLA shall on the service of written notice be entitled forthwith and without any liability to any Consortium Member to terminate this Agreement.

19.10 The Lead Partner must provide GLA with a completed:

19.10.1 Affordable Starts Certificate by 31 March of each Financial Year until and including 31 March 2020; and

19.10.2 Affordable Starts Final Certificate by 30 June 2021 together with supporting evidence as to whether the Affordable Starts Condition has been satisfied.

19.11 If it becomes apparent to the GLA (acting reasonably) on the basis of the information provided by the Lead Partner pursuant to Condition 19.10 or otherwise that the Affordable Starts Condition will not be satisfied by 31 March 2021 (a **Prospective Starts Failure**) or the Affordable Starts Condition has not been satisfied by 31 March 2021, the GLA shall be entitled to serve an Election Notice on the Lead Partner.

19.12 Subject to the operation of Conditions 19.14 and 19.15, the GLA shall (in its absolute discretion) be entitled after the service of an Election Notice to elect in writing between:

19.12.1 serving a written notice on the Lead Partner and the effect of such notice shall be:

- (a) in the case of a Prospective Starts Failure, to relieve permanently the GLA from all and any obligations to fund any Named Project which has as at the date of the notice yet to achieve Start on Site and in relation to which no Tranche has been paid;
- (b) to require the Lead Partner within such period as may be specified in the notice to submit to the GLA in writing and together with supporting calculations a Recalculated Grant Sum in relation to each Named Project in respect of which any Consortium Member has received or used any Total Project Grant; and

- (c) unless such figures are disputed by the GLA within ten (10) Business Days of the receipt of the submitted information:
 - i each Consortium Member shall in relation to each Fully-funded Project pay the Overpaid Sum to the GLA within ten (10) Business Days of receipt of the GLA's written demand for the same;
 - ii the Relevant Consortium Member shall in relation to each Early Starts Project in relation to which the First Tranche Grant has been paid and/or Fund Proceeds have been used but Start on Site not achieved, such Relevant Consortium Member will repay a sum equivalent to the First Tranche Grant and any RCGF Funds applied to the Early Start Project to the GLA within ten (10) Business Days of receipt of the GLA's written demand for the same;
 - iii The Lead Partner, the Relevant Consortium Member and the GLA shall in relation to each Continuing Named Project in respect of which First Tranche Grant has been paid and/or Fund Proceeds used, deduct the amount of such First Tranche Grant and any RCGF Funds applied to the Continuing Named Project from the Recalculated Grant Sum and where the result of that deduction is a positive figure that figure shall notwithstanding any provision to the contrary be deemed to be the amount payable to the Relevant Consortium Member as Second Tranche Grant in relation to the relevant Continuing Named Project and OPS shall be updated accordingly but where the result of that deduction is a negative figure the amount payable to the Relevant Consortium Member as Second Tranche Grant shall be deemed to be zero, OPS shall be updated by the Lead Partner accordingly and the Relevant Consortium Member must pay the GLA the Differential Sum within ten (10) Business Days of receipt of the GLA's written demand for the same;
 - iv the Lead Partner, the Relevant Consortium Member and the GLA shall in relation to any Continuing Named Project in relation to which no Tranche has been paid nor any Fund Proceeds used treat the Recalculated Grant Sum as the Named Project Grant for that Continuing Named Project and OPS shall be updated accordingly;

19.12.2 offering the Consortium Members the opportunity to enter into an alternative grant agreement pursuant to which:

- (a) a grant reconciliation exercise shall be undertaken based on the Developer-led Principles; and
- (b) a repayment regime shall be agreed if the Total Grant Sum exceeds the grant which would be payable under the alternative agreement following application of the Developer-led Principles.

19.13 If:

- 19.13.1 the Consortium declines the opportunity offered under Condition 19.12.2 within ten (10) Business Days of receipt of the GLA's offer; or
- 19.13.2 the parties fail to agree the terms of the alternative agreement within thirty (30) Business Days of receipt of GLA's offer,

GLA shall be entitled on not less than two (2) weeks' written notice to terminate this Agreement and each Consortium Member must repay any part of the Total Grant Sum which it has been paid or it has used (as the case may be) under the terms of this

Agreement within ten (10) Business Days of receipt of the GLA's written demand for the same.

19.14 The GLA's rights pursuant to Condition 19.12 shall be capable of suspension only once during the currency of this Agreement and:

19.14.1 only in respect of a Prospective Starts Failure; and

19.14.2 for the duration of the ASC Remediation Period.

19.15 Where on or before the expiry of the ASC Remediation Period:

19.15.1 the Prospective Starts Failure related to or was committed or caused by a single Consortium Member (or Consortium Member Affiliate) other than the Lead Partner, that Consortium Member has been removed from the Consortium;

19.15.2 the Prospective Starts Failure related to or was committed or caused by the Lead Partner and:

(a) the Lead Partner has been removed from the Consortium; 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.

19.15.3 the ASC Removed Consortium Member has provided to the GLA a Deed of Release duly executed by it and the other Consortium Members together with the Completion Authority; and

19.15.4 either:

(a) following information supplied and/or representations made by the Consortium (excluding the ASC Removed Consortium Member) the GLA is satisfied (acting reasonably) that the Consortium is capable of delivering the Approved Bid without the need for a change to it; or

(b) any change to the Approved Bid requested by the then Lead Partner as a result of the removal of the ASC Removed Consortium Member does not materially and adversely affect the delivery of the Approved Bid and the GLA has agreed such change in advance in writing; and

(c) the GLA is satisfied (acting reasonably) that the Affordable Starts Condition is capable of being satisfied notwithstanding the loss of the Exiting Project from the Approved Bid,

the GLA's right under Condition 19.12 shall lapse in respect of the particular Prospective Starts Failure which gave rise to the implementation of the Remediation Period.

19.16 In the event that:

19.16.1 the Election Notice served pursuant to Condition 19.11 does not relate to a Prospective Starts Failure; or

19.16.2 the GLA's rights under Condition 19.12 do not lapse as a result of the operation of Conditions 19.14 and 19.15,

the GLA shall be entitled immediately to take the action contemplated under Condition 19.12.1 or Condition 19.12.2.

20 **Open Book Obligations**

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

20.1.1 at all times maintain a full record of particulars of all the income (including Public Sector Subsidy) received and Development Costs in respect each Named Project;

20.1.2 at all times when reasonably required to do so by the GLA, provide a summary of any of the income and Development Costs referred to in Condition 20.1.1 as the GLA may reasonably require to enable it to monitor the performance by the Relevant Consortium Member of its obligations under this Agreement; and

20.1.3 at all times provide such access or facilities as the GLA may reasonably require for its representatives to visit any place where the records are held and examine the records maintained under this Condition 20.

20.2 Compliance with the above shall require each Relevant Consortium Member to keep (and where appropriate to procure that any Subcontractor or Consortium Member Affiliate 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:

20.2.1 income (including Public Sector Subsidy and receipts);

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

20.2.3 payments made to Subcontractors;

20.2.4 capital and revenue expenditure;

20.2.5 VAT incurred on all items of expenditure where the 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 competent authority; and

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

and each 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 27 to determine a

dispute or otherwise authorised by the GLA) upon reasonable notice, and shall submit a report of these to the GLA as and when requested.

21 Information and confidentiality

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

21.2 Each party agrees to treat all Confidential Information belonging to the others as confidential and not to disclose such Confidential Information or any other confidential information relating to the GLA or each other arising or coming to its attention during the currency of this Agreement to any third party without the prior written consent of the other relevant party and agrees not to use such Confidential Information for any purpose other than that for which it is supplied under this Agreement.

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

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

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

21.3.3 is lawfully in the possession of another relevant party before the date of this Agreement and in respect of which that party is not under an existing obligation of confidentiality; or

21.3.4 is independently developed without access to the Confidential Information of another relevant party to this Agreement.

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

21.4.1 to enable the disclosing party to perform its obligations under this Agreement or any loan agreement or proposed loan agreement or funding documentation with a commercial lender;

21.4.2 by any applicable Law or by a court, arbitral or administrative tribunal in the course of proceedings before it including without limitation any requirement for disclosure under FOIA, EIR or the Code of Practice on Access to Government Information and each Consortium Member acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and the GLA may nevertheless be obliged to disclose such Confidential Information;

21.4.3 by any Regulatory Body (including any investment exchange and the Regulator) acting in the course of proceedings before it or acting in the course of its duties; or

21.4.4 in order to give proper instructions to any professional adviser of that party who also has an obligation to keep any such Confidential Information confidential.

21.5 Each Consortium Member shall ensure that all Confidential Information obtained by it under or in connection with this Agreement:

21.5.1 is given only to such of its employees, professional advisors or consultants engaged to advise it in connection with this Agreement as is strictly necessary

for the performance of this Agreement and only to the extent necessary for the performance of this Agreement;

21.5.2 is treated as confidential and not disclosed (without the other party's prior written approval) or used by any such staff or professional advisors or consultants otherwise than for the purposes of this Agreement;

21.5.3 where it is considered necessary in the opinion of the other party, relevant party shall ensure that such staff, professional advisors or consultants sign a confidentiality undertaking before commencing work in connection with this Agreement.

21.6 Nothing in this Condition 21 shall prevent any party:

21.6.1 disclosing any Confidential Information for the purpose of:

- (a) the examination and certification of its accounts;
- (b) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the GLA has used its resources;

21.6.2 disclosing any Confidential Information obtained from the any other party:

- (a) to any other department, office or agency of the Crown or any member of the GLA Group;
- (b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- (c) on a confidential basis to a proposed successor body in connection with any assignment, novation or disposal of any of its rights obligations or liabilities under this Agreement; or
- (d) to any person engaged in providing any services to such party for any purpose relating to or ancillary to this Agreement or any person conducting an Office of Government Commerce gateway review,

provided that in disclosing information under any of Conditions 21.6.2(a) to Condition 21.6.2(d) inclusive the disclosing party discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

21.7 Nothing in this Condition 21 shall prevent any party from using any techniques, ideas or know-how gained during the performance of its Agreement in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

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

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

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

21.9.2 any Information is to be disclosed in response to a Request for Information,

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

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

21.10.1 without consulting the them (or any one of them); or

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

21.11 Without in any way limiting Condition 21.9 or Condition 21.10, in the event that the GLA receives a RFI, the GLA will, where appropriate, as soon as reasonably practicable notify the other parties.

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

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

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

21.12.3 provide the GLA with any data or information in its possession or power in the form that the GLA requires within five (5) Business Days (or such other period as the GLA may specify) of the GLA requesting that Information;

21.12.4 permit the GLA to inspect any records as requested from time to time.

21.13 Nothing in this Agreement will prevent the GLA from complying with any valid order, decision, enforcement or practice recommendation notice issued to it by the Information Commissioner under FOIA and/or EIR in relation to any Exempted Information.

21.14 The obligations in this Condition 21 will survive the expiry or termination of this Agreement for a period of two (2) years or, in respect of any particular item of Confidential Information, until such earlier time as that item of Confidential Information reaches the public domain otherwise than by reason of a breach of this Agreement or of any other duty of confidentiality relating to that information.

21.15 Each Consortium Member acknowledges and agrees that the GLA may in its absolute discretion redact all or part of the Agreement Information prior to its publication. In so doing and in its absolute discretion the GLA may take account of any EIR Exemptions and FOIA Exemptions. The GLA may in its absolute discretion consult with the Lead Partner on behalf of the Consortium Member regarding any redactions to the Agreement Information to be published pursuant to this Condition 21. The GLA shall make the final decision regarding publication and/or redaction of the Agreement Information.

22 Data Protection

22.1 Each Consortium Member shall ensure that at all times it complies with its obligations under this Agreement in manner so as to comply with the DPA and all relevant regulations relating to data protection.

22.2 Each Consortium Member warrants and represents that it has obtained all necessary registrations, notifications and consents required by the DPA to Process Personal Data for the purposes of performing its obligations under this Agreement.

- 22.3 Each Consortium Member undertakes that to the extent that it and/or any of its employees receives, has access to and/or is required to Process Personal Data on behalf of the GLA (the **GLA's Personal Data**) for the purpose of performing its obligations under this Agreement it will at all times act as if it were a Data Controller and comply with the provisions of the DPA for the time being in force.
- 22.4 Each Consortium Member shall at all material times have in place and maintain appropriate technical and organisational security measures designed to safeguard against accidental or unlawful destruction, accidental loss, alteration, unauthorised or unlawful disclosure of or access to the GLA's Personal Data and any person it authorises to have access to any the GLA's Personal Data will respect and maintain the confidentiality and security of the GLA's Personal Data.
- 22.5 Each Consortium Member shall allow the GLA to audit its compliance with the requirements of this Condition 22 on reasonable notice and/or, at the GLA's request, provide the GLA with evidence of its compliance with the obligations within this Condition 22.
- 22.6 Each Consortium Member undertakes not to disclose or transfer any of the GLA's Personal Data to any third party without the prior written consent of the GLA save that without prejudice to Condition 22.3 each Consortium Member shall be entitled to disclose the GLA's Personal Data to employees to whom such disclosure is reasonably necessary in order for that Consortium Member to perform its obligations under this Agreement, or to the extent required under a court order.
- 22.7 Each Consortium Member agrees to use all reasonable efforts to assist the GLA to comply with such obligations as are imposed on the GLA by the DPA.
- 22.8 Each Consortium Member shall indemnify the GLA against all claims and proceedings and all liability, losses, costs and expenses incurred in connection therewith by the GLA as a result of the destruction, damage or loss of the GLA's Personal Data processed by its employees, agents, or any breach of or other failure to comply with the obligations in the DPA and/or this Condition 22 by the Consortium Member, its employees, agents or sub-contractors.
- 22.9 Each Consortium Member undertakes to include obligations no less onerous than those set out in this Condition 22, in all contractual arrangements with agents engaged by it in performing its obligations under this Agreement to the GLA.

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 which it is the Landlord, 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 Named Project 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 Net Grant has been paid to or utilised by the Lead Partner **provided that** nothing in this Condition 23.5.2 shall entitle the a Consortium Member to revoke such licence insofar as it relates to:

(a) 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 Fund Proceeds have been used; or

(b) Continuing Named Projects.

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

24.1 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.

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

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

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

24.4.1 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

24.4.2 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.

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

24.6 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.

24.7 Each Consortium Member shall maintain an accurate record of all health, safety and environmental incidents which occur on or in connection with each Named Project for each Named Project for which it is Landlord.

24.8 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.

25 **Construction Industry Scheme**

25.1 For such time as:

25.1.1 the Relevant Consortium Member continues to be a Registered Provider; and

25.1.2 the provisions of paragraph 13040 of Chapter 1 of HM Revenue & Customs' Construction Industry Scheme Reform Manual remain in effect as published at July 2009,

the Relevant Consortium Member warrants to the GLA that since it is a Registered Provider, it is deemed by concession to be certificated as a sub-contractor entitled to receive relevant payments gross under the Construction Industry Scheme set out in Chapter 3 of Part 3 of the Finance Act 2004 and associated regulations (the **CIS**) provided always that if either Condition 25.1.1 or Condition 25.1.2 ceases to hold true at a time when monies remain outstanding from the GLA to the Relevant Consortium Member pursuant to this Agreement then the Relevant Consortium Member shall promptly notify the GLA of such fact and the parties shall take such steps as may reasonably be required to ensure that the CIS is if necessary applied to all such outstanding payments.

26 **Assignment and sub-contracting**

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

26.2 No Consortium Member shall be entitled to transfer or assign all or part of this Agreement.

27 **Dispute resolution**

27.1 All disputes and differences arising out of or in connection with this Agreement (a **Dispute**) shall be resolved pursuant to the terms of this Condition 27.

27.1.1 In the event that 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 27.

27.1.2 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.

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

27.1.4 The Senior Executives shall meet within ten (10) Business Days (or such other longer period not exceeding twenty (20) Business Days as the 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.

27.1.5 If the Dispute remains unresolved after ten (10) Business Days following referral to the Senior Executives, such Dispute must be dealt with in accordance with Condition 27.2.

27.2 In the circumstances contemplated in Condition 27.1.5, the 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:

27.2.1 to initiate the mediation a party must give notice in writing (**ADR Notice**) to the other party to the Dispute requesting a mediation. A copy of the request should be sent to CEDR;

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

27.2.3 except where the right to issue proceedings would be prejudiced by a delay, no party may commence any court proceedings in relation to any dispute arising out of this Agreement until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation.

28 Further assurance

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

28.1.1 shall promptly execute and deliver or procure the execution and delivery of any and all such further instruments and documents as may be necessary for the purpose of obtaining for the GLA the full benefit of this Agreement and of the rights and powers herein granted and each Consortium Member (other than any LA Provider) hereby irrevocably appoints the GLA as its attorney solely for that purpose; and

28.1.2 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.

29 Notices

29.1 Any notice to be given hereunder shall be in writing and shall be sufficiently served if delivered by hand and receipted for by the recipient, (but not by facsimile or electronic mail) or sent by a recorded delivery service addressed in the case of one party to the other parties' registered offices as set out at the beginning of this Agreement or to such other addresses as the parties may from time to time notify to the other 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 delivered by hand, when delivered to the recipient;

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

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

30 **No fetter on statutory functions**

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

31 **No agency**

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

31.2 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 or any of them nor any of its employees shall at any time hold itself or themselves out to be an employee of the GLA.

32 **Exclusion of third party rights**

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

33 **Entire Agreement**

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

33.2 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 the it is entering into this Agreement.

34 **Severability**

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

35 **Cumulative rights and enforcement**

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

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

36 Waiver

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

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

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

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

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

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

37 VAT

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

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

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

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

38 Survival of this Agreement

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

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

38.3 Without limitation the provisions of any of Conditions 1, 2, 3, 6, 9 to 13 (inclusive), 15 to 23 (inclusive), 27, 35, 36, 41 this Condition 38, Schedule 3 and such other provisions of this Agreement as are necessary to give effect to such Conditions are expressly agreed by the parties to survive the termination or expiry of this Agreement.

39 **London Living Wage**

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

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

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

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

40 **Execution**

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

41 **Governing law**

This Agreement shall be governed by and construed in accordance with the laws of England and Wales and subject to the provisions of Condition 27 the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

Schedule 1

Acknowledgements, Representations and Warranties

Part 1

Agreed Principles

- 1 The provisions of this Agreement represent the conditions upon which the GLA:
 - 1.1 makes the Allocated Net Grant available to the Lead Partner; and
 - 1.2 permits the Relevant Consortium Member to use the Allocated Fund Proceeds.
- 2 The GLA has made the Allocated Net Grant available to the Lead Partner and permitted the use of the Allocated Fund Proceeds by the Relevant Consortium Member on the express understanding that:
 - 2.1 it is applied solely for the purposes of funding the Development Costs in respect of AHP Dwellings which are to be let or sold to individuals as AHP Housing; and
 - 2.2 in order to benefit from the AP Grant Rates in relation to the AHP Dwellings to be funded under this Agreement, the Affordable Starts Condition must be satisfied by 31 March 2021.
- 3 All Fund Proceeds 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 Subsidy 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 Subsidy in respect of the Approved Bid exceed an amount equal to the aggregated Actual Development Costs in respect of the delivery of the Approved Bid.
- 5 All Named Project Grant paid under this Agreement is:
 - 5.1 social housing assistance as defined in Section 32(13) of the HRA 2008; and
 - 5.2 subject to the provisions of Sections 30, 34 and 333ZE of the Greater London Authority Act 1999 and any determinations made under such provisions, and the provisions of Condition 17 represent the events and principles determined by the GLA for the purposes of Sections 31-34 of the HRA 2008.
- 6 All Fund Proceeds used for the purposes of funding (in whole or in part) the Development Costs constitute social housing assistance for the purposes of Section 32 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 LAR Dwelling, LLR Dwelling or Nil Grant Unit 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:
 - 10.1 a London Affordable Rent pursuant to this Agreement constitutes an "Affordable Rent" for the purposes of the Rent Standard (for RP Providers) and Rent Guidance (for LA Providers) (as the case may be);
 - 10.2 any LLR Dwellings delivered pursuant to this Agreement constitute "intermediate rent accommodation" for the purposes of the Social Housing Rents (Exceptions and Miscellaneous Provisions) Regulations 2016.
- 11 The parties acknowledge and agree that the LLR Dwellings delivered pursuant to this Agreement will not be subject to the Right to Acquire or the Voluntary Right to Buy.
- 12 The aggregate of the First Tranche Grant and the Second Tranche Grant in each Named Project will represent one hundred per centum (100%) of the Named Project Grant.

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.
- 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.
- 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 Subsidy.
- 2.7 It is not aware of any material fact or circumstance that has not been disclosed to the GLA and which might, if disclosed materially, adversely affect the decision of anyone considering whether or not to contract with it.
- 2.8 So far as it is aware (having made all reasonable enquiries) the Affordable Starts Condition will be satisfied by 31 March 2021.
- 2.9 The level of rent for any LAR Dwellings will be set at the Benchmark Rent Levels.
- 2.10 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 10.4.3 each Financial Year in respect of any Named Project in relation to which it is the Landlord.
- 2.11 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.
- 2.12 It will own and be the landlord of the LAR Dwellings and the LLR Dwellings in respect of any Named Project in respect of which it is or will be the Relevant Consortium Member.
- 3 Application of Approved Bid Capacity**
- 3.1 Other than any Nil Grant Units, none of the AHP Dwellings provided by it pursuant to this Agreement are being subsidised by RTB Funds.
- 3.2 Save where expressly agreed by the GLA, no Named Project provided by it which is a Section 106 Project is being subsidised by Named Project Grant or Fund Proceeds.
- 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 Where delivering Estate Regeneration in connection with a Named Project in respect of which it is or will be the Relevant Consortium Member it will comply with the Good Practice Guide to Estate Regeneration.

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 of those of any of its partner organisation 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 of those of any of its partner organisation 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

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.
- 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 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.
- 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 Relevant Consortium Member's initial application for grant funding or in the course of the subsequent discussions was at the time of submission and as far as it was aware (or ought to have been aware) having made all reasonable and proper enquiries true, complete and accurate in all respects.

- 2.5 It has informed 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 Subsidy.
- 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 So far as it is aware (having made all reasonable enquiries) the Affordable Starts Condition will be satisfied by 31 March 2021.
- 2.8 The level of rent for any LAR Dwellings will be set at the Benchmark Rent Levels.
- 2.9 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 10.4.3 each Financial Year in respect of any Named Project in relation to which it is the Landlord.
- 2.10 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.
- 2.11 It will own and be the landlord of the LAR Dwellings and the LLR Dwellings in respect of any Named Project in respect of which it is or will be the Relevant Consortium Member.
- 3 Application of Approved Bid Capacity**
- 3.1 Other than any Nil Grant Units, none of the AHP Dwellings provided pursuant to this Agreement are being subsidised by RTB Funds.
- 3.2 Save where expressly agreed by the GLA, no Named Project provided by it which is a Section 106 Project is being subsidised by Named Project Grant or Fund Proceeds.
- 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 Where delivering Estate Regeneration in connection with a Named Project in respect of which it is or will be the Landlord, it will comply with the Good Practice Guide to Estate Regeneration.
- 4 Authority of Lead Partner's Representative**
- The Lead Partner's Representative is empowered to act on behalf of each of the Consortium Member's 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 it 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 organisation 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

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

No Section 114 Report has been made nor 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 European Community directives, and the GLA's requirements relating to energy rating of dwellings and Eco-Homes certification.
- 3.6 In-house or external consultants' fees, disbursements and expenses (where the development contract is a design and build contract) (see note below).
- 3.7 Insurance premiums including building warranty and defects/liability insurance (except contract insurance included in Works costs).
- 3.8 Contract performance bond premiums.
- 3.9 Borrowing administration charges (including associated legal and valuation fees).
- 3.10 An appropriate proportion of the Relevant Consortium Member's development and administration costs.
- 3.11 Irrecoverable VAT on the above.

Note 1

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

Note 2

Some items will not qualify as Development Costs unless the 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

Capital costs incurred:

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

Schedule 3

Legal Opinion

[TO BE TYPED ON COUNCIL NOTEPAPER]

Our ref

Your ref

Date

Email address

Greater London Authority

City Hall

The Queen's Walk

More

London

SE1 2AA

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

Dear Sirs,

Legal Opinion Approved Provider re Consortium Grant Agreement and related matters

I refer to the proposed Approved Provider (Consortium) Grant Agreement 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 deeds by the Council and for the delegation of its authority and the powers of the Council's Executive;
- (c) such other documents I consider appropriate for the purposes of giving this opinion.

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

I am of the opinion that, as at the date hereof, as a matter of English law, the Council has the power and authority to enter into, observe and perform the terms and obligations on its part to be observed and performed by it under the Agreement and has taken all necessary action and has obtained all relevant consents and approvals (statutory or otherwise) to authorise the execution and delivery of the Agreement and the performance and validity of the obligations under it.

Neither the execution and the delivery of, nor the performance by the Council of its obligations under the Agreement will violate any provisions of any existing application law, rule, regulation or

agreement binding on the Council, and the Agreement constitutes a valid and legally binding obligation on the Council enforceable in accordance with its terms. I have given this opinion, taking into account the common law and statutory duties applicable to the exercise of power by the Council.

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

This opinion is given by virtue of my position as Solicitor to the Council and is only given as the holder of that office. I am not giving this opinion in a personal capacity, nor do I accept any private or personal liability for any error or omission in it or which may arise therefrom and the recipient, in seeking to place reliance on the contents of this letter, must duly acknowledge the same if any error or omission is later to be found. This opinion is addressed to 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 as a deed of the Agreement referred to above.

Name _____

Title

Specimen Signature

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	Landlord of Named Project	Applicable to Consortium Member responsible for the relevant breach
Condition 1.1:		
(a) "Actual Development Costs"	✓	
(b) "Additional Project"	✓	
(c) "AHP Housing"	✓	
(d) "Building Contract"	✓	
(e) "Building Contractor"	✓	
(f) "Consortium Member Affiliate"	✓	
(g) "Decision Allowable Costs"	✓	
(h) "Decision Revenue"	✓	
(i) "Development Costs"	✓	
(j) "Disposal Notification"	✓	
(k) "DPF"	✓ (where the Relevant Consortium Member is a RP Provider)	
(l) "DPF Funds"	✓ (where the Relevant Consortium Member is a RP Provider)	
(m) "Fully-funded Project"	✓	
(n) "Fund Proceeds"	✓	
(o) "Housing Start"	✓	
(p) "Land Acquisition Date"	✓	

Condition Number	Landlord of Named Project	Applicable to Consortium Member responsible for the relevant breach
(q) "Legal Opinion"	✓ (where the Relevant Consortium Member is a LA Provider)	
(r) "Milestone Extension Events"	✓	
(s) "Milestone Failure"	✓	
(t) "Nil Grant Unit"	✓	
(u) "Professional Team"	✓	
(v) "Public Sector Subsidy"	✓	
(w) "RCGF"	✓	
(x) "RCGF Funds"	✓	
(y) "Recoverable Project Grant"		✓
(z) "Relevant Authority"	✓	
(aa) "Secure Legal Interest"	✓	
(bb) "Start on Site Date"	✓	
(cc) "Subcontractor"	✓	
(dd) "Waiver Conditions"		✓
Condition 1.2.12	Relevant Consortium Member means the Landlord as the context requires or the Lead Partner	
Condition 2.1.2	Relevant Consortium Member means the Landlord as the context requires or the Lead Partner who is an RP Provider	
Condition 4.2	✓	

Condition Number	Landlord of Named Project	Applicable to Consortium Member responsible for the relevant breach
Condition 4.3	✓	
Condition 4.4		✓
Condition 5.2	✓	
Condition 6.1	✓	
Condition 6.2	✓	
Condition 7.1.2		✓
Condition 7.2.2		✓
Condition 8.2	✓	
Condition 8.3	✓	
Condition 8.4.3	✓	
Condition 9.1	✓	
Condition 10.1 – 10.5 (inclusive)	✓	
Condition 10.8	✓	
Condition 10.10	✓	
Condition 11.9	✓ 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 12	✓	
Condition 13.2	✓	

Condition Number	Landlord of Named Project	Applicable to Consortium Member responsible for the relevant breach
Condition 13.5	✓	
Condition 13.5.4	✓	
Condition 16.1.2		✓
Condition 16.1.9		✓
Condition 17.1		✓
Condition 17.2.1		✓ Relevant Consortium Member means, in relation to Condition 17.2.1 only, the Consortium Member responsible for the breach and/or any other Consortium Member who was complicit in such breach whether by any act or omission
Condition 17.2.2-17.2.5 (excluding 17.2.3)		✓
Condition 17.3.4 (c)		✓
Condition 17.4		✓ Relevant Consortium Member means the Consortium Member responsible for the relevant breach which includes the Lead Partner where applicable.
Condition 17.5		✓
Condition 17.8	✓	
Condition 17.9		✓
Condition 17.10		✓ Where the Relevant Consortium Member is a Profit Making

Condition Number	Landlord of Named Project	Applicable to Consortium Member responsible for the relevant breach
		Organisation
Condition 19.2.1		✓
Conditions 19.2.3-19.2.5		✓
Conditions 19.2.8 and 19.2.9		✓
Condition 19.3		✓ <i>by</i>
Condition 19.3.2		✓
Condition 19.6.2		✓ Relevant Consortium Member means the Consortium Member responsible for the relevant breach which includes the Lead Partner where applicable.
Condition 19.6.3		✓
Condition 19.8.1		✓
Condition 19.12		✓
Condition 20.1	✓	
Condition 20.2	✓	
Condition 20.2.5	✓	
Condition 23.5	✓	
Condition 24.4	✓	
Condition 24.5	✓	
Condition 25	✓	

Schedule 5

Deed of Release

This deed is made the day of 20[]

Between

- (1) [] ("Outgoing] [Removed] Consortium Member")
- (2) [], [], [] ("Remaining Consortium Members")
- (3) **Greater London Authority** of City Hall, The Queen's Walk, London, SE1 2AA (the **GLA**).

WHEREAS

- (A) Together, the Remaining Consortium Members and the [Outgoing] [Removed] Consortium Member entered into an agreement with the GLA dated [] (the **Approved Provider Consortium 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 2016-2021.
- (B) It has been agreed that the [Outgoing] [Removed] Consortium Member shall cease to be a Consortium Member and Party to the Approved Provider Consortium Agreement upon the terms and conditions hereinafter appearing.

IT IS NOW HEREBY AGREED as follows:

1 **Interpretation**

Capitalised terms defined in the Approved Provider Consortium 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] [Removed] Consortium Member shall cease to be a Consortium Member for the purposes of, and a Party to, the Approved Provider Consortium Agreement.

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

3 **Allocation of Grant**

The [Outgoing] [Removed] 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] [Removed] Consortium Member**

4.1 Notwithstanding the fact that the [Outgoing] [Removed] Consortium Member shall from the Effective Date no longer be a Consortium Member nor a Party to the Approved Provider Consortium Agreement:

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

- (a) Conditions 3, 9, 10, 11.3, 11.5, 11.9, 13, 17, 19 to 25, 27, 28, 35, 36.2, 37, 38 and 41 of the Approved Provider Consortium Agreement and such other provisions of the Approved Provider Consortium 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] [Removed] Consortium Member shall, until such time as the Regulator prescribes otherwise, be entitled to continue to charge an Affordable Rent in respect of those 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 Approved Provider 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, The Queen's Walk, London, SE1 2AA (the **GLA**).

WHEREAS

- (A) The Original Consortium Members entered into an Approved Provider Consortium Grant Agreement with the GLA dated [] (the **Approved Provider Consortium 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 2016-2021.
- (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 Approved Provider Consortium Agreement upon the terms and conditions hereinafter appearing.

IT IS NOW HEREBY AGREED as follows:

1 Interpretation

Capitalised terms defined in the Approved Provider Consortium 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 Approved Provider Consortium 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 Approved Provider Consortium Agreement in all respects as if it was an original party to the Approved Provider Consortium 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 Approved Provider Consortium Agreement is:

Address: [Address]

Fax: [Fax]

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]

Annexure 1

Financial Confirmation

[Confirmation to be provided on the Lead Partner's letterhead]

Greater London Authority

[(Attention: [])]

Dear Sirs

We refer to a Grant Agreement dated *[insert date]* made between (1) the Greater London Authority and (2) *[insert name of each Consortium Member]* (the **Agreement**).

Capitalised terms used in this certificate, unless otherwise defined herein, shall have the same meaning as given to them in the Agreement.

Pursuant to Condition 11.6 of the Agreement, we hereby confirm that based on current actual and projected information *[delete one of the following options as appropriate]* [the Agreement Funding together with the aggregated Decision Revenue received by the Consortium Members will not exceed the Aggregate Development Costs.] / [the Agreement Funding together with the aggregate Decision Revenue received by the Consortium Members is projected to exceed the Aggregate Development Costs and we have provided the details below².

Number of AHP Dwellings which are Practically Complete []

The aggregate Agreement Funding (actual - received for AHP Dwellings which have achieved Practical Completion) £[]

The aggregate Decision Revenue (projected - rents and first tranche sales receipts for AHP Dwellings which have achieved Practical Completion) £[]

Actual Development Costs (in relation to the AHP Dwellings which have achieved Practical Completion) £[]

Actual cost gap (aggregate Actual Development Costs less Decision Revenue)] £[]

Dated:

.....

Signed by:

² The aggregated information required will be drawn from information the Lead Partner is required to upload to OPS from time to time

..... (*Print name*)

..... (*State role / position*)

[name of Lead Partner] for and on behalf of the Consortium Member

[Note: Where the aggregate is referred to in this financial confirmation, this means all of the relevant funding/costs/revenue over all the Named Projects]

Annexure 2

Part 1

Affordable Starts Certificate

[Certificate to be provided on the Lead Partner's letterhead]

Greater London Authority

[(Attention: [])]

Dear Sirs

We refer to a Grant Agreement dated *[insert date]* made between (1) the Greater London Authority and (2) *[insert names of Consortium Members]* (the **Agreement**).

Capitalised terms used in this certificate shall, unless otherwise defined herein, have the same meaning as given to them in the Agreement.

Pursuant to Condition 19.10.1 of the Agreement, we hereby confirm that so far as we are aware (having made all reasonable enquiries) at least fifty per centum (50%) of the Consortium's Housing Starts in London for the period from 1 April 2015 to 31 March 2021 will be for Affordable Housing dwellings (the **Condition**) and no material facts or circumstances exist which threaten the satisfaction or fulfilment of this Condition.

Dated:

.....

Signed by:

..... (Print name)

..... (State role / position)

for and on behalf of *[Lead Partner]* on behalf of the Consortium Members

Part 2

Affordable Starts Final Certificate

[Certificate to be provided on the Lead Partner's letterhead]

Greater London Authority

[(Attention: [])]

Dear Sirs

We refer to a Grant Agreement dated *[insert date]* made between (1) the Greater London Authority and (2) *[insert names of Consortium Members]* (the **Agreement**).

Capitalised terms used in this certificate shall, unless otherwise defined herein, have the same meaning as given to them in the Agreement.

Condition 19.10.2 of the Agreement requires us to provide a certificate by 30 June 2021 setting out whether the Affordable Starts Condition has been satisfied together with supporting evidence.

We hereby confirm that *[insert details]* Housing Starts have occurred in the period commencing on 1 April 2015 and ending on 31 March 2021 (the **Confirmed Housing Starts**) and *[insert details]* of the Confirmed Housing Starts are for Affordable Housing dwellings.

In support of this certificate we append the following information: *[insert a summary of the information required by the Affordable Housing Capital Funding Guide. Please ensure such information is in the form and includes the details specified by the Affordable Housing Capital Funding Guide.]*

Dated:

.....

Signed by:

..... (Print name)

..... (State role / position)

for and on behalf of *[Lead Partner]* on behalf of the Consortium Members

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

EXECUTED as a **DEED** by affixing)

the common seal of the)

GREATER LONDON AUTHORITY)

In the presence of:

Authorised Signatory



EXECUTED as a **DEED** by affixing)

the common seal of)

PEABODY TRUST)

in the presence of:

Authorised signatory

Authorised signatory



EXECUTED as a **DEED** by affixing)

the common seal of)

PEABODY ENTERPRISES LIMITED)

in the presence of:


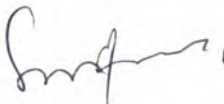
Director

Director/Secretary




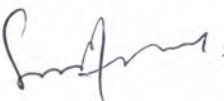
EXECUTED as a **DEED** by affixing)
the common seal of)
FAMILY MOSAIC HOUSING)
in the presence of:



Authorised signatory 
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EXECUTED as a **DEED** by affixing)
the common seal of)
FAMILY MOSAIC HOME OWNERSHIP)
LIMITED in the presence of:



Authorised signatory 
Authorised signatory 

EXECUTED as a **DEED** by affixing)
the common seal of)
CHARLTON TRIANGLE HOMES)
LIMITED in the presence of:



Authorised signatory 
Authorised signatory 