



**dated**

**2014**

**Greater London Authority**

and

**[Grant Recipient]**

**Framework Delivery Agreement (ex RSL)**

in relation to the Mayor's Housing Covenant - 2015-18 Programme

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# Framework Delivery Agreement (ex RSL)

dated

Parties

- (1) **Greater London Authority** of City Hall, The Queen's Walk, More, London SE1 2AA (the **GLA**); and
- (2) [ ] (company/registered society in accordance with Section 1 of the Co-operative and Community Benefit Societies Act 2014 with registration number [ ]) whose registered office is at [ ] (the **Grant Recipient**).

## Introduction

- (A) The Localism Act 2011 devolved the housing and regeneration functions of the Homes and Communities Agency in Greater London to the GLA.
- (B) The GLA is empowered under Sections 30, 34 and 333ZE of the Greater London Authority Act 1999 inter alia to make grants available to facilitate the development and provision of affordable housing.
- (C) The GLA and the Grant Recipient have agreed the terms of a Programme Offer (as defined below) pursuant to which the GLA agrees to provide grant funding to the Grant Recipient for the purposes of the delivery by 31 March 2018 (unless otherwise agreed) of the number of Affordable Dwellings specified in the Programme Offer.
- (D) Grant paid by the GLA to the Grant Recipient pursuant to this Agreement is social housing assistance as defined in Section 32(13) of the Housing and Regeneration Act 2008.

## 1 Definitions and interpretation

### 1.1 Definitions

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

**Acceptance Date** means the date upon which the GLA accepts a Developable Scheme as a Firm Scheme pursuant to Condition 7.4;

**Actual Development Costs** means in respect of each Firm Scheme the amount of Development Costs actually incurred by the Grant Recipient in developing that Firm Scheme as such amount is certified by the Grant Recipient pursuant to Condition 11.2.3 or 11.4.3;

**Additional Design and Quality Standards** means in respect of each Firm Scheme the standards offered by the Grant Recipient and accepted by the GLA through IMS which are additional to the requirements of the Design and Quality Standards;

**Advertising Requirements** means:

- (a) such form of wording together with warnings examples and annual percentage rate illustrations as the GLA may from time to time provide to the Grant Recipient for the purpose of illustration within any advertisement relating to the Equity Loans; and
- (b) all other requirements of the Consumer Credit (Advertisements) Regulations 2004 and 2010 so far as the same are applicable to this Agreement.

**Affordable Dwelling** means:

- (a) a house, flat or maisonette developed with the benefit of grant payable under this Agreement and in relation to each relevant Firm Scheme as more particularly described in the relevant Firm Scheme Details; and
- (b) a Nil Grant Unit.

**Affordable Home Ownership** means low cost home ownership on Shared Ownership Lease terms or on Equity Loan Terms;

**Affordable Home Ownership Dwelling** means a Flexible Dwelling to be disposed of on Affordable Home Ownership terms;

**Affordable Housing** means subsidised housing provided by the Grant Recipient pursuant to this Agreement that will be made permanently available as:

- (a) Affordable Rent;
- (b) On a Rent to Save basis; or
- (c) On Affordable Home Ownership terms.

**Affordable Rent** means low cost rental accommodation (as defined in Section 69 of the HRA 2008), made available on:

- (a) Capped Rent terms; or
- (b) Discounted Rent terms.

**Affordable Rent Dwelling** means an Affordable Dwelling to be occupied on an Affordable Rent basis;

**Affordable Rent Dwelling Split** means across the Programme Offer and subject to a tolerance of one (1) the provision of an equal number of Affordable Rent Dwellings let or to be let on:

- (a) Capped Rent terms; and
- (b) Discounted Rent terms.

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

**Agreement** means this Framework Delivery Agreement (including its Schedules, Annexures and Appendices (if any));

**Allocation Change Notice** means a notification submitted by the GLA under Condition 6.2;

**Allocated Grant** means [ ], being, subject to Condition 4, the maximum amount of grant payable by the GLA to the Grant Recipient in respect of the Programme Offer and shall unless the context precludes such interpretation include every tranche thereof;

**Annual Allocation** means for each of Year 1, Year 2 and Year 3:

- (a) the Identified Site Schemes with a Start on Site Date in that Year; and
- (b) the Indicative Allocation for that Year

as set out in the Programme Offer;

**Annual Review Meeting** means the first Review Meeting held after the 31 December Quarter Date in each year during the Term;

**Approved Lender** means the lender providing mortgage finance to an Eligible Purchaser (secured by a prior legal charge) and who is:

- (a) a Qualifying Lender; and
- (b) aware of the terms of Equity Loans and who has confirmed that it will provide prior loans to Eligible Purchasers participating in the MHC.

**Balancing Sum** means such sum as represents the amount by which Public Sector Subsidy in respect of the Programme Offer (or such part thereof as has been delivered) exceeds the aggregated Actual Development Costs incurred by the Grant Recipient in the delivery of the Programme Offer;

**Broad Market Rental Area** has the meaning specified in paragraph 4 of Schedule 3B to the Rent Officers (Housing Benefit Functions) Order 1997, or article 3 of the Rent Officers (Universal Credit Functions) Order 2013 as appropriate;

**Building Contract** means the contract entered into between the Grant Recipient and the Building Contractor relating to the construction and development of a Firm Scheme;

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

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

**Capital Funding Guide** means:

- (a) the "Affordable Housing Capital Funding Guide" published on the website of the Homes and Communities Agency from time to time or any successor guide so published subject to such amendments, variations or updates to the same as the GLA may publish on its website from time to time; or
- (b) any guide, instrument or document published by the GLA on its website as a replacement or substitute for the guide referred to in sub-paragraph (a) (as such guide, instrument or document may be updated, amended or replaced from time to time).

**Capped Level** means in relation to each Capped Rent Dwelling a figure (calculated in accordance with the methodology set out in chapter 2 of the Rent Guidance, as may be amended and updated from time to time (whether or not such guidance expressly deals with Capped Rent properties)) which is no greater than the higher of these (unless otherwise agreed by the GLA in its absolute discretion):

- (a) 50% of the market rent (inclusive of service charge) for an equivalent dwelling; and
- (b) the Formula Rent for an equivalent dwelling

in each case in the same geographical location as the relevant Capped Rent Dwelling;

**Capped Rent** means low cost rental accommodation (as defined in Section 69 of HRA (2008)) other than Discounted Rent made permanently available for letting to persons at rents (inclusive of service charge) not exceeding the Capped Level and let on assured tenancy terms and to include those persons nominated by any relevant local authority;

**Capped Rent Dwelling** means an Affordable Rent Dwelling let on Capped Rent terms;

**CDM Regulations** means the Construction (Design and Management) Regulations 2007 S.I. No. 320;

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

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

**Confidential Information** means in respect of the GLA all information relating to the GLA's business and affairs, its employees, suppliers including IMS systems, data and software programs and otherwise relating to the existence or terms of this Agreement in respect of which the Grant Recipient becomes aware in its capacity as a party to this Agreement or which is received by the Grant Recipient in relation to this Agreement from either the GLA or any of its advisers or from any third party if the information was obtained by that third party directly or indirectly from the GLA or any of its advisers in whatever form in either case (including information given orally and any document electronic file or other means of recording or representing information which includes derives or is copied from

such information) and in the case of the Grant Recipient means such specific information as the Grant Recipient shall have identified to 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;

**Continuing Firm Scheme** means a Firm Scheme approved by the GLA on IMS and in respect of which the Start on Site Date has or will have occurred at the date of the expiry of the notice period referred to in Condition 5.5.2;

**Conversion Capacity** means, subject to Condition 4, the sum of £[ ]<sup>1</sup>;

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

**Corporation** means The Housing Corporation, a body corporate established under the Housing Associations Act 1985, whose investment functions were transferred to the Homes and Communities Agency on 1 December 2008 pursuant to the HRA 2008;

**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 and where this Agreement refers to CPI, this shall be the figure for CPI for September of the preceding year;

**Cycle Safety Statement** means the statement of that name incorporated within or supplied in support of the Programme Offer;

**Data Controller** has the meaning ascribed to it in the DPA;

**Data Subject** has the meaning ascribed to it in the DPA;

**Design and Quality Standards** means the standards set out in the Corporation's publication entitled "Design and Quality Standards April 2007" in respect of any scheme which has submitted for detailed planning consent before 31 July 2011 and for all Firm Schemes the standards set out in the London Housing Design Guide as published by the GLA subject to any waivers agreed by the GLA in accordance with the Funding Prospectus;

**Design Standards Statement** means the statement of that name incorporated within or supplied in support of the Programme Offer;

**Developable Scheme** means each proposed named scheme for the development (including, where relevant, the refurbishment) of Affordable Housing submitted or to be submitted by the Grant Recipient to the GLA pursuant to Conditions 7.1 and 7.2;

**Development Costs** means the costs relating to the development of a Firm Scheme incurred or to be incurred in respect of such Firm Scheme by the Grant Recipient in respect of the heads of expenditure set out in Part 1 to Schedule 2 or such other heads of expenditure as the GLA may in its absolute discretion agree in respect of any Firm

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<sup>1</sup> Figure to be inserted from the Programme Offer which identifies the capacity to be generated from Permitted Conversions.



Scheme **provided that** any costs falling within the heads of expenditure set out in Part 2 to Schedule 2 shall not be capable of being treated as Development Costs;

**Development Strategy** means the Grant Recipient's strategy setting out its future development plans in respect of the Programme Offer;

**Direction** means the Direction on the Rent Standard 2014 made by the Secretary of State for Communities and Local Government on 23 May 2014;

**Discount Level** means in relation to each Discounted Rent Dwelling a figure calculated in accordance with the methodology for affordable rents set out in the Direction and any rent standard issued by the Regulator in accordance with the Direction, as the same may be amended and updated from time to time representing the lower of:

- (a) 80% of the market rent for an equivalent property; and
- (b) the relevant Local Housing Allowance figure for an equivalent property

located in each case in the Broad Market Rental Area in which the relevant Discounted Rent Dwelling is located;

**Discounted Rent** means low cost rental accommodation (as defined in Section 69 of the HRA 2008), other than Capped Rent, made permanently available for letting to persons at rents (inclusive of service charges) not exceeding the Discount Level and let on assured or secure tenancy terms;

**Discounted Rent Dwelling** means an Affordable Rent Dwelling let on Discounted Rent terms;

**DPA** means the Data Protection Act 1998;

**DPF** means the Disposal Proceeds Fund maintained by the Grant Recipient in accordance with the requirements of Section 177 of the HRA 2008;

**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;

**Eligible Purchaser** means a person (including a prospective Tenant of a Rent to Save Dwelling):

- (a) who satisfies the eligibility criteria issued from time to time by the GLA in relation to participation in the MHC;
- (b) who in the case of an Affordable Home Ownership Dwelling is taking out a prior fixed first charge with an Approved Lender;
- (c) who is not connected with the Grant Recipient (save where the GLA confirms in writing that any such person qualifies as an Eligible Purchaser); and

- (d) who has provided written confirmation to the Grant Recipient that they (and any co-purchaser or co-Tenant) do not currently own a property.

**Environmental Retrofit Statement** means the statement of that name incorporated within or supplied in support of the Programme Offer;

**Equity Loan** means a loan which is equal in amount to a percentage to be acquired agreed between the Grant Recipient and the mortgagor (not exceeding twenty per centum (20%) of the market value of the dwelling) multiplied by the market value of the dwelling to be acquired as determined by the Grant Recipient when it makes the loan;

**Equity Loan Dwelling** means an Affordable Dwelling disposed of or to be disposed of on Equity Loan Terms;

**Equity Loan Terms** means a disposal of a dwelling by the Grant Recipient to an Eligible Purchaser and facilitated by an Equity Loan secured by an Equity Mortgage;

**Equity Loan Units** means the number of Flexible Dwellings disposed of or to be disposed of on Equity Loan Terms set out within the Firm Scheme Details;

**Equity Mortgage** means a mortgage in the form specified in the Capital Funding Guide under which, in consideration for an Equity Loan, the mortgagor agrees that on the loan becoming repayable he shall pay to the Grant Recipient an amount which is equal to the agreed percentage multiplied by the value of the dwelling, determined in accordance with the terms of the mortgage, at the date upon which the loan becomes repayable;

**Estate Renewal Statement** means the statement of that name incorporated within or supplied in support of the Programme Offer;

**EU Procurement Regime** means all applicable United Kingdom and European procurement legislation and any implementing measures and any other legislation in connection with the procurement of works, supplies or services including European Union directives 2004/18/EC, 89/665/EEC and 2004/17/EC, United Kingdom Statutory Instruments 1991/268, 1995/201, 1993/3228 and 2006/5 insofar as the same are applicable;

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

**FCA** means the Financial Conduct Authority and anyone assuming the regulatory functions of the FCA from time to time;

**Final Disposal Date** means the first anniversary of the Firm Scheme Completion Date;

**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 until the expiry of the Term or earlier termination of this Agreement;

**Firm Scheme** means each scheme for the development of Affordable Housing accepted by the GLA pursuant to Condition 7.4;

**Firm Scheme Completion Date** means the date for completion of the relevant Firm Scheme set out in the Firm Scheme Delivery Timetable;

**Firm Scheme Delivery Timetable** means the timetable for construction and completion of the Firm Scheme as agreed by the GLA through IMS;

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

**Firm Scheme Grant** or **FSG** means (save where the context requires otherwise) the amount of grant payable by the GLA in respect of a Firm Scheme as set out in the relevant Firm Scheme Details and shall include every tranche thereof;

**Firm Scheme Obligations** has the meaning given in 8.1;

**First Tranche Grant** means such sum as is equivalent to fifty per centum (50%) of the Firm Scheme Grant;

**Flexible Dwelling** means an Affordable Dwelling to be occupied on Flexible Product Terms;

**Flexible Product Terms** means accommodation made available:

- (a) on a Rent to Save basis; or
- (b) as Affordable Home Ownership.

**Flexible Tenure Mix** means in relation to a Firm Scheme the split between Rent to Save Units, Shared Ownership Units and Equity Loan Units;

**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;

**Formula Rent** means a rent conforming with the pattern produced by the rents formula set out in the Rent Guidance, as may be amended or updated from time to time, with a 5% upward tolerance on individual rents (10% for supported housing and sheltered housing) but subject to the maximum rent levels specified in the Rent Guidance (as amended or updated);

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

**Funding Conditions** mean the Funding Conditions set out within the Capital Funding Guide, as formally accepted by the Grant Recipient's board of management and indicated as such on IMS;

**Funding Prospectus** means the GLA's publication entitled "The Mayor's Housing Covenant 2015-2018 Programme – Funding prospectus";

**Further Application Request** means a request made by the Grant Recipient pursuant to Condition 16.4.3;

**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;

**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;

**Global FT Mix** means the aggregated Flexible Tenure Mix across the Programme Offer;

**Grant Recipient Party** means:

- (a) the Grant Recipient, the Building Contractor, any member of the Professional Team, agent, employee or subcontractor of any tier of the Grant Recipient and the Grant Recipient's Representative;
- (b) any subsidiary or holding company of the Grant Recipient or any subsidiary to any such holding company as subsidiary and holding company are defined in Section 1159 of the Companies Act 2006.

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

**Grant Reconciliation Exercise** means the exercise conducted pursuant to Condition 16. A worked example of the application of the Grant Reconciliation Exercise is set out in Schedule 3 for illustrative purposes only;

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

**Homes and Communities Agency** means the body corporate established under Section 1 of the HRA 2008;

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

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

**Identified Site Schemes** means those named schemes for the delivery of Affordable Housing to be developed on sites which are identified in the Programme Offer;

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

**Indicative Allocation** means for each Year:

- (a) the proposed number of Affordable Dwellings (other than those contained in Identified Site Schemes) to be delivered by the Grant Recipient which have a Start on Site Date in that Year; and
- (b) in respect of the Affordable Dwellings referred to in limb (a):
  - i the projected year of Practical Completion; and

- ii the projected Tenure Mix.

as set out in the Annual Allocations under the Programme Offer;

**Information Commissioner** has the meaning set out in Section 6 of the DPA 1998;

**Initial Sales Receipts** means the figure set out in the field headed "Anticipated Initial Sales Receipts" in the Firm Scheme Details;

**Insolvency Event** means the occurrence of any of the following in relation to the Grant Recipient;

- (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, the GLA becomes aware of a notice served on the Regulator under Section 145(2) of the HRA 2008 or the GLA receives a notice under Section 145(5) 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 creditor;
  - 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, administrator, compulsory manager or other similar officer;
  - iv enforcement of any Security over any assets of the Grant Recipient; or
  - v any analogous procedure or step is taken in any jurisdiction;  
  
other than any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within ten (10) Business Days of commencement; or
- (e) any expropriation, attachment, sequestration, distress or execution affects any asset or assets of the Grant Recipient which has a Material Adverse Effect.

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

**Investment Partner** means a Registered Provider which has been confirmed by the GLA as having "Investment Partner Status" under the GLA's Investment Partner qualification procedure;

**Jobs and Growth Statement** means the statement of that name incorporated within or supplied in support of the Programme Offer;

**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;

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

in each case in the United Kingdom;

**Local Housing Allowance** means an allowance determined in accordance with paragraph 2 of Schedule 3B to the Rent Officers (Housing Benefit Functions) Order 1997, or paragraph 2 of Schedule 1 to the Rent Officers (Universal Credit Functions) Order 2013, as appropriate;

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

**London Housing Design Guide** means the "London Housing Design Guide" published by the London Development Agency in August 2010 (as the same may be amended, varied, updated or replaced from time to time);

**London Living Wage** means the basic hourly wage of £8.55 (before tax, other deductions and any increase for overtime) as may be updated from time to time by the GLA and notified to the Grant Recipient.

**London Plan** means "The London Plan Spatial Developments Strategy for London" published by the GLA in July 2011 (as the same may be amended, varied, updated or replaced from time to time);

**Mandated Change Notice** means a notice submitted by the GLA under Condition 5.9;

**Material Adverse Effect** means the effect of any event or circumstance which is reasonably likely to be materially adverse to the ability of the Grant Recipient to deliver the Programme Offer or Annual Allocation within the time limits (if any) for doing so and for the avoidance of doubt includes the circumstance in which the Grant Recipient does not or will not be able to deliver the Affordable Rent Dwelling Split or Global FT mix;

**MHC** means the Mayor's Housing Covenant Programme 2015/18 as described in the Funding Prospectus;

**Milestone** means each stage in the development of the Firm Scheme agreed by the parties and set out in IMS (including as a minimum a Start on Site Date and a Firm Scheme Completion Date);

**Milestone Date** means the date agreed by the GLA through IMS by which the relevant Milestone must have been achieved (as the same may be varied by the GLA pursuant to Condition 9.2);

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

- (a) exceptionally adverse weather conditions;
- (b) delay in receipt of any necessary permission or approval of any statutory body which the Grant Recipient has taken all practicable steps to avoid or reduce;
- (c) the exercise after the date of this Agreement by the United Kingdom Government of any statutory power which directly affects the execution of the construction works necessary to the delivery of the Firm Scheme by restricting the availability or use of labour which is essential to the proper carrying out of such works or preventing the Grant Recipient from, or delaying in, securing such goods or materials or such fuel or energy as are essential to the proper carrying out of such works;
- (d) the use or threat of terrorism and/or the activity of the relevant authorities in dealing with such use or threat;
- (e) fire, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation, earthquakes, riot and civil commotion;
- (f) failure by any statutory undertaker, utility company or other like body to carry out works or provide services;
- (g) any accidental loss or damage to the development or any roads servicing it;
- (h) any failure or shortage of power, fuel or transport;

- (i) any blockade or embargo;
- (j) any:
  - i official or unofficial strike;
  - ii lockout;
  - iii go-slow; or
  - iv other dispute

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

unless:

- (a) any of the events arises (directly or indirectly) as a result of any wilful default or wilful act of the Grant Recipient or, save in respect of the event referred to in (k) above, any of its subcontractors of any tier; or
- (b) in respect of the event referred to in (f) above, such event arises as a result of any failure by the Grant Recipient (whether wilful or otherwise) to notify the relevant statutory undertaker or utility company of the requirement for works or services to be completed by the date required to enable the Grant Recipient to complete the Firm Scheme by the Firm Scheme Completion Date.

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

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

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

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

**Ongoing Obligations** means the Grant Recipient's obligations under Conditions 8.2 to 8.8 inclusive;



**Open Book** means the declaration of all price components including profit margins, central office overheads, site overheads, preliminaries, contingencies and the cost of all materials, goods, equipment, work and services with all and any books of accounts, correspondence, agreements, orders, invoices, receipts and other documents available for inspection;

**Open Book Obligations** mean the obligations set out in Condition 17;

**Other Contribution** means the aggregate of the figures set out in the fields headed "Provider's Other Resources" and "Provider cross subsidy from Newbuild Market Sale Development" in the Firm Scheme Details;

**Over Commitment** has the meaning ascribed to it in Condition 16.2.3;

**Permitted Conversions** means, subject to Condition 4, the number of properties (other than the Affordable Dwellings) identified in the Programme Offer which the Grant Recipient intends to let at an Affordable Rent or, as applicable, dispose of either on Affordable Home Ownership terms or on market sale terms to generate the Conversion Capacity;

**Personal Data** has the meaning ascribed to it in the DPA;

**Practical Completion** means the point at which a Firm Scheme is complete for all practical purposes and in particular:

- (a) all applicable statutory requirements have been complied with and all consents obtained;
- (b) neither the existence nor execution of any minor outstanding works would affect its use;
- (c) any stipulations identified under the Building Contract as being essential for practical completion to take place have been satisfied; and/or
- (d) all information required by the Building Contract to be delivered at practical completion has been delivered to the Grant Recipient.

**Process** has the meaning ascribed to it in the DPA;

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

**Programme Aims** means the GLA's requirements:

- (a) to ensure that the Allocated Grant and Conversion Capacity is properly and effectively spent;
- (b) to maximise the delivery of Affordable Housing under the Programme Offer; and
- (c) to deliver the Affordable Housing in accordance with the delivery projections comprised in the Annual Allocations or earlier (where reasonably practicable).

**Programme Change Notice** means a notification served by one party on the other pursuant to Condition 4.3;

**Programme Default** has the meaning given to it in Condition 5.1;

**Programme Offer** means the terms input by the Grant Recipient and approved by the GLA on IMS as at the date hereof (including the Annual Allocations for Year 1, Year 2 and Year 3) upon which the Grant Recipient has agreed to deliver new Affordable Housing and the GLA has agreed to make the Allocated Grant available (as the same may be amended from time to time in accordance with Condition 4);

**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 the Grant Recipient or on its behalf, or to its knowledge, unless before the relevant agreement is entered into particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to 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.

**Public Sector Subsidy** means all funding or subsidy in relation to the Programme Offer in money or money's worth (including the Firm Scheme Grant) received or receivable by the Grant Recipient from public sector bodies including for this purpose funding from 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;

**Qualifying Lender** means an institution authorised by the Financial Conduct Authority to "enter into a regulated mortgage constraint as lender" and "Qualifying Lenders" shall be construed accordingly;

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

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

**Recoverable Amount** has the meaning given to it in Condition 14.2;

**Recovery Determination** means the Recovery of Capital Grants and Recycled Capital Grant Fund General Determination 2012 as amended from time to time;

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

**Registered Provider** means a body entered on the Register as a non-profit organisation (as such term is 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 a 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;

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

**Remaining Units** means any Flexible Dwellings comprised within a Firm Scheme which have not been sold or let to Eligible Purchasers by the Final Disposal Date;

**Rent Guidance** has the meaning ascribed to it in the Direction;

**Rent Standard** means any standard set by the Regulator from time to time pursuant to section 193 of the HRA 2008;

**Rent to Save** means accommodation let initially on an intermediate rent basis to Eligible Purchasers on assured shorthold tenancies at rents (inclusive of service charge) of no more than eighty per centum (80%) of the market rent level in the relevant local area and together with a legally enforceable right to purchase the relevant Rent to Save Dwelling within an agreed period on Affordable Home Ownership terms;

**Rent to Save Dwelling** means a Flexible Dwelling let to a Tenant on a Rent to Save basis;

**Rent to Save Units** means the number of Flexible Dwellings disposed of or to be disposed of as Rent to Save Dwellings set out in the Firm Scheme Details;

**Rental Stream Capacity** means the figure set out in the field headed "Anticipated Capacity Generated by Rental Income" in the Firm Scheme Details;

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

**Reservation Period** means a period not exceeding five (5) years from the date on which the Tenant took occupation of the relevant Rent to Save Dwelling agreed between the Grant Recipient and the Tenant as the period within which the Tenant may acquire the dwelling on an Affordable Home Ownership basis;

**Review Meeting** means a meeting held pursuant to Conditions 3.3 to 3.5;

**Scheme Default** has the meaning given to it in Condition 5.2;

**Second Tranche Grant** means such sum as is equivalent to fifty per centum (50%) of the Firm Scheme Grant;

**Section 106 Agreement** means an agreement entered into by a local planning authority and a person under section 106 of the Town and Country Planning Act 1990;

**Section 106 Scheme** means a Firm Scheme where the Affordable Housing is part of a larger scheme (controlled by a party other than the Grant Recipient) comprising accommodation which is non-residential and/or residential which is not Affordable Housing which is subject to a Section 106 Agreement;

**Secure Legal Interest** means the Grant Recipient has in respect of the Site:

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

**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 "flawed asset" arrangement);

**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 Capital Funding Guide.

**Shared Ownership Units** means the number of Flexible Dwellings disposed of or to be disposed of by way of Shared Ownership Lease set out within the Firm Scheme Details;

**Site** means the site (including any part of it) identified to the GLA as being the area of land comprised or to be comprised in a Firm Scheme and/or the Affordable Dwellings and common areas developed as part of such Firm Scheme;

**Social Rent Accommodation** means low cost rental accommodation as defined in Section 69 of the HRA 2008 to which the Rent Standard applies but which is not let on Discounted Rent terms let on assured or secure tenancy terms and to include those persons nominated by any relevant local authority;

**Standard Literature** means the explanatory and other documentation from time to time supplied by the GLA for provision to the Eligible Purchaser, the Approved Lender and the Eligible Purchaser's conveyancers;

**Start on Site Date** means the date on which:

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

**Start on Site Works** means:

- (a) excavation for strip or trench foundations or for pad footings;
- (b) digging out and preparation of ground for raft foundations;
- (c) vibrofloatation, piling, boring for piles or pile driving; or
- (d) drainage work specific to the buildings forming part of the Firm Scheme.

**Statements** means the Cycle Safety Statement, the Design Standards Statement, the Environmental Retrofit Statement, the Estate Renewal Statement and the Jobs and Growth Statement;

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

**Submitted Standards** means in respect of each Firm Scheme:

- (a) the Design and Quality Standards; and
- (b) the Additional Design and Quality Standards (if any).

**Tenancy Standard** means the standard described in The Regulatory Framework for Social Housing in England published by the Regulator in March 2012 as may be amended and updated from time to time;

**Tenant** means (as the context requires):

- (a) a tenant occupying a Rent to Save Dwelling on the basis of an assured shorthold tenancy;
- (b) a prospective assured shorthold tenant of a Rent to Save Dwelling; or
- (c) a tenant occupying an Affordable Rent Dwelling.

**Tenure Mix** means the split between Affordable Rent Dwellings which are Capped Rent and Affordable Rent Dwellings which are Discounted Rent;

**Term** means the period of time from the date hereof until:

- (a) 31 March 2018 (or such later date as the GLA may reasonably require); or
- (b) the date of any earlier termination by the GLA of the entirety of this Agreement.

**Termination Event** means:

- (a) this Agreement is terminated pursuant to Condition 5.5.1 or Condition 5.5.2; or
- (b) this Agreement is determined in relation to a particular Firm Scheme pursuant to Condition 5.8.

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

**Total Grant** means the aggregate of the figures set out in the fields headed "Total GLA Funding Requested", "RCGF Attributed to Scheme" and "DPF Attributed to Scheme" in the Firm Scheme Details;

**Total Scheme Costs** means the figure set out in the field of this name in the Firm Scheme Details;

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

**Under Commitment** has the meaning ascribed to it in Condition 16.2.2;

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

**Waiver Condition** means provision of satisfactory evidence by the Grant Recipient to the GLA that the relevant Prohibited Act was committed by:

- (a) an employee acting independently of the Grant Recipient; or
- (b) a subcontractor of any tier (or any employee of a subcontractor not acting independently of the subcontractor); or

- (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 Grant Recipient and/or the subcontractor (as applicable) has taken such action as is appropriate taking into account the nature and the circumstances of the relevant Prohibited Act. "Acting independently" for these purposes means not acting with the authority or knowledge of any one or more of the directors of the Grant Recipient or relevant subcontractor;

**Withholding Event** means an event or circumstance of the type described in Condition 13.1;

**Works** means all of the works (including design, infrastructure works and all other works necessary for obtaining access to the Affordable Dwellings) to be undertaken in order to ensure that the Affordable Dwellings meet the Submitted Standards and are constructed in accordance with the Firm Scheme Details;

**Year** means Year 1, Year 2 or Year 3 as the context requires;

**Year 1** means 1 April 2015 to 31 March 2016;

**Year 2** means 1 April 2016 to 31 March 2017;

**Year 3** means 1 April 2017 to 31 March 2018 or such other date agreed by the GLA in its absolute discretion.

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

1.2.4 Any reference to this Agreement or to any other document 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 document in the agreed form is to be the form of the relevant document agreed between the parties and for the purpose of identification initialled by each of them or on their behalf (in each case with such amendments as may be agreed by or on behalf of the parties) or in the form set out in a Schedule to this Agreement.
- 1.2.11 A paragraph in a Schedule shall be construed as references to a paragraph in that particular Schedule.
- 1.2.12 A deliberate act or omission of any person shall exclude acts or omissions which were within the contemplation of the parties or which were otherwise provided for in this Agreement.
- 1.2.13 In any case where the consent or approval of the GLA (or any officer of the GLA) is required or a notice is to be given by the GLA, such consent or approval or notice shall only be validly given if it is in writing 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 Grant Recipient.
- 1.2.14 An obligation to do anything includes an obligation to procure its being done.
- 1.2.15 Any restriction includes an obligation not to permit infringement of the restriction.
- 1.2.16 When there are two or more persons affected by the obligations under this Agreement such obligations are to bind each such person jointly and severally.
- 1.2.17 Save where a contrary intention is shown, or where an express discretion is given by this Agreement, the GLA shall act reasonably in exercising its rights hereunder (including in granting approvals hereunder).
- 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 The Grant Recipient shall in relation to the delivery of its obligations under this Agreement be responsible as against the GLA for the acts or omissions of any Grant Recipient Party as if they were the acts or omissions of the Grant Recipient.
- 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 the Grant Recipient of any of its obligations under this Agreement or of any duty which it may have hereunder to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, examination,



acknowledgement or knowledge nor confer impose or imply any liability or responsibility on or on behalf of 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 In the event of any conflict between the document referred to in sub paragraph (a) of the definition of Capital Funding Guide and any amendments, variations or updates thereto published by the GLA (on its website), the latter shall prevail.

## 2 The Programme Offer

- 2.1 The parties acknowledge the terms of the Programme Offer which the Grant Recipient agrees to deliver subject to and in accordance with the terms of this Agreement.

- 2.2 The GLA has agreed to make the Allocated Grant available to the Grant Recipient to develop the Affordable Dwellings subject to and in accordance with the terms and conditions of this Agreement and the Grant Recipient acknowledges that the terms of this Agreement represent the conditions upon which the GLA makes the Allocated Grant available to it.

- 2.3 The Grant Recipient shall use its reasonable endeavours to deliver its commitments and/or proposals outlined in the Statements.

- 2.4 The Grant Recipient shall:

2.4.1 use its reasonable endeavours to complete the Permitted Conversions in accordance with the timescale projected for such Permitted Conversions in the Programme Offer and in any event by 31 March 2019;

2.4.2 not convert more dwellings let as Social Rent Accommodation within its housing stock to Affordable Rent beyond that required to create the Conversion Capacity;

2.4.3 not dispose of more dwellings let as Social Rent Accommodation within its housing stock on Affordable Home Ownership or market sale terms than are required to create the Conversion Capacity SAVE THAT nothing in this Condition 2.4.3 is intended to preclude the Grant Recipient from making such other disposals from its housing stock as:

(a) are consistent with its corporate asset management strategies from time to time; and/or

(b) are consented to by the Regulator.

- 2.5 The Grant Recipient acknowledges and agrees that:

2.5.1 the Allocated Grant is being made available by the GLA on the express understanding that it is applied solely for the purposes of funding the Development Costs in respect of the Affordable Dwellings which are to be:

(a) in the case of the Flexible Dwellings, disposed of to Eligible Purchasers on Flexible Product Terms; and/or

(b) in the case of the Affordable Rent Dwellings, let to Tenants in accordance with the Tenancy Standard;

2.5.2 Affordable Rent Dwellings to be provided across the Programme Offer shall be made available in an equal split between those provided on Capped Rent terms and those provided on Discounted Rent terms subject to a tolerance of one (1);

2.5.3 all Fund Proceeds identified in the Programme Offer and/or relevant Firm Scheme Details must be applied solely for the purposes of funding the Development Costs in respect of the Affordable Dwellings;

2.5.4 the Public Sector Subsidy in respect of the Programme Offer may not exceed an amount equal to the aggregated Actual Development Costs incurred by the Grant Recipient in respect of the delivery of the Programme Offer;

2.5.5 all funding under this Agreement is 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 14 represent the events and principles determined by the GLA for the purposes of Sections 31-34 of the HRA 2008;

2.5.6 the GLA has adopted the terms of the Capital Funding Guide and its terms are incorporated with this Agreement (*mutatis mutandis*);

2.5.7 the Affordable Rent Dwellings provided with the benefit of the Allocated Grant shall be deemed to have been provided with public money for the purposes of Section 180 of the HRA 2008;

2.5.8 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;

2.5.9 any failure by the Grant Recipient to:

(a) market, use and continue to use a Flexible Dwelling as a Rent to Save Dwelling or Affordable Home Ownership Dwelling; and/or

(b) use and continue to use an Affordable Rent Dwelling on Affordable Rent terms,

constitutes a failure to comply with a condition attached to the making of capital grant for the purposes of paragraph 7(e) of the Recovery Determination.

2.6 The Grant Recipient shall comply with the Open Book Obligations.

2.7 The GLA shall not insist upon the Grant Recipient accepting a Local Housing Authority nominee to a Discounted Rent Dwelling if such nominee is affected by the benefits cap. For the purpose of this Condition a nominee is affected by the benefits cap if the total amount of welfare benefits to which that nominee would otherwise be entitled is reduced by the benefit cap pursuant to Part 8A of the Housing Benefit Regulations 2006 and/or Part 7 of the Universal Credit Regulations 2013 as amended or replaced from time to time.

### 3 **Programme Offer - Monitoring and Reporting**

3.1 The Grant Recipient acknowledges the high importance to the GLA of it being advised when any circumstance occurs which may:

- 3.1.1 impact on the Grant Recipient's ability to deliver the Programme Offer;
- 3.1.2 change any assumptions in the Programme Offer (including changes to the Annual Allocation for each Year) which would provide an opportunity for the Grant Recipient to deliver more Affordable Dwellings with the Allocated Grant;
- 3.1.3 indicates that the GLA is making available more grant than is required to deliver the Programme Offer either as a whole or in respect of the Annual Allocation for a particular Year; or
- 3.1.4 without prejudice to the circumstances specified in Conditions 3.1.1 to 3.1.3 (inclusive), indicates that the Grant Recipient will need to make more or less Permitted Conversions

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

3.2 The Grant Recipient shall comply fully with the contract management and reporting obligations set out in this Condition 3.

3.3 The GLA and the Grant Recipient shall attend a Review Meeting within ten (10) Business Days of each Quarter Date (or within such longer period as the GLA may at its absolute discretion agree) to discuss (but without limitation):

- 3.3.1 the Grant Recipient's performance against the Programme Offer and the Annual Allocation and any matters which may adversely impact on the Grant Recipient's performance against the same;
- 3.3.2 progress updates in relation to each Firm Scheme including delivery forecasts, progress against previously given delivery forecasts, lettings and sales forecasts and progress against previously given lettings and sales forecasts;
- 3.3.3 the occurrence of any Milestone Extension Event or change in Tenure Mix or Flexible Tenure Mix in respect of a Firm Scheme or any Annual Allocation;
- 3.3.4 the Contract Monitoring Outputs;
- 3.3.5 the information supplied pursuant to the Open Book Obligations;
- 3.3.6 the position on agreeing nomination arrangements in respect of Affordable Dwellings with relevant Local Housing Authorities, the Housing Moves service and in line with the Mayor's Housing Strategy
- 3.3.7 the Reservation Periods in relation to each Firm Scheme and the actual and projected take up by Tenants of the right to purchase their Rent to Save Dwellings;
- 3.3.8 the existence of any Over Commitments or Under Commitments across the Programme Offer;

- 3.3.9 the existence of any Remaining Units and the steps being taken to procure their disposal on Flexible Product Terms; and
  - 3.3.10 such other matters in relation to the performance of this Agreement as are notified by either party to the other in writing at least 5 Business Days prior to the date of the Review Meeting.
- 3.4 At the Annual Review Meeting in addition to the matters to be addressed at each Review Meeting (as specified in Condition 3.3), the parties shall also review:
- 3.4.1 all changes made to the Programme Offer since the previous Annual Review Meeting;
  - 3.4.2 the Grant Recipient's progress against its obligations in Condition 2.3;
  - 3.4.3 the terms of any Allocation Change Notice or Mandated Change Notice;
  - 3.4.4 the Development Strategy;
  - 3.4.5 any remaining Indicative Allocation which has yet to be profiled as Developable Schemes and submitted on IMS in accordance with Condition 7.2; and
  - 3.4.6 whether the Grant Recipient's status as an Investment Partner has been retained;
- and the Grant Recipient shall supply such supporting information as the GLA may require pursuant to Condition 3.8 no less than ten (10) Business Days prior to the Annual Review Meeting.
- 3.5 The GLA or the Grant Recipient may also call a Review Meeting at any time outside of the quarterly cycle provided that the party requesting the meeting:
- 3.5.1 gives reasonable prior written notice to the other of such meeting; and
  - 3.5.2 includes with the notice an agenda for such meeting.
- 3.6 The GLA's Representative and the Grant Recipient's Representative (or, where agreed with the GLA in advance, such other member of the Grant Recipient's executive management team) shall attend all Review Meetings during the Term or for such longer period as the GLA (acting reasonably) requires to enable it to monitor the take up of Flexible Dwellings by Eligible Purchasers. The parties agree that the Regulator shall also be entitled to send a representative to attend such meetings.
- 3.7 Save as otherwise agreed between the parties, any meeting under this Condition 3 shall be minuted by the Grant Recipient and such minutes shall be distributed within ten (10) Business Days following the meeting to the GLA and any other attendee.
- 3.8 The Grant Recipient shall provide the GLA as soon as reasonable practicable with such information as the GLA shall reasonably require the support or facilitate the discussions referred to in this Condition 3.
- 3.9 The Grant Recipient must keep IMS fully updated and ensure that it accurately reflects the agreed Programme Offer and Firm Scheme Details from time to time.

## 4 Programme Changes

4.1 The parties acknowledge that changes may be required to the Programme Offer during the Term to ensure that inter alia:

4.1.1 the Programme Aims are being delivered; and/or

4.1.2 the Grant Recipient remains capable of delivering the Programme Offer from time to time

(the **Programme Offer Requirements**).

4.2 A change to the Programme Offer may take the form of one or more (or a combination of) the following:

4.2.1 a revision to:

(a) the profile of projected Start on Site Dates and dates for Practical Completion in relation to Firm Schemes and Annual Allocations;

(b) the type, location, number or the Submitted Standards of Affordable Dwellings;

(c) the Tenure Mix or Global FT Mix; or

(d) the rent levels forecast for such dwellings included in the Programme Offer.

4.2.2 a change in the number, location or rate of Permitted Conversions or Conversion Capacity;

4.2.3 the Grant Recipient committing more of its own resources to underpin the delivery of the Programme Offer;

4.2.4 fewer or more Affordable Dwellings being included in the Programme Offer or Annual Allocation;

4.2.5 a withdrawal, reduction or change in the quantum of the Allocated Grant attributed to an Annual Allocation or the Programme Offer; or

4.2.6 such other change as either party may propose.

4.3 Either party shall notify the other in writing when it becomes aware of circumstances which give rise (in that party's opinion (acting reasonably)) to the need for a change to be implemented to the Programme Offer (including an Annual Allocation). Any Programme Change Notice shall specify the reasons for the proposed change to the Programme Offer and describe the proposed nature of the change being sought. The party issuing the Programme Change Notice may withdraw the notice at any time.

4.4 Save where the parties agree that a meeting is unnecessary a meeting shall be convened as soon as is practicable (but in any event no later than the next scheduled Review Meeting) to discuss a Programme Change Notice and shall be attended by the same persons as those required (or permitted) to attend Review Meetings.

- 4.5 In determining whether to implement a change to the Programme Offer, and the substance of that change, the parties acting in good faith, reasonably and taking account of:
- 4.5.1 the Programme Offer requirements;
  - 4.5.2 the performance, to date, of the Grant Recipient under the Agreement; and
  - 4.5.3 whether the total Indicative Allocation for any Year has been profiled as Developable Schemes and submitted on IMS in accordance with Condition 6.1,

shall seek to agree the terms of any change to the Programme Offer **provided that and it is hereby agreed that** the GLA shall not be obliged to agree any change to the Programme Offer where such change would (when taken individually or together with other changes to the Grant Recipient's Programme Offer or to the programme offers of other grant recipients under the MHC) result in the GLA becoming liable to pay out more by way of grant in any Financial Year than is then available to the GLA for investment in Affordable Housing for the relevant Financial Year.

- 4.6 Subject to Condition 4.10 no change to the Programme Offer shall be implemented unless it has been agreed by the parties. The GLA shall, where it considers it necessary, consult with the Regulator on the proposed change before determining whether to approve a change to the Programme Offer.
- 4.7 Where a change to the Programme Offer has been agreed in accordance with Condition 4.6, the Grant Recipient shall input the agreed changes to the Programme Offer on IMS as soon as is practicable and in any event within five (5) Business Days of the date of the meeting or other forum or means at or through which the change was agreed. Acceptance by the GLA of the changes to the Programme Offer on IMS shall constitute evidence of the parties agreement as to the revised terms of the Programme Offer and no further evidence shall be required.
- 4.8 Subject to Condition 4.9, the Grant Recipient acknowledges that where a Programme Change Notice (comprising one or more material changes to the Programme Offer) is submitted (and has not been withdrawn) and the parties are unable to agree on the change proposed in the Programme Change Notice within twenty (20) Business Days (or such longer period as the GLA may at its discretion permit) of the meeting held in accordance with the provisions of Condition 4.4 or where no such meeting is held the date of the next scheduled Review Meeting, either party (acting reasonably) shall be entitled to terminate this Agreement in accordance with Condition 5.
- 4.9 The right to terminate this Agreement under Condition 4.8 shall not apply where the reason why a Programme Change Notice has been submitted is because the Indicative Allocation for a particular Year has not been fully incorporated as Developable Schemes and submitted in IMS in accordance with Condition 6.1 or where the GLA has issued a Programme Change Notice under Condition 13.2 or 14.5.1.
- 4.10 Neither exercise by the GLA of its rights under Conditions 5.8, 5.9 or 6.2 nor the operation of Condition 10 shall entitle the Grant Recipient to issue a Programme Change Notice.

## 5 **Programme Default**

- 5.1 The following circumstances shall constitute a Programme Default:

- 5.1.1 failure by the Grant Recipient to comply with its obligations in Condition 3 and/or any information supplied in connection with its obligations in Condition 3, whether in relation to, the Open Book Obligations or otherwise, is materially deficient, misleading or inaccurate;
- 5.1.2 the Grant Recipient is unable to make the 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;
- 5.1.3 an Insolvency Event has occurred in relation to the Grant Recipient;
- 5.1.4 a Prohibited Act has been committed by or on behalf of the Grant Recipient (in respect of which the Waiver Condition has not been satisfied);
- 5.1.5 the occurrence of the circumstance referred to in Condition 4.8;
- 5.1.6 a breach of the Open Book Obligations;
- 5.1.7 the GLA determines (acting reasonably) that proper progress against the Grant Recipient's projections in the Programme Offer has not been made by the Grant Recipient in delivering the Programme Offer;
- 5.1.8 the Grant Recipient ceases operating;
- 5.1.9 the Grant Recipient's status as a Registered Provider is lost or removed;
- 5.1.10 the Grant Recipient's Investment Partner status is lost or removed;
- 5.1.11 the Regulator directs or recommends that grant is not to be paid to the Grant Recipient;
- 5.1.12 a breach of the Grant Recipient's obligations under Condition 8.5.7;
- 5.1.13 any other breach of or failure to comply with the Agreement which has a Material Adverse Effect;
- 5.1.14 the Grant Recipient (either by its own actions or omissions, or those of its contractors or agents) harms the GLA's, the MHC's or the Mayor of London's reputation or brings the GLA, the MHC or the Mayor of London into disrepute;
- 5.1.15 a failure by the Grant Recipient to comply with any repayment obligation under this Agreement; and/or
- 5.1.16 a failure or inability by the Grant Recipient to comply with the requirements of Conditions 11.1 to 11.4 (inclusive).

5.2 The following circumstances shall constitute a Scheme Default:

- 5.2.1 a breach of Condition 8.1, 8.2 or 8.5 (other than Condition 8.5.7);
- 5.2.2 any other breach of this Agreement which is reasonably likely to be materially adverse to the Grant Recipient's ability to deliver the Firm Scheme on the basis agreed and/or within the time limits (if any) for doing so;

- 5.2.3 a failure by the parties to agree the matters referred to in Condition 16.3.1 or 16.4.1; or
- 5.2.4 a failure by the parties to agree the matter referred to in Condition 14.3.3(a).
- 5.3 The Grant Recipient must notify the GLA immediately in writing on the occurrence of a Programme Default or Scheme Default.
- 5.4 Without prejudice to Condition 5.5, in the event of the occurrence of a Programme Default or Scheme Default and for so long as that Programme Default or Scheme Default subsists (or another Programme Default or Scheme Default has occurred and is continuing) or a Programme Change Notice has been issued but not yet agreed by the parties, the GLA shall be entitled to reject the submission of any Firm Scheme on IMS.
- 5.5 Where the Programme Default is:
- 5.5.1 an occurrence specified in Condition 5.1.3, 5.1.4, 5.1.8, 5.1.9, 5.1.10, and/or Condition 5.1.14, the GLA shall be entitled forthwith and without any liability to the Grant Recipient terminate the Agreement;
- 5.5.2 an occurrence specified in Condition 5.1.1, 5.1.2, 5.1.6, 5.1.7, 5.1.11, 5.1.12, 5.1.13, Condition 5.1.15 or Condition 5.1.16 the GLA may serve notice on the Grant Recipient requiring the Grant Recipient to remedy 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
- (b) where so permitted by the GLA the Grant Recipient has not given an undertaking to remedy the breach on terms satisfactory to the GLA; or
- (c) if it becomes apparent that the Programme 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 the Grant Recipient to exercise the termination rights in Condition 5.7.
- 5.6 In the circumstances identified in Condition 5.1.5:
- 5.6.1 either party shall be entitled on giving not less than ten (10) Business Days' notice to terminate this Agreement; and
- 5.6.2 the provisions of Condition 5 shall be deemed to apply (*mutatis mutandis*) to a termination under this Condition 5.6 as if it were a termination pursuant to Condition 5.5.2.
- 5.7 Where Condition 5.5.2 applies and:
- 5.7.1 there are no Continuing Firm Schemes, the GLA may terminate this Agreement in its entirety such termination to take effect at the end of the notice period referred to in Condition 5.5.2;



5.7.2 there are Continuing Firm Schemes the GLA may terminate this Agreement in relation to all but the Continuing Firm Schemes such termination to take effect at the end of the notice period referred to in Condition 5.5.2.

5.8 Where a Scheme Default is:

5.8.1 an occurrence specified in Condition 5.2.3 or 5.2.4, the GLA shall be entitled forthwith and without any liability to the Grant Recipient but without determining the whole of this Agreement to terminate the Agreement in so far as it relates to the Firm Scheme to which the Scheme Default relates;

5.8.2 an occurrence specified in Condition 5.2.1 or 5.2.2, the GLA may serve notice on the Grant Recipient requiring the Grant Recipient to remedy 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
- (b) where so permitted by the GLA the Grant Recipient has not given an undertaking to remedy the breach on terms satisfactory to the GLA; or
- (c) if it becomes apparent that the Scheme Default is incapable of remedy either with 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 the Grant Recipient but without determining the whole of this Agreement to terminate the Agreement insofar as it relates to the Firm Scheme to which the Scheme Default relates.

5.9 Where the GLA exercises its rights under Condition 5.8, it may submit a Mandated Change Notice requiring such change to the residual Programme Offer as the GLA (acting reasonably and having regard to the terms of Condition 4.2) considers necessary to deal with the loss of the promised Affordable Dwellings comprised within the relevant Firm Scheme from the Programme Offer (the **Programme Loss**) and/or the implications of such loss for any Annual Allocation (the **Allocation Impact**) and such Mandated Change Notice shall be discussed as soon as reasonably practicable by the parties and in any event within 10 Business Days of the date of issue of the Mandated Change Notice.

5.10 Nothing in Condition 5.9 shall preclude the parties from agreeing an alternative means of dealing with the Programme Loss and/or Allocation Impact to that set out in the Mandated Change Notice **save that** unless such alternative is agreed and reflected in IMS within 20 Business Days of the date of issue of the Mandated Change Notice, the change required by the GLA in the Mandated Change Notice shall take effect on the next following Business Day and the GLA shall be entitled to make all such changes to IMS as are necessary to reflect the contents of the Mandated Change Notice.

5.11 Where either party purports to terminate this Agreement in accordance with this Condition 5 and the other party disputes its entitlement to do so the provisions of Condition 25 shall apply.

## 6 Profiling of schemes

- 6.1 Each Indicative Allocation comprised within any Annual Allocation for a Year must be incorporated into Developable Schemes and submitted to the GLA in accordance with the procedure in Condition 7 by no later than the 31 December immediately preceding the start of that Year.
- 6.2 Where the Indicative Allocation comprised within the Annual Allocation for a Year has not been fully incorporated in accordance with Condition 6.1 (an **Under Allocation**) the GLA may submit an Allocation Change Notice requiring:
- 6.2.1 a withdrawal, reduction or change in the Annual Allocation;
  - 6.2.2 a reduction in the Allocated Grant commensurate with the withdrawal, reduction or change under Condition 6.2.1; and/or
  - 6.2.3 any other change of the type described in Condition 4.2 necessary to deal with the Under Allocation and such Allocation Change Notice shall be discussed as soon as reasonably practicable by the parties and in any event within 15 Business Days of the date of issue of the Allocation Change Notice.
- 6.3 Nothing in this Condition 6 shall preclude the parties from agreeing an alternative means of dealing with the Under Allocation to that set out in the Allocation Change Notice **save that** unless such alternative is agreed and reflected in IMS by the end of the then current Financial Year, the change required by the GLA in the Allocation Change Notice shall take effect on the next following 1 April and the GLA shall be entitled to make all such changes to IMS as are necessary to reflect the contents of the Allocation Change Notice.

## 7 Firm Schemes – Submission Procedures

- 7.1 The Grant Recipient must upload such details of each Identified Site Scheme for the delivery of Affordable Housing comprised in the Programme Offer onto the GLA's IMS within 5 Business Days of the date of this Agreement.
- 7.2 Subject to Condition 7.1, where the Grant Recipient identifies a Developable Scheme, it must submit to the GLA through IMS such details of the Developable Scheme as the GLA may require.
- 7.3 In submitting the details of a Developable Scheme (whether under Condition 7.1 or 7.2), the Grant Recipient is deemed to represent and warrant to the GLA that:
- 7.3.1 the Developable Scheme:
    - (a) is consistent with the Programme Offer and the relevant Annual Allocation;
    - (b) is in its opinion (acting reasonably) deliverable in accordance with the Firm Scheme Delivery Timetable and the Submitted Standards;
    - (c) has received the support of the Local Housing Authority which it acknowledges will be verified by the GLA with the Local Housing Authority; and

7.3.2 the Grant Recipient:

- (a) possesses or will possess a Secure Legal Interest in the Site; and
- (b) has obtained all Consents necessary for the lawful development of the Developable Scheme to the Submitted Standards as are then required.

7.4 If the GLA (acting reasonably) is satisfied with the details submitted under Condition 7.1 or 7.2 and considers that the Developable Scheme is consistent with the Programme Offer (including the relevant Annual Allocation, the scheme cost information and information in relation to the level of the Grant Recipient's contribution), it will subject to Condition 5.4 confirm its acceptance of the Developable Scheme to the Grant Recipient through IMS.

7.5 With effect from the Acceptance Date, the Developable Scheme shall constitute a Firm Scheme and shall be subject to the whole terms and conditions of this Agreement.

7.6 The GLA has no obligation to make any payment of grant in respect of a Firm Scheme unless and until it has confirmed its acceptance of it in the manner described in Condition 7.4.

## 8 Firm Scheme Obligations

8.1 The Grant Recipient must:

8.1.1 carry out the acquisition of the Site and procure the design construction and completion of the Firm Scheme so that:

- (a) the Firm Scheme is (subject to Condition 9.2) delivered in accordance with the Firm Scheme Delivery Timetable;
- (b) when delivered, the Firm Scheme fully complies with the Firm Scheme Details and meets the Submitted Standards;
- (c) any applicable requirements of the London Plan are satisfied; and
- (d) any applicable requirements of the EU Procurement Regime are complied with.

8.1.2 actively market the Flexible Dwellings with a view to ensuring (as far as practicable) the disposal or letting of such dwellings to Eligible Purchasers at the Firm Scheme Completion Date (or as soon as reasonably possible thereafter) and in any event by the Final Disposal Date;

8.1.3 advertise all Flexible Dwellings through the First Steps portal at [www.shareto-buy.com/firststeps](http://www.shareto-buy.com/firststeps) or such other website address notified by the GLA to the Grant Recipients from time to time; and

8.1.4 offer through the Housing Moves service at least 5% of Affordable Rent Dwellings on each Site and at least 10% on each Site comprising 150 dwellings or more (or such other percentage notified in either case by the GLA to the Grant Recipient from time to time following consultation) on the initial letting of such Affordable Rent Dwellings.

(collectively the **Firm Scheme Obligations**).

8.2 In delivering the Firm Scheme and in operating and administering the Firm Scheme after Practical Completion, the Grant Recipient must:

8.2.1 observe and comply with Legislation, the applicable terms of the Funding Conditions, the Capital Funding Guide, the London Plan and the Recovery Determination;

8.2.2 use its reasonable endeavours to deliver the commitments and/or proposals outlined in the Statements;

8.2.3 prior to undertaking any marketing in respect of Equity Loan Dwellings, ensure it is in a position to comply with the Advertising Requirements, in respect of the Equity Mortgages;

8.2.4 procure that:

(a) all potential purchasers of Equity Loan Dwellings (who are introduced to it or who introduce themselves) are provided with the Standard Literature and are advised to consult a mortgage advisor;

(b) no representations about the Affordable Housing or its suitability for Eligible Purchasers are made or permitted to be made by or on its behalf save as set out in the Standard Literature; and

(c) in no circumstances will it restrict any Eligible Purchaser's ability to consult an independent financial and/or legal advisor or make any direct charge to the Eligible Purchasers for the provision of Flexible Dwellings (excluding any reservation fee);

(d) any advertisement issued by or on its behalf which makes reference to Equity Loan Dwellings or the assistance available from the GLA shall comply with the Advertising Requirements;

(e) it takes its own legal advice in relation to complying with the Advertising Requirements, and compliance with the requirements of the relevant Legislation;

(f) the GLA has up to date information in respect of the marketing of Flexible Dwellings and current availability and that such information is supplied in a manner which enables it to be uploaded directly onto any website maintained by the GLA or its nominee; and

(g) it continues actively to market any Remaining Units on Flexible Product Terms.

8.3 The Grant Recipient 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 Firm Scheme and to monitor compliance by the Grant Recipient with its obligations under this Agreement.

- 8.4 The Grant Recipient must notify the GLA in writing (save in respect of Condition 8.4.1, where notification is required to be given through IMS):
- 8.4.1 immediately once the Start on Site Date has occurred;
  - 8.4.2 immediately, in the event of the receipt by it of any other Public Sector Subsidy or guarantees of it, or the offer of same, in respect of the Firm Scheme (or any part of it) beyond any amount of Public Sector Subsidy notified to the GLA by the Grant Recipient pursuant to Condition 7.1 or 7.2;
  - 8.4.3 immediately upon becoming aware of any event or circumstance which may have a Material Adverse Effect;
  - 8.4.4 of any other event or circumstance in relation the Firm Scheme as the GLA may reasonably require from time to time and within such timeframes as the GLA may reasonably require.
- 8.5 Without prejudice to Condition 8.2, the Grant Recipient must in operating and administering the Firm Scheme after Practical Completion:
- 8.5.1 subject to Condition 14.1 not use the Affordable Dwellings for any purpose other than the Agreed Purposes without the GLA's prior written consent;
  - 8.5.2 not charge a higher initial rent in relation to a Rent to Save Dwelling or Affordable Rent Dwelling than set out in the relevant Firm Scheme Details;
  - 8.5.3 not increase the rent in relation to a Rent to Save Dwelling or Affordable Rent Dwelling more than once in any consecutive period of twelve months;
  - 8.5.4 not increase the rent in relation to a Rent to Save Dwelling or an Affordable Rent Dwelling (when compared with the rent payable immediately before the relevant rent increase date) by more than CPI + 1% per annum;
  - 8.5.5 comply with the Regulator's Tenancy Standard and the Rent Standard in respect of the Affordable Rent Dwellings;
  - 8.5.6 observe and comply with the requirements of the Capital Funding Guide in relation to:
    - (a) any disposal of the Affordable Home Ownership Dwellings and ensure that such disposal takes effect only at arms length and on market terms; and
    - (b) the letting, management or disposal of Rent to Save Dwellings and/or the Affordable Rent Dwellings;
  - 8.5.7 comply with the GLA's requirements in relation to Compliance Audit;
  - 8.5.8 participate in the CORE system from time to time and complete the "Initial Sales" data screens on IMS promptly following the sale of any Affordable Home Ownership Dwelling;
  - 8.5.9 in relation to each Rent to Save Dwelling the Grant Recipient must:

- (a) use its reasonable endeavours to ensure that the Tenant has a savings plan in place to raise sufficient funds to enable him to purchase the Rent to Save Dwelling within the Reservation Period;
- (b) review the Tenant's saving plan at regular intervals to assess the likelihood of the Tenant being able to purchase the Rent to Save Dwelling within the Reservation Period;
- (c) take all reasonable steps to regain possession of a Rent to Save Dwelling if the Tenant has not acquired the relevant dwelling within the Reservation Period or has not taken substantive and credible steps towards doing so or has indicated that he does not wish to acquire the Rent to Save Dwelling; and
- (d) where the Tenant permanently vacates the Rent to Save Dwelling, continue to market and use the dwelling as a Flexible Dwelling; and

8.5.10 in relation to each Affordable Rent Dwelling use the most appropriate form of tenancy having regard to the terms of the Funding Prospectus, the Tenancy Standard and the efficient use of public funds.

8.6 The Grant Recipient 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 Grant Recipient from time to time or otherwise as included in the Capital Funding Guide are observed and implemented in respect of each Firm Scheme.

8.7 In discharging its obligations under this Agreement, the Grant Recipient must act at all times with the utmost good faith, with the intent to deliver the Programme Offer and with proper regard to the need for efficiency in the use of public funds.

8.8 Where the Grant Recipient is aware that it is in breach of an obligation under this Condition 8 it must promptly notify the GLA of the fact and take all such steps as are appropriate in the circumstances to remedy the breach.

## 9 **Changes to Firm Schemes**

9.1 The parties may from time to time agree changes to the Firm Scheme Details and where such changes are agreed they shall be implemented by the Grant Recipient amending the Firm Scheme Details in IMS and the electronic confirmation of that amendment by the GLA through IMS.

9.2 Where a Milestone Failure occurs or is in the reasonable opinion of the GLA likely to occur (having regard to the information supplied at the Review Meeting or pursuant to Condition 8.4) and such failure is directly caused by a Milestone Extension Event, the GLA shall subject to Conditions 9.3 and 9.4 extend the relevant Milestone Date and associated Firm Scheme Completion Date by such period as it (acting reasonably) considers appropriate to take account of the delay caused or likely to be caused by the Milestone Extension Event.

9.3 The GLA shall not be obliged to extend a Milestone Date where such extension would (when taken individually or together with other extensions in relation to the Grant Recipient) in the GLA's reasonable opinion materially and adversely affect the delivery of the Programme Offer or (when taken individually or together with other extensions in

relation to the Grant Recipient or other grant recipients under the MHC) materially and adversely affect the GLA's projected expenditure profile in relation to any year of the MHC and in particular (but without limitation) such expenditure profile in relation to the last quarter of the relevant Financial Year.

9.4 The GLA shall not under any circumstance be required or obliged to extend a Firm Scheme Completion Date beyond 31 March 2018.

## 10 **Scheme Substitution**

10.1 The Grant Recipient may, where it considers (acting reasonably) that a Firm Scheme constitutes an Undeliverable Scheme, request the GLA to accept the substitution of a different scheme (a **Substitute Scheme**) in place of the Undeliverable Scheme.

10.2 If the Grant Recipient wishes to submit a Substitute Scheme, it must submit to the GLA through IMS such details of the relevant Substitute Scheme as the GLA may require. In submitting the details of the Substitute Scheme, the Grant Recipient is deemed to make and give the same representations and warranties in relation to the Substitute Scheme as it gives pursuant to Condition 7.3 in relation to a Firm Scheme.

10.3 The GLA shall consider the submitted details and if the GLA is (in its absolute discretion) satisfied (a) with the information provided and (b) that:

10.3.1 the Substitute Scheme offers value for money and its characteristics (in terms of tenure type and scheme costs) are similar to those of the Undeliverable Scheme;

10.3.2 the Substitute Scheme is consistent with the Programme Offer and applicable Annual Allocation (including the scheme cost information and information in relation to the level of the Grant Recipient's contribution);

10.3.3 the Grant Recipient's performance in respect of other Firm Schemes has complied with the terms of this Agreement;

10.3.4 the Substitute Scheme can be fully delivered by 31 March 2018 (or such other date as the GLA may in its discretion agree); and

10.3.5 the grant requested in respect of the Substitute Scheme is acceptable

the GLA shall (subject to Condition 5.4) accept the Substitute Scheme as a Firm Scheme.

10.4 Where the GLA accepts a Substitute Scheme into the Programme Offer pursuant to Condition 10.3 it will confirm its acceptance of such scheme to the Grant Recipient through IMS.

10.5 With effect from the Acceptance Date:

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

10.5.2 the details set out by the Grant Recipient in respect of the Substitute Scheme in IMS and as confirmed by the GLA through IMS shall be deemed to be Firm Scheme Details for the purposes of this Agreement.

10.6 It is agreed that any Firm Scheme Grant received by the Grant Recipient in relation to the Undeliverable Scheme shall be treated as having been received by the Grant Recipient in relation to the Substitute Scheme.

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

## 11 **Grant Claim Procedures**

11.1 Subject to a Firm Scheme having reached the Start on Site Date, the Grant Recipient may apply to the GLA for the First Tranche Grant payable in respect of that Firm Scheme to be paid to it. The Grant Recipient must make its application through IMS and in accordance with the requirements of IMS from time to time and in compliance with the applicable procedures relating to grant claims and payments set out in the Capital Funding Guide.

11.2 In submitting an application pursuant to Condition 11.1 the Grant Recipient is deemed to:

11.2.1 repeat the representations and warranties set out in Condition 7.3;

11.2.2 represent and warrant to the GLA that the Start on Site Date has been reached and that such date is no later than that submitted therefor in IMS;

11.2.3 represent and warrant to the GLA that all confirmations and certifications made or to be made by the Grant Recipient in IMS in relation to the Firm Scheme have been, are or will be correct in all material respects;

11.2.4 represent and warrant to the GLA that the Grant Recipient is a Registered Provider and retains its status as an Investment Partner; and

11.2.5 represent and warrant to the GLA that no Withholding Event or Termination Event has occurred or arisen.

11.3 Subject to a Firm Scheme having reached Practical Completion, the Grant Recipient may apply to the GLA for the Second Tranche Grant payable in respect of that Firm Scheme to be paid to it. The Grant Recipient must make its application through IMS and in accordance with the requirements of IMS from time to time.

11.4 In submitting an application pursuant to Condition 11.3 the Grant Recipient is deemed to represent and warrant to the GLA that:

11.4.1 the Firm Scheme has been procured, designed, constructed and delivered in accordance with the requirements of this Agreement;

11.4.2 the Firm Scheme has reached Practical Completion;

11.4.3 all confirmations and certifications made or to be made by the Grant Recipient in IMS in relation to the Firm Scheme have been or will be correct in all material respects;

11.4.4 the Grant Recipient is a Registered Provider and retains its status as an Investment Partner;



- 11.4.5 it has obtained all Consents necessary for the lawful development of the Firm Scheme in accordance with the Firm Scheme Details and to the Submitted Standards as are then required or to the extent that they are not obtained that the Grant Recipient has taken all necessary steps to obtain them, is waiting only for the Relevant Authority to issue them and is not aware (having made all reasonable enquiries) of any reason why such Consents will not be given or issued;
  - 11.4.6 where it did not possess a Secure Legal Interest in the Site at the point of submitting a Developable Scheme pursuant to Condition 7.1 or 7.2, it possesses a Secure Legal Interest in the Site and for the purpose of this Condition 11.4.6 the parties acknowledge and agree that limb (d) of the definition of Secure Legal Interest shall be disregarded and of no effect;
  - 11.4.7 no Withholding Event or Termination Event has occurred or arisen;
  - 11.4.8 the Tenure Mix or Flexible Tenure Mix (as applicable) in relation to the Firm Scheme is consistent with the Firm Scheme Details; and
  - 11.4.9 subject to Condition 11.5, all Flexible Dwellings within the Firm Scheme have been acquired, reserved by or let to Eligible Purchasers.
- 11.5 The Grant Recipient shall be entitled to disclose against the warranty given in Condition 11.4.9 and must provide details of the then current acquisition, reservation and letting position in relation to the Firm Scheme.

## 12 **Payment of Grant**

### 12.1 Subject to:

- 12.1.1 the GLA (acting reasonably) being satisfied with the Grant Recipient's application for payment; and
- 12.1.2 Conditions 12.3, 12.4 and 13

the GLA shall pay the First Tranche Grant or Second Tranche Grant (as applicable) to the Grant Recipient within ten (10) Business Days of receipt of the satisfactory application.

- 12.2 If the GLA is not satisfied with the Grant Recipient's application for payment, it must notify the Grant Recipient in writing as soon as reasonably practicable and in any event within ten (10) Business Days of receipt of the application for payment identifying the reason for its dissatisfaction. The GLA must allow the Grant Recipient a period of up to ten (10) Business Days to address the issues identified in the notification and to resubmit or amend its application accordingly in which case the provisions of Conditions 11 to 12 (as applicable) will be reapplied to the Grant Recipient's resubmitted or amended application for payment.

### 12.3 The GLA shall not be obliged to pay to the Grant Recipient:

- 12.3.1 the First Tranche Grant before the date identified in the Firm Scheme Details as the forecast Start on Site Date;

- 12.3.2 the Second Tranche Grant before the Firm Scheme Completion Date (as confirmed by the GLA through IMS) has occurred.
- 12.4 The GLA shall not be obliged to make any payment by way of Second Tranche Grant or otherwise in respect of any Firm Scheme which has not reached Practical Completion by 31 March 2018 or such other later date as the GLA may in its absolute discretion notify to the Grant Recipient from time to time.
- 12.5 Where the GLA pays Firm Scheme Grant to the Grant Recipient, the Allocated Grant shall be reduced by a commensurate amount.
- 13 **Withholding of Firm Scheme Grant**
- 13.1 Notwithstanding any other term of this Agreement the GLA shall not be obliged to make any payment to the Grant Recipient whether by way of First Tranche Grant or Second Tranche Grant or otherwise where:
- 13.1.1 the Firm Scheme has not been delivered in accordance with the Firm Scheme Details (including but not limited to the Tenure Mix or Flexible Tenure Mix (as applicable) in relation to the Firm Scheme) or to the Submitted Standards or in accordance with the Firm Scheme Delivery Timetable (in circumstances where the GLA was unable to agree revised Milestone Dates);
- 13.1.2 the Grant Recipient is unable to give the confirmations or certifications required by IMS or to make the representations and give the warranties referred to in Condition 11.2 and Condition 11.4 (in any case in whole or in part);
- 13.1.3 a Prohibited Act has been committed by or on behalf of the Grant Recipient and the Grant Recipient has not satisfied the Waiver Condition in respect of such Prohibited Act;
- 13.1.4 an Insolvency Event has occurred in relation to the Grant Recipient;
- 13.1.5 the Grant Recipient has ceased to operate;
- 13.1.6 the Grant Recipient's status as a Registered Provider or Investment Partner is removed or withdrawn;
- 13.1.7 the Regulator directs the GLA not to give grant to the Grant Recipient or formally recommends to it that it should not do so;
- 13.1.8 where the Grant Recipient is in material breach of any Firm Scheme Obligation or Ongoing Obligation and has not taken steps to remedy it to the GLA's satisfaction (acting reasonably);
- 13.1.9 the Grant Recipient (either by its own actions or omissions or those of its contractors or agents) harms the GLA's, the MHC's or the Mayor of London's reputation or brings the GLA, the MHC or the Mayor of London into disrepute; or
- 13.1.10 the Grant Recipient has failed to comply with any of its obligations under Conditions 3, 14, or 17.

13.2 In the circumstances contemplated in Conditions 13.1.1 and 13.1.2 the GLA (acting reasonably) shall be entitled (but not obliged) to elect between withholding the Firm Scheme Grant as permitted by Condition 13.1 and issuing a Programme Change Notice.

13.3 Where a change to the Programme Offer is agreed between the parties and confirmed by the GLA through IMS, the GLA shall (to the extent consistent with the change to the Programme Offer) pay the Firm Scheme Grant (mutatis mutandis) to the Grant Recipient within fifteen (15) Business Days of the date of it making its confirmation in IMS.

#### 14 **Repayment of Grant**

14.1 The parties acknowledge and agree that:

14.1.1 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; and

14.1.2 for the purposes of the Recovery Determination the terms of this Agreement represent the conditions attached to the making of Capital Grant.

14.2 Without prejudice to any other term of this Agreement, the GLA reserves the right whether following termination of this Agreement or otherwise (which right the Grant Recipient expressly acknowledges and agrees) at its discretion to recover from the Grant Recipient the Firm Scheme Grant or such part or aggregation thereof as is determined in accordance with Condition 14.3 (the **Recoverable Amount**) in circumstances where:

14.2.1 a Prohibited Act has occurred and the Grant Recipient has not satisfied the Waiver Condition in respect of such Prohibited Act;

14.2.2 the relevant Tranche has been paid to the Grant Recipient on the basis of a misrepresentation made by or on behalf of the Grant Recipient other than in the circumstances specified in Condition 14.2.5;

14.2.3 the GLA has made an overpayment in relation to a Firm Scheme or has made a payment in error to the Grant Recipient;

14.2.4 a Balancing Sum has arisen;

14.2.5 the relevant Tranche has been paid to the Grant Recipient but the GLA becomes aware (whether following the completion of a Compliance Audit or otherwise) that the Grant Recipient has failed to deliver the relevant Firm Scheme in accordance with the agreed Firm Scheme Details;

14.2.6 the Grant Recipient has breached its obligations under Conditions 8.1, 8.2, 8.5 or 8.8;

14.2.7 an Insolvency Event has occurred in relation to the Grant Recipient;

14.2.8 a Termination Event has occurred.

14.3 In the circumstances set out in:

- 14.3.1 Conditions 14.2.1, 14.2.2, 14.2.6, 14.2.7 and 14.2.8 the Recoverable Amount shall be a sum equivalent to the Firm Scheme Grant for any affected Firm Scheme;
- 14.3.2 Conditions 14.2.3 and 14.2.4, the Recoverable Amount shall be a sum equal to the amount of the overpayment, the sum paid in error or the Balancing Sum as applicable;
- 14.3.3 Condition 14.2.5, subject always to Condition 14.4, 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 Firm Scheme Grant figure reflecting the changed nature of the delivered Firm Scheme as against that described in the Firm Scheme Details;
- (b) where a revised figure for Firm Scheme Grant is agreed, the Recoverable Amount shall be the product of the following calculation:

$$RA = FSG - RFSG$$

where

RA is the Recoverable Amount;

FSG is the Firm Scheme Grant paid pursuant to Condition 12.1.1 in respect of the relevant Firm Scheme; and

RFSG is the revised Firm Scheme Grant figure agreed pursuant to Condition 14.3.3(a);

- (c) Subject to Condition 25, the Grant Recipient shall amend the relevant information on IMS to reflect the agreement made pursuant to Condition 14.3.3(a);
- (d) where the parties are unable to agree a revised Firm Scheme Grant figure in accordance with Condition 14.3.3(a) the GLA shall be entitled to terminate this Agreement in accordance with Condition 5.8 and the Recoverable Amount shall be an amount equal to the Firm Scheme Grant paid pursuant to Condition 12.1 in respect of the relevant Firm Scheme.

Under no circumstances will the GLA be required to make any payment to the Grant Recipient if the application of the calculation in Condition 14.3.3(b) results in RA being a negative figure.

- 14.4 Where the GLA (acting reasonably) considers that the Grant Recipient acted fraudulently or dishonestly in claiming the Firm Scheme Grant for the relevant Firm Scheme, such claim shall be deemed to be a Prohibited Act for the purposes of Condition 5.1 and 14.2.1 and the GLA will not be bound by the terms of Condition 14.3.3 or 14.5.

- 14.5 In the circumstances set out in Condition 14.2.5 the GLA shall be entitled (in its absolute discretion) to elect between:
- 14.5.1 permitting the Grant Recipient to apply the Recoverable Amount towards a pro rated reduction in the Allocated Grant or against the Firm Scheme Grant in relation to another Firm Scheme in which case the GLA shall issue a Programme Change Notice; or
  - 14.5.2 requiring the repayment of the Recoverable Amount in which case the terms of Condition 14.7 will apply.
- 14.6 In making any determinations pursuant to Condition 14.5, the GLA shall act reasonably and in good faith and, in the context of Condition 14.5.2, proportionately. Subject to Condition 25, the Grant Recipient shall amend the relevant information on IMS in respect of the Programme Offer and each relevant Firm Scheme to reflect the determinations made pursuant to Condition 14.5.
- 14.7 Subject to Condition 14.5 the Grant Recipient shall pay the Recoverable Amount to the GLA within ten (10) Business Days of demand together with interest at two per centum (2%) above the base rate from time to time of the Royal Bank of Scotland plc such interest to run from the date upon which the Firm Scheme Grant (or relevant part thereof) overpayment or payment in error was paid to the Grant Recipient until the date upon which the GLA receives the repayment required from the Grant Recipient under this Condition 14.
- 14.8 The Grant Recipient acknowledges and agrees that the disposal or letting of a Flexible Dwelling to any person on any basis other than Flexible Product Terms or the letting of an Affordable Rent Dwelling other than in accordance with the Tenancy Standard constitutes a failure to comply with a condition attached to the making of capital grant for the purposes of paragraph 7(e) of the Recovery Determination.
- 14.9 The parties acknowledge that the Late Payment of Commercial Debts (Interest) Act 1998 does not apply to this Agreement.
- 14.10 Notwithstanding any other term of this Condition 14, where a payment has been made following an administrative error by the GLA, the Grant Recipient shall not be liable for interest on the amount repayable under Condition 14.7.
- 15 **VAT**
- 15.1 Except where expressly stated to the contrary in this Agreement:
- 15.1.1 the amount of any payment or the value of any supply is expressed exclusive of VAT properly chargeable on it;
  - 15.1.2 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.
- 15.2 The payment of Firm Scheme Grant or any part thereof hereunder by the GLA to the Grant Recipient shall be regarded as inclusive of any VAT chargeable thereon.

16 **Flexible Product Grant Reconciliation**

16.1 The parties agree that a reconciliation exercise shall be carried out in relation to a Firm Scheme in the following circumstances to ascertain whether more Firm Scheme Grant is being given by the GLA than is necessary for its delivery:

- 16.1.1 if the Flexible Tenure Mix changes between the Acceptance Date and the Start on Site Date (a **Pre-Start Change**);
- 16.1.2 if the Flexible Tenure Mix changes between the Start on Site Date and the Firm Scheme Completion Date (a **Mid-Scheme Change**);
- 16.1.3 if the Flexible Tenure Mix changes between the Firm Scheme Completion Date and the Final Disposal Date (a **Post-Completion Change**)

and for the purposes of carrying out such exercise the parties shall use:

- (a) actual figures for Total Scheme Costs, Total Grant, Initial Sales Receipts, Rental Stream Capacity, Rent to Save Units, Shared Ownership Units and Equity Loan Units to the extent that actual figures for those items are known and in all other circumstances shall use reasonable estimates and projections for such items; and
- (b) the same assumptions and heads of expenditure and income as were used to arrive at the Firm Scheme Grant figure set out in IMS as at the date hereof.

16.2 If the results of the conduct of a Grant Reconciliation Exercise in relation to a Firm Scheme demonstrate that:

- 16.2.1 A is equal to zero, then no further action is required;
- 16.2.2 A is greater than zero (an **Under Commitment**) then the terms of Condition 16.3 shall apply;
- 16.2.3 A is less than zero (an **Over Commitment**) then the terms of Condition 16.4 shall apply

Where in each case

$$A = TSC - TG - ISR - RSC - OC$$

And

TSC = Total Scheme Costs;

TG = Total Grant;

ISR = Initial Sales Receipts;

RSC = Rental Stream Capacity; and

OC = Other Contribution

16.3 Where Condition 16.2.2 applies and there is:

- 16.3.1 a Pre-Start Change or Mid-Scheme Change the parties shall use their reasonable endeavours to agree a revised figure for Firm Scheme Grant and a revised Flexible Tenure Mix. Where such revisions are agreed, the Grant Recipient must amend the Firm Scheme Details on IMS to reflect such agreement and following acceptance by the GLA of such change through IMS the revised Firm Scheme details shall have effect. Where the parties are unable to agree such matters, the GLA shall be entitled to exercise its termination rights under Condition 5.8;
- 16.3.2 a Post-Completion Change the Grant Recipient shall be entitled to set off a sum equivalent to the Under Commitment (the **Set-Off Sum**) against any Over Commitments on other Firm Schemes. The Grant Recipient acknowledges and agrees that under no circumstances will the GLA be required to make any payment to the Grant Recipient if the Grant Recipient is unable to use the Set-Off Sum either in whole or part in the manner contemplated in this Condition 16.3.2.
- 16.3.3 In the circumstances under Condition 16.3.2 the Grant Recipient must notify the GLA in writing of the quantum of the Set-Off Sum and the Over Commitments on other Firm Schemes to which and in what manner the Set-Off Sum will be applied.

16.4 Where Condition 16.2.3 applies and there is:

- 16.4.1 a Pre-Start Change, the parties shall use their reasonable endeavours to agree a revised figure for the Firm Scheme Grant and a revised Flexible Tenure Mix. Where such revisions are agreed, the Grant Recipient must amend the Firm Scheme Details on IMS to reflect such agreement and following acceptance by the GLA of such change through IMS the revised Firm Scheme details shall have effect. Where the parties are unable to agree such matters, the GLA shall be entitled to exercise its termination rights under Condition 5.8;
- 16.4.2 a Mid-Scheme Change, the GLA shall be entitled to reduce the amount of Second Tranche Grant by an amount equivalent to the amount of that Over Commitment. If such reduction cannot absorb the full amount of the Over Commitment, the balance shall be applied as if it were an Over Commitment subject to Condition 16.4.3;
- 16.4.3 a Post-Completion Change, the Grant Recipient may in writing request the GLA's consent to apply the amount of the Over Commitment to the delivery of further Affordable Housing.

16.5 Following receipt of a Further Application Request the GLA (acting reasonably) must notify the Grant Recipient in writing as soon as reasonably practicable as to whether:

- 16.5.1 it requires repayment of the Over Commitment in which case a sum equivalent to the amount of the Over Commitment (the **Over Commitment Sum**) must be repaid by the Grant Recipient within twenty (20) Business Days of the date of the GLA's notice; or

- 16.5.2 subject to Condition 16.6 it consents in principle to the Further Application Request and where it does so, the parties shall use their reasonable endeavours to agree the details of one or more further schemes for the delivery of Affordable Housing to which the Over Commitment will be applied; and
- (a) if such schemes are agreed, the Grant Recipient must submit details of the proposed scheme onto IMS and any such scheme shall (subject to such reasonable changes to dates and time periods as the GLA reasonably requires) with effect from the Acceptance Date become a Firm Scheme and subject to the whole terms and conditions of this Agreement;
  - (b) if the parties fail to agree further schemes to which the Over Commitment will be applied within three (3) months of the date of the GLA's notice, the Grant Recipient must repay the Over Commitment Sum within ten (10) Business Days of receipt of the GLA's demand for the same.
- 16.6 Notwithstanding any other provision of this Agreement the GLA shall be under no obligation to accept any further scheme into this Agreement pursuant to Condition 16.5.2(a) nor to make any payment in relation to any such scheme if that scheme cannot reasonably be expected to or does not achieve Practical Completion by 31 March 2019.
- 17 Open Book Obligations**
- 17.1 The Grant Recipient shall on an Open Book basis:
- 17.1.1 at all times maintain a full record of particulars of all the income (including Public Sector Subsidy) received and Development Costs incurred by the Grant Recipient in respect each Firm Scheme;
  - 17.1.2 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 17.1.1 as the GLA may reasonably require to enable it to monitor the performance by the Grant Recipient of its obligations under this Agreement; and
  - 17.1.3 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 17.
- 17.2 Compliance with the above shall require the Grant Recipient to keep (and where appropriate to procure that any Subcontractor shall keep) separate books of account (from those relating to any business, activity or operation carried on by the Grant Recipient or Subcontractor and which do not directly relate to any Firm Scheme) in accordance with good accountancy practice with respect to all Firm Schemes showing in detail:
- 17.2.1 income (including Public Sector Subsidy and receipts);
  - 17.2.2 administrative overheads where directly attributed or where apportioned on a pro rata basis;
  - 17.2.3 payments made to Subcontractors;



- 17.2.4 capital and revenue expenditure;
- 17.2.5 VAT incurred on all items of expenditure where the Grant Recipient 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 Grant Recipient of such VAT as input tax from HM Revenue & Customs or other competent authority; and
- 17.2.6 such other item as the GLA may reasonably require to conduct (itself or through a third party) cost audits for verification of income, cost expenditure or estimated expenditure, for the purpose of any of the provisions of this Agreement;

and the Grant Recipient 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 25 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.

## 18 **State Aid**

If the GLA is required pursuant to the Decision of the Commission of the European Communities published on 20 December 2011 in relation to public sector compensation granted to certain undertakings entrusted with the operation of services of general economic interest to recover any amount of overcompensation (as described in the Decision) the GLA will be entitled to recover any such amount from the Grant Recipient.

## 19 **Representations and Warranties**

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

- 19.1.1 represents and warrants to the GLA on the date hereof and on each day until and including the date upon which the Grant Recipient receives the last payment of Firm Scheme Grant payable under this Agreement in the terms set out in Schedule 1 inclusive; and
- 19.1.2 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.

## 20 **Information and confidentiality**

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

20.2 Each party agrees to treat all Confidential Information belonging to the other as confidential and not to disclose such Confidential Information or any other confidential information relating to the GLA arising or coming to its attention during the currency of this Agreement to any third party without the prior written consent of the other party and

agrees not to use such Confidential Information for any purpose other than that for which it is supplied under this Agreement.

20.3 The obligations of confidence referred to in Condition 20.2 shall not apply to any Confidential Information which:

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

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

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

20.3.4 is independently developed without access to the Confidential Information of the other party.

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

20.4.1 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; or

20.4.2 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 the Grant Recipient 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; or

20.4.3 by any regulatory body (including any investment exchange) acting in the course of proceedings before it or acting in the course of its duties; or

20.4.4 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.

20.5 The Grant Recipient shall ensure that all Confidential Information obtained from the GLA under or in connection with this Agreement:

20.5.1 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;

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

20.5.3 where it is considered necessary in the opinion of the GLA the Grant Recipient shall ensure that such staff, professional advisors or consultants sign a confidentiality undertaking before commencing work in connection with this Agreement.

20.6 Nothing in this Condition 20 shall prevent the GLA:

20.6.1 disclosing any Confidential Information for the purpose of:

- (a) the examination and certification of the GLA's accounts; or
- (b) any examination of the economy, efficiency and effectiveness with which the GLA has used its resources; or

20.6.2 disclosing any Confidential Information obtained from the Grant Recipient:

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

provided that in disclosing information under Condition 20.6.2(a) or 20.6.2(b) the GLA 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.

20.7 Nothing in this Condition 20 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

20.8 The Grant Recipient 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.

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

20.9.1 any Information is Exempted Information or remains Exempted Information; or

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

and in no event shall the Grant Recipient respond directly to a Request for Information to which the GLA is required to respond to, except to confirm receipt of the Request for Information and that the Request for Information has been passed to the GLA unless otherwise expressly authorised to do so by the GLA.

20.10 Subject to Condition 20.11 below, the Grant Recipient acknowledges that the GLA may be obliged under FOIA or EIR to disclose Information:

20.10.1 without consulting the Grant Recipient or

- 20.10.2 following consultation with the Grant Recipient and having taken (or not taken, as the case may be) its views into account.
- 20.11 Without in any way limiting Conditions 20.9 and 20.10, in the event that the GLA receives a Request for Information, the GLA will, where appropriate, as soon as reasonably practicable notify the Grant Recipient.
- 20.12 The Grant Recipient 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:
- 20.12.1 transfer any Request for Information received by the Grant Recipient to the GLA as soon as practicable after receipt and in any event within two (2) Business Days of receiving a request for information;
- 20.12.2 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;
- 20.12.3 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;
- 20.12.4 permit the GLA to inspect such as requested from time to time
- 20.13 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.
- 20.14 The obligations in this Condition 20 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.
- 20.15 The Grant Recipient 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 Grant Recipient regarding any redactions to the Agreement Information to be published pursuant to this Condition 20. The GLA shall make the final decision regarding publication and/or redaction of the Agreement Information.

## 21 **Intellectual Property**

- 21.1 Subject to Condition 21.5 the Grant Recipient 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 the Grant Recipient or which are or become owned by the Grant Recipient and which relate to the Firm Schemes, for any purpose relating to this Agreement.

- 21.2 To the extent that any of the data, materials and documents referred to in Condition 21.1 are generated by or maintained on a computer or in any other machine readable format, the Grant Recipient 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 the Grant Recipient 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 21.1.
- 21.3 Neither party shall infringe any third party's Intellectual Property Rights in connection with this Agreement.
- 21.4 The Grant Recipient shall fully indemnify the GLA within five (5) Business Days of demand under this Condition 21.4 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 21, any breach by the Grant Recipient of this Condition 21 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.
- 21.5 The Grant Recipient shall only be entitled to revoke the licence granted to the GLA under Condition 21.1 in the following circumstances and upon the following terms:
- 21.5.1 on the termination of the whole of this Agreement in circumstances where no Allocated Grant has been paid to the Grant Recipient; or
- 21.5.2 on the termination of this Agreement (in whole or in part) in circumstances where some Allocated Grant has been paid to the Grant Recipient **provided that** nothing in this Condition 21.5.2 shall entitle the Grant Recipient to revoke such licence insofar as it relates to:
- (a) Firm Schemes in respect of which Firm Scheme Grant has been paid or in respect of which a valid entitlement to claim Firm Scheme Grant has arisen;
  - (b) Continuing Firm Schemes; or
  - (c) Firm Schemes subject to the provisions of Condition 13.2.

## 22 **Grant Recipient's records and accounting**

- 22.1 The Grant Recipient shall, as and when requested by the GLA whether before or after the date of payment of the Firm Scheme Grant, make available in a timely manner to the GLA where required in connection with this Agreement or the Programme Offer a copy of each of:
- 22.1.1 all data, materials, documents and accounts of any nature created, acquired or brought into existence in any manner whatsoever by or on behalf of the Grant Recipient for the purposes of this Agreement; and
- 22.1.2 all such data, materials, documents and accounts created, acquired or brought into existence by the Grant Recipient's officers, employees, agents or

consultants relating to the Firm Schemes and which have been supplied to the Grant Recipient for the purposes of this Agreement.

22.2 On the expiry of this Agreement or (if earlier) upon termination thereof, the Grant Recipient shall if requested to do so deliver up to the GLA all the data, materials, documents and accounts referred to in this Condition 22 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 22.1.2 or as otherwise directed by the GLA.

22.3 The Grant Recipient must for a period of ten (10) years from the date upon which it receives the Firm Scheme Grant retain all of the data, documents, materials and accounts referred to in this Condition 22 and the Grant Recipient may retain such data, documents, materials and accounts in electronic form only.

22.4 The Grant Recipient acknowledges that The Comptroller and Auditor General shall have rights of access to the information referred to in Condition 22.1 pursuant to the National Audit Act 1983 and the Government Resources and Accounts Act 2000.

### 23 **Health and Safety and Equality and Diversity**

23.1 The Grant Recipient will comply in all material respects with all relevant Legislation relating to health and safety, equality and relevant employment matters and will use reasonable endeavours to procure that all Grant Recipient Parties do likewise.

23.2 The Grant Recipient confirms that it has, and is in full compliance with, a policy covering equal opportunities designed to ensure that discrimination prohibited by the Equality Act 2010 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.

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

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

23.4.1 where the Grant Recipient is engaging consultants and a contractor or contractors as Subcontractors to deliver the Firm Scheme the Grant Recipient elects to be the only client in relation to such Firm Scheme; or

23.4.2 where the Grant Recipient is contracting with a developer as a Subcontractor to deliver a Firm Scheme the Grant Recipient shall procure that such developer shall elect to be the only client in relation to the Firm Scheme on or before the date that a Developable Scheme becomes a Firm Scheme;

and the GLA hereby agrees to such election.

23.5 The Grant Recipient shall not seek to withdraw, terminate or in any manner derogate from such election pursuant to clause 23.4.1 or (if appropriate) shall procure that any developer/employer shall not withdraw, terminate or in any manner derogate from any election pursuant to clause 23.4.2 without the GLA's prior written consent, which the GLA may in its absolute discretion withhold.

23.6 The Grant Recipient shall at all times comply with all obligations, requirements and duties arising under the HS Act and the CDM Regulations in connection with the Works.

## 24 **Co-operation**

24.1 Each party undertakes to co-operate in good faith with the other to facilitate the proper performance of this Agreement and the delivery of the Firm Schemes. Without prejudice to the generality of the foregoing the Grant Recipient shall co-operate fully and in a timely manner with any reasonable request from time to time:

24.1.1 of any auditor (whether internal or external) of the GLA; and/or

24.1.2 of the GLA where the GLA is required under any legislation to provide any document relating to the Firm Schemes to any person.

## 25 **Dispute Resolution**

25.1 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 25.

25.1.1 In the event that the Grant Recipient 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 25.

25.1.2 Representatives of the parties shall meet within five (5) Business Days (or such other longer period not exceeding twenty (20) Business Days as the parties may agree) of receipt of a Notice of Dispute.

25.1.3 Where either no representatives of both parties are available to meet within the period set out in Condition 25.1.2 or the representatives fail to agree a unanimous resolution of the Dispute at such meeting, the Dispute shall be referred to the chief executive (or nominated deputy) of the Grant Recipient and the GLA's Head of Paid Service (the **Senior Executives**).

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

25.1.5 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 25.2.

25.2 In the circumstances contemplated in Condition 25.1.5, the parties 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:

- 25.2.1 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.
- 25.2.2 the mediation shall start not later than twenty eight (28) days after the date of the ADR notice; and
- 25.2.3 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.

## 26 **Notices**

- 26.1 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 either party to the other party's registered office as set out at the beginning of this Agreement or to such other addresses as either party may from time to time notify to the other in writing **provided that** such other address is within England and Wales.
- 26.2 Any notice shall be deemed to be given by the sender and received by the recipient:
  - 26.2.1 if delivered by hand, when delivered to the recipient;
  - 26.2.2 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 4.00pm it is to be regarded as received at 9.00am on the following Business Day.

## 27 **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.

## 28 **No agency**

- 28.1 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.
- 28.2 The Grant Recipient shall at all times be independent and nothing in this Agreement shall be construed as creating the relationship of employer and employee between the GLA and the Grant Recipient. Neither the Grant Recipient nor any of its employees shall at any time hold itself or themselves out to be an employee of the GLA.



29 **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.

30 **Assignment and sub-contracting**

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

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

31 **Construction Industry Scheme**

31.1 For such time as:

31.1.1 the Grant Recipient continues to be a Registered Provider; and

31.1.2 the provisions of paragraph 13040 of Chapter 1 of HM Revenue & Customs' CIS Reform Manual remain in effect as published at July 2009,

the Grant Recipient 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 31.1.1 or Condition 31.1.2 ceases to hold at a time when monies remain outstanding from the GLA to the Grant Recipient pursuant to this Agreement then the Grant Recipient 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.

32 **Data Protection**

32.1 The Grant Recipient 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.

32.2 The Grant Recipient undertakes that to the extent that the Grant Recipient 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 comply with the provisions of the DPA for the time being in force, including without limitation the Data Protection Principles set out in Schedule 1 of the DPA. In particular, the Grant Recipient agrees to comply with the requirements and obligations imposed on the Data Controller in the Seventh Data Protection Principle set out in the DPA namely:

32.2.1 the Grant Recipient 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. This includes the obligation to comply with any records management, operational and/or information security policies operated by the GLA, when performing its obligations under this Agreement on the GLA's premises and/or accessing their manual and/or automated information systems. These measures shall be appropriate to the harm which might result from any unauthorised Processing, accidental loss, destruction or damage to the Personal Data which is to be protected;

- 32.2.2 the Grant Recipient shall only process Personal Data for and on behalf of the GLA for the purpose of performing its obligations under this Agreement in accordance with this Agreement, or as is required by Law or any Regulatory Body, and where necessary only on written instructions from the GLA to ensure compliance with the DPA;
  - 32.2.3 the Grant Recipient shall allow the GLA to audit the Grant Recipient's compliance with the requirements of this Condition 32 on reasonable notice and/or, at the GLA's request, provide the GLA with evidence of the Grant Recipient's compliance with the obligations within this Condition 32.
- 32.3 The Grant Recipient 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 32.2 the Grant Recipient shall be entitled to disclose the GLA's Personal Data to employees to whom such disclosure is reasonably necessary in order for the Grant Recipient to performing its obligations under this Agreement, or to the extent required under a court order.
- 32.4 The Grant Recipient shall:
- 32.4.1 take reasonable steps to ensure the reliability of any Grant Recipient Party who has access to the Personal Data;
  - 32.4.2 ensure that any Grant Recipient Party required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Condition 32;
  - 32.4.3 ensure that none of any Grant Recipient Party publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the GLA;
  - 32.4.4 provide a written description of the technical and organisational methods employed by the Grant Recipient for processing Personal Data (within the timescales required by the GLA); and
  - 32.4.5 not Process Personal Data outside the European Economic Area without the prior written consent of the GLA and, where the GLA consents to a transfer, to comply with:
    - (a) the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the DPA by providing an adequate level of protection to any Personal Data that is transferred; and
    - (b) any reasonable instructions notified to it by the GLA.

- 32.5 The Grant Recipient agrees to use all reasonable efforts to assist the GLA to comply with such obligations as are imposed on the GLA by the DPA. For the avoidance of doubt, this includes the obligation to:
- 32.5.1 provide to the GLA such access as may be reasonably required from time to time to all Personal Data stored or processed in performing its obligations under this Agreement in order to enable the GLA to meet its obligations to respond to access requests from Data Subjects under the DPA;
  - 32.5.2 provide the GLA with reasonable assistance in complying with any request for information served on the GLA under Section 7 of the DPA;
  - 32.5.3 notify the GLA (within five (5) Business Days) about the receipt of any such request received by the Grant Recipient under Section 7 of the DPA or complaint or request relating to the GLA's obligations under the DPA and not disclose or release any information (including the GLA's Personal Data) in response to such a request or complaint without first consulting with the GLA, where the information sought relates to the GLA, its employees, agents and/or its business operations;
  - 32.5.4 provide the GLA with full co-operation and assistance in relation to any complaint of request made, including by:
    - (a) providing the GLA with full details of the complaint or request;
    - (b) complying with a data access request within the relevant timescales set out in the DPA and in accordance with the GLA's instructions;
    - (c) providing the GLA with any Personal Data it holds in relation to a Data Subject (within the timescales required by the GLA); and
    - (d) providing the GLA with any information requested by the GLA;
- 32.6 The Grant Recipient shall comply at all times with the DPA and shall not perform its obligations under this Agreement in such a way as to cause the GLA to breach any of its applicable obligations under the DPA.
- 32.7 The Grant Recipient 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 Grant Recipient's destruction of and/or damage to any of the GLA's Personal Data processed by the Grant Recipient, its employees, agents, or any breach of or other failure to comply with the obligations in the DPA and/or this Condition 32 by the Grant Recipient, its employees, agents or sub-contractors.
- 32.8 The Grant Recipient shall appoint and identify an individual within its organisation authorised to respond to enquiries from the GLA concerning the Grant Recipient's Processing of the GLA's Personal Data and will deal with all enquiries from the GLA relating to such Personal Data promptly, including those from the Information Commissioner and will to the extent reasonably necessary co-operate with and assist in ensuring compliance with any Data Subject rights of data access, correction, blocking, suppression or deletion relating to the GLA's Personal Data and in the defence or

management of any enforcement action or assessment by the Information Commissioner or any other competent authority in relation thereto.

32.9 The Grant Recipient undertakes to include obligations no less onerous than those set out in this Condition 32, in all contractual arrangements with agents engaged by the Grant Recipient in performing its obligations under this Agreement to the GLA.

### 33 **Further Assurance**

33.1 At any time upon the written request of the GLA the Grant Recipient:

33.1.1 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 the Grant Recipient hereby irrevocably appoints the GLA as its attorney solely for that purpose;

33.1.2 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.

### 34 **Entire agreement**

34.1 This Agreement and the conditions herein contained together with the Schedules and Annexes constitute the entire agreement between the parties and, subject always to Condition 4.7, may only be varied or modified in writing by deed.

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

### 35 **Severability**

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

### 36 **Cumulative rights and enforcement**

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

36.2 The parties acknowledge that money damages alone may not properly compensate the GLA for any breach of the Grant Recipient's obligations hereunder and the parties hereby expressly agree that in the event of the breach or threatened breach of any such obligation in addition to any other rights or remedies 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.

## 37 **Waiver**

- 37.1 The failure of any party at any one time to enforce any provision of this Agreement in no way affects its right thereafter to require complete performance by the other party, nor may the waiver of any breach or any provision be taken or held to be a waiver of any subsequent breach of any provision or be a waiver of the provision itself.
- 37.2 Where in this Agreement any obligation of a party is to be performed within a specified time that obligation shall be deemed to continue after that time if the party fails to comply with that obligation within the time.
- 37.3 Any waiver or release of any right or remedy of either party must be specifically granted in writing signed by that party and shall:
- 37.3.1 be confined to the specific circumstances in which it is given;
  - 37.3.2 not affect any other enforcement of the same or any other right; and
  - 37.3.3 (unless it is expressed to be irrevocable) be revocable at any time in writing.

## 38 **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 the Grant Recipient provided for in this Agreement remain to be discharged after the termination or expiry of this Agreement the provisions of this Agreement shall survive and remain in full force and effect notwithstanding such termination or expiry.
- 38.3 Without limitation the provisions of Conditions 2.6, 5.9 to 5.11, 8.2, 8.4 to 8.8, 9, 11, 13.1, 13.2, 14, 16 to 18 and 20 to 22, 32.5, 32.7, 37, 39 and this Condition 38 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, the Grant Recipient shall:
- 39.1.1 use all reasonable endeavours to ensure that none of its 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 none of its 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;
  - 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;

- 39.1.4 disseminate on behalf of the GLA to its employees engaged in the provision of the Works such perception questionnaires as the GLA may reasonably require from time to time and promptly collate and return to the GLA responses to such questionnaires; and
- 39.1.5 use all reasonable endeavours to co-operate and provide all reasonable assistance in monitoring the effect of the London Living Wage.

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 25 the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

## Schedule 1

### Representation and Warranties

#### 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 **Programme Deliverability**

- 2.1 No person having any Security over the property or any other assets of the Grant Recipient has enforced or given notice of its intention to enforce such security.
- 2.2 It has obtained or will by Practical Completion of a Firm Scheme 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 Programme Default 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 Grant Recipient's initial application for grant funding or in the course of the subsequent discussions was at the time of submission and as far as it was aware (or ought to have been aware) having made all reasonable and proper enquiries true, complete and accurate in all respects.
- 2.6 All data or other information submitted in IMS in respect of the Programme Offer and each Firm Scheme is accurate.
- 2.7 All data or other information supplied to the Regulator in connection with, or related to the Programme Offer is accurate (including, inter alia, details of any Permitted Conversions).
- 2.8 It has informed the GLA of any material change that has occurred since the date of submission of the Programme Offer 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.
- 2.9 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.
- 2.10 The Programme Offer comprises (subject to tolerance of one (1)) an equal number of Affordable Rent Dwellings let on:
- 2.10.1 Capped Rent terms; and
  - 2.10.2 Discounted Rent terms.
- 2.11 Save where expressly agreed by the GLA, no Firm Scheme which is a Section 106 Scheme is being subsidised by Conversion Capacity, Firm Scheme Grant, RCGF or DPF.
- 2.12 Save where expressly agreed by the GLA, all Affordable Dwellings and Permitted Conversions have been let or disposed of (as applicable) in accordance with the terms of the Programme Offer.
- 2.13 So far as the Grant Recipient is aware (having made all reasonable enquiries) the Programme Offer (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 Programme Offer.

### **3 Application of Programme Offer Capacity**

3.1 All financial capacity generated by the Grant Recipient through the terms of the Programme Offer is being and will be applied by the Grant Recipient to the delivery of new Affordable Housing supply under this Agreement.

### **4 Authority of Grant Recipient's Representative**

4.1 The Grant Recipient's Representative is empowered to act on behalf of the Grant Recipient for all purposes connected with this Agreement.

## Schedule 2

### Part 1

#### Development Costs

##### Heads of expenditure

##### 1 Acquisition

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

##### 2 Works

- 2.1 Main works contract costs (excluding any costs defined as on costs).
- 2.2 Major site development works (where applicable). These include piling, soil stabilisation, road/sewer construction, major demolition.
- 2.3 statutory agreements, associated bonds and party wall agreements (including all fees and charges directly attributable to such works) where applicable.
- 2.4 Additional costs associated with complying with archaeological works and party wall agreement awards (including all fees, charges and claims attributable to such works) where applicable.
- 2.5 Irrecoverable VAT on the above (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, Eco-Homes certification and Housing Quality Indicators.
- 3.6 In-house or external consultants' fees, disbursements and expenses (where the development contract is a design and build contract) (see note below).
- 3.7 Insurance premiums including building warranty and defects/liability insurance (except contract insurance included in works costs).
- 3.8 Contract performance bond premiums.
- 3.9 Borrowing administration charges (including associated legal and valuation fees).

- 3.10 An appropriate proportion of the Grant Recipient's development and administration costs.
- 3.11 Marketing costs – for sale schemes only.
- 3.12 Post-completion interest - for sale schemes only.
- 3.13 Irrecoverable VAT on the above.

**Note 1**

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

**Note 2**

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

Examples of these are as follows:

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

**Note 3**

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

## Schedule 2

### 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 Firm Scheme;
- 1.3 on estate offices, factories, letting offices;
- 1.4 on stores (other than external storage provision required by Design and Quality Standards);
- 1.5 on medical or dental surgeries, clinics;
- 1.6 on police stations, public libraries, bus shelters;
- 1.7 on shops, restaurants, public houses, offices;
- 1.8 on transformer and other related buildings;
- 1.9 on maintenance depots, tools, plant and vehicles;
- 1.10 on garages (other than integral garages on market purchase scheme types) and greenhouses;
- 1.11 on separate commercial laundry blocks and related equipment.

### Schedule 3

#### Grant Reconciliation Mechanism Illustration

##### Illustration 1

<b>Scheme [XYZ]</b>	<b>IMS information as at date of this Agreement</b>	<b>IMS information as at Firm Scheme Completion Date</b>
Total Scheme Costs	£20,000,000	£20,000,000
Total Grant	£2,000,000	£2,000,000
Initial Sales Receipts	£10,500,000	£12,500,000
Rental Stream Capacity	£7,250,000	£6,000,000
Other Contribution	£250,000	£250,000
Rent to Save Units	20	10
Shared Ownership Units	80	80
Equity Loan Units	-	10
Under Commitment	-	-
Over Commitment	-	(£750,000)

##### Illustration 2

<b>Scheme [XYZ]</b>	<b>IMS information as at date of this Agreement</b>	<b>IMS information as at Firm Scheme Completion Date</b>
Total Scheme Costs	£20,000,000	£20,000,000
Total Grant	£2,000,000	£2,000,000
Initial Sales Receipts	£10,500,000	£9,250,000
Rental Stream Capacity	£7,250,000	£8,000,000
Other Contribution	£250,000	£250,000
Rent to Save Units	20	30
Shared Ownership Units	80	70

<b>Equity Loan Units</b>	-	
<b>Under Commitment</b>	-	<b>£500,000</b>
<b>Over Commitment</b>	-	-

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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 )  
**[GRANT RECIPIENT]** )  
in the presence of: )

Authorised Officer