

To: The Chair and Members of the County Council's Cabinet

Supplement

Dear Member

CABINET – 23 JULY 2020

Further to the agenda for Cabinet on 23 July 2020, please find attached Agenda Item No 12 – Carlisle Southern Link Road - Housing Infrastructure Fund Grant Determination Agreement, which was marked 'to follow' on the agenda.

Please note Appendix 2 – Schedules and Annexures to Grant Determination Agreement *is enclosed for members only and is not for publication by virtue of Paragraph(s) 3 of Part I of Schedule 12A of the Local Government Act 1972, as this report contains exempt information relating to the financial or business affairs of any particular person (including the authority holding that information).*

Appendix 4 – Risk Report for Grant Determination Agreement *is also enclosed for members only and is not for publication by virtue of Paragraph(s) 5 of Part I of Schedule 12A of the Local Government Act 1972, as this report contains exempt information in respect of which a claim to legal professional privilege could be maintained in legal proceedings).*

Appendix 3 – Collaboration Agreement with Carlisle City Council is still marked to follow and I will send this on as soon as it becomes available.

Yours sincerely

JACKIE CURRIE
Professional Lead – Democratic Services

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Committee: Cabinet

Date of meeting: 23 July 2020

Title of Report: Carlisle Southern Link Road Housing Infrastructure Fund Grant Determination Agreement

Report by: Angela Jones, Executive Director - Economy and Infrastructure

Cabinet Member: Councillor Keith Little, Portfolio Holder for Highways and Transport

1. What is the Report About? (Executive Summary)

- 1.1 The report seeks approval for the Council to enter into a Grant Determination Agreement (GDA) with Homes England for £134m of grant funding from MHCLG's Housing Infrastructure Fund (HIF) and for the Council to commit to the delivery of the Carlisle Southern Link Road (CSLR). The CSLR is required to facilitate the development of 10,325 new homes at St Cuthbert's Garden Village (SCGV) to the south of Carlisle and will also play a vital role in supporting the economic recovery of Carlisle and Cumbria post COVID-19.
- 1.2 The GDA is a tripartite agreement between Homes England (on behalf of MHCLG), Cumbria County Council and Carlisle City Council. The terms and conditions of the GDA are summarised in this report and a copy of the final GDA is attached at Appendix 1 and 2. The principal terms and conditions of the GDA include:
 - a) £5m funding contribution towards the scheme costs from the County Council (agreed at Cabinet on 26 July 2018 and Council on 5 September 2018) and £5m funding contribution from Carlisle City Council.
 - b) Management and responsibility for delivery and any associated cost-over-runs will be the responsibility of the County Council.
 - c) Capital receipts from the sale of County Council land at Cummersdale will contribute to the Garden Village infrastructure costs (including CSLR if required).
 - d) A maximum HIF grant of £134m, will be provided towards a scheme cost of £144m, conditional on defrayal of HIF expenditure before 31 March 2024.
 - e) Acquisition of the land required to build the road, including a Compulsory Purchase Order
 - f) Preparation of a Housing Delivery Statement and Local Plan for SCGV by the City Council including an agreed approach with Homes England for land value capture to enable development of the Garden Village and 10,325 new homes by 2049.
 - g) Finalisation and agreement of certain GDA supporting documents with Homes England by the 11 September 2020.
 - h) The completion of a Collaboration Agreement with Carlisle City Council in relation to the respective roles and responsibilities. The draft Agreement is attached at Appendix 3.

2. Recommendation of the Executive Director

2.1 It is recommended that Cabinet agrees to:

- a) Enter a Grant Determination Agreement with Homes England to receive £134m of grant funding towards the scheme costs of the Carlisle Southern Link Road in line with the agreement attached at Appendix 1 and 2.
- b) Delegate authority to the Executive Director Economy and Infrastructure in consultation with the S151 Officer, Monitoring Officer, Leader, Deputy Leader and Portfolio Holder for Highways and Transport to approve any necessary, minor amendments to the Grant Determination Agreement prior to its completion and to provide to Homes England the supporting documents for the Schedules and Annexures by the 11 September 2020.
- c) Enter a “Collaboration Agreement” with Carlisle City Council prior to completion of the Grant Determination Agreement confirming its £5m funding contribution to the project.
- d) Delegate authority to the Executive Director Economy and Infrastructure in consultation with the S151 Officer, Monitoring Officer, Leader, Deputy Leader and Portfolio Holder for Highways and Transport to approve any amendments to the draft “Collaboration Agreement” attached at Appendix 3.

3. Background to the Proposals

- 3.1 Cumbria has ambitious plans for economic growth as set out in the LEP’s Local Industrial Strategy. Following the global COVID-19 pandemic, CSLR will play a vital role in the economic recovery of the county. However, the biggest economic challenge for the county is addressing the current decline in the working age population. In this regard, St Cuthbert’s Garden Village is the single most important project for Cumbria due to its ability to support growth in the local population and thereby contribute to reversing the declining working age population.
- 3.2 The Carlisle District Local Plan seeks to deliver a step change in the character and perception of Carlisle with an ambitious approach to housing delivery. St Cuthbert’s Garden Village is central to this approach and to increasing the working age population. The Garden Village provides a long term growth site for Carlisle for delivery of 10,325 new homes over the next 20-30 years.
- 3.3 To facilitate this level of growth, a major infrastructure upgrade is essential. The proposed CSLR will provide a high quality link between Junction 42 on the M6 and the A595 connecting to the Carlisle Northern Development Route and thereby completing an outer ring road for Carlisle. This road is critical in unlocking the development of the Garden Village proposals; providing highway capacity and access to support the delivery of St Cuthbert’s Garden Village and wider strategic connectivity from the M6 to the A595 and a more resilient network within the wider Carlisle highway network.

Housing Infrastructure Fund (HIF)

- 3.4 In 2017 the Government launched MHCLG's £5bn Housing Infrastructure Fund (HIF). This fund is intended to support the delivery of significant housing growth and included separate funds, the Marginal Viability Fund for schemes up to £20m in value and the Forward Fund for schemes up to £250m in value. In September 2017, and with the support of Carlisle City Council, a Forward Fund Expression of Interest for the CSLR was submitted to the Government. In two tier local government environments, the Government required that applications to the Forward Fund are made by the upper tier authority.
- 3.5 In March 2018, the Council was advised that the Expression of Interest had been prioritised and was invited to submit a full application. The Council's application was submitted in September 2018 requesting £102m for the delivery of the CSLR supported by a further £10m of developer contributions forward funded by both Cumbria County Council and Carlisle City Council (at £5m each). Following an intensive due diligence process by Homes England in February 2019 it was announced that the HIF application was successful. In April 2019 a letter confirming the award of the grant was received.
- 3.6 There has been an extended period of negotiation on the GDA for CSLR reflecting the scale and complexity of the project. A key part of the negotiation with Homes England has related to the project cost. Following the announcement of the HIF award, the County Council continued to progress the project development work. This led to the submission of the planning application for CSLR in October 2019. In parallel to the submission of the planning application, a cost validation review of the scheme was undertaken and this identified an estimated scheme cost of £136.7m, forecasting a funding short-fall of £24.7m.
- 3.7 As part of the negotiations with Homes England on the GDA, there has been discussion in relation to the impacts of Covid-19 on the scheme delivery timescales as well as options for accelerating delivery to support economic recovery. The initial proposal was to extend the HIF Expenditure date from March 2024 to March 2025. However, in order to support fiscal stimulus, the Council was asked to put forward a proposal that would ensure delivery for March 2024. On 9 June 2020, a 'fast-track' proposal was submitted to Homes England for an additional £32m to cover the funding shortfall (£24.7m) and to accelerate delivery (£7.3m). The benefit of the 'fast-track' proposal for Government is that it removes the uncertainty associated with the previously identified funding shortfall and provides the confidence and commitment for scheme delivery with the associated benefits it will deliver, alongside an accelerated programme that would see all HIF Expenditure completed by the end of March 2024 and practical completion of the road by 31 May 2024.
- 3.8 Confirmation of £32m additional funding was received on 13 July 2020, increasing the grant funding from £102m to £134m. This is subject to contracting of the GDA being complete by 31 July 2020. Recognising that the additional funding was not approved until the 13 July 2020, the GDA contract (Clause 2.5) allows for the finalisation and agreement of certain GDA supporting documents (to be included within the GDA Schedules and Annexures) with Homes England by 11 September 2020.

- 3.9 Although the CSLR is a transport scheme, the HIF grant is being provided on the basis that the CSLR unlocks the housing delivery. In a two-tier area this requires the involvement of both tiers of local government reflecting the different statutory responsibilities. The HIF GDA and the 'Collaboration Agreement' at Appendix 1 and 2 respectively, reflect the outcome of the negotiations with Homes England and the joint working with the City Council who are leading on SCGV.

HIF Grant Determination Agreement (GDA)

- 3.10 The GDA is a tripartite agreement between Homes England (on behalf of MHCLG), Cumbria County Council and Carlisle City Council.
- 3.11 Homes England is providing the HIF grant to unlock the delivery of the 10,325 new homes in the Garden Village. In doing so, the GDA includes various conditions relating to the County Council's responsibilities in relation to the delivery of CSLR as well as conditions that provide assurance for enabling and reporting on housing delivery. The GDA (attached at Appendix 1 and 2) includes the mechanisms through which funding is to be provided for delivery of the CSLR. The key terms and conditions in the GDA are summarised in paragraphs 3.12 to 3.27 below.
- 3.12 **Maximum Sum** – The HIF grant is a Maximum Sum of £134m that has to be spent by the end of March 2024. Homes England has a wide discretion to reduce the Maximum Sum. This includes reducing the Maximum Sum in the event of changes to the Infrastructure Details, Infrastructure Works or Housing Outputs. It can also be reduced if additional income or other sources of financial assistance are provided in relation to the delivery of the CSLR. This is intended to avoid double-funding of the Homes England investment.
- 3.13 Any reduction of the Maximum Sum could result in the County Council having insufficient funding to complete the construction of the CSLR or being required to fund the shortfall from other sources. However, this risk of funding being reduced as a result of changes to the scheme can be mitigated by maintaining regular and comprehensive communications with Homes England delivery team, but also specifically to ensure that any changes to the infrastructure details that are approved will not create a financial risk to the Council.
- 3.14 **Expenditure Date** – The HIF funding is required to be spent by a longstop date of 31 March 2024. As a result of COVID-19 (or other unforeseen events), there is inherent risk in meeting the longstop date. The current programme and expenditure profile forecasts that the HIF grant will have been defrayed by March 2024. Although this is practically achievable, the programme is tight and any unforeseen events could delay forecast expenditure. The longstop date of 31 March 2024 creates the risk that the funding for CSLR would not be available to draw-down in the event that the full grant expenditure is not achieved by 31 March 2024. There are provisions within the GDA to agree a Remediation Plan in the event of a delay to the project, however there is no contractual mechanism for the availability period for HIF expenditure to be extended.

- 3.15 **Milestones** – The GDA allows for a sequenced approach to the release of HIF grant based on a series of Milestones. Grant claims will be submitted to Homes England with evidence of defrayed expenditure and reporting of achievement of the specified Milestones. Grant claims are to be submitted with the approval of the S151 Officer. The expectation is that the County Council and City Council will achieve the Milestones as set out in the GDA. If Milestones are not achieved as set out in the GDA, Homes England can withhold the payment of a grant claim. However, there is provision to agree a Milestone Extension and a Remediation Plan can be proposed to Homes England, which is required to consider the Remediation Plan in good faith with a view to securing the delivery of the scheme.
- 3.16 **Milestone Dates** – The key Milestones are identified in Schedule 1 and Schedule 6 of the GDA. There is a risk register that is maintained for the project as part of the standard project management practice for delivery of the CSLR milestones. This risk register has been disclosed to Homes England and future iterations will form part of the regular reporting on project progress and delivery. As the project remains at a relatively early stage with the appointment of the design and build contractor and the CPO process not yet concluded, the delivery programme has to be approached with a degree of caution, recognising that the accuracy of delivery dates will increase over time. In particular the response of the construction market to the tender process will be key to firming delivery dates.
- 3.17 The County Council is responsible for the Milestones that relate to the CSLR and the City Council is responsible for the Milestones that relate to SCGV. The Collaboration Agreement at Appendix 3 acknowledges the City Council’s responsibilities in relation to their Milestone Dates. The key milestones are summarised below:
- Planning determination for CSLR granted – 30 September 2020
 - SCGV Masterplan finalised – 30 November 2020
 - SPD for SCGV adopted – 30 April 2021
 - Evidence of CPO Strategy for CSLR – 30 August 2021
 - Public Inquiries for CSLR are complete – 30 August 2021
 - Final Housing Delivery Statement for SCGV – 30 September 2021
 - All land acquired for CSLR – 31 March 2022
 - Contractual award for the CSLR works – 31 March 2022
 - SCGV Local Plan adopted – 31 July 2022
- 3.18 **Cost Over-Run** – In entering the GDA, the Council will be responsible for the management of the cost over-run risk. A Cost Overrun Strategy (referred to as the Management Plan) is included in the GDA that sets out how this risk will be managed through effective cost management of the project. The proposed contract for the works will include a gain/pain share incentive to reduce the risk of cost over-run but will not eliminate the risk of a cost over-run. The GDA also includes provision for use of ‘Recovery Proceeds’ to contribute to CSLR cost over-runs if required and this is reflected in the Cost Overrun Strategy. Further detail on Recovery Proceeds is provided in 3.20 below.
- 3.19 **Housing Delivery** – The City Council will be responsible for the on-going monitoring and reporting on the delivery of 10,325 new homes completions up to 2049. Whilst there is no binding obligation to deliver the forecast housing outputs, a Housing Delivery Statement needs to be prepared and approved by Homes

England. The Housing Delivery Statement is an important obligation in the GDA as this will provide the assurance to Homes England that the housing outputs can be delivered. A key aspect of this is the approach that will be adopted by the City Council for land value capture and recovery of proceeds to fund the infrastructure for SCGV. An outline Housing Delivery Statement is attached to the GDA with the final document required by 30 September 2021.

3.20 The final Housing Delivery Statement will detail all aspects of delivery for SCGV including the planning policy framework and proposed delivery model, informed by detailed assessments of the infrastructure requirements, viability, funding, land ownership etc. Given the importance of housing delivery to Homes England, there is a risk of delay to achievement of this Milestone if the Housing Delivery Statement does not provide the necessary assurance on housing delivery. As highlighted above, the GDA includes provision to agree a Milestone Extension in the event of a delay. The delivery and achievement of this Milestone is the responsibility of the City Council and this is reflected in the Collaboration Agreement with the City Council.

3.21 **Recovery Proceeds** – Aligned to the Housing Delivery Statement, Homes England requires that all Recovery Proceeds are reinvested in the delivery of SCGV as well as contributing to any CSLR funding short-fall. Recovery Proceeds includes local authority land receipts, developer contributions and the capture of any other form of land value uplift. The £10m of forward funding contributions from the City Council and County Council would be repaid from the Recovery Proceeds following recovery of Homes England’s £134m investment in SCGV. The timing on the repayment of £10m will be linked to the Housing Delivery Statement and the overall viability of SCGV. There is therefore a risk that the County Council’s £5m will not be recovered. The Recovery Strategy states that:

Both Councils have committed £5m as forward funding to CSLR on the basis that this will be repaid from future developer contributions made towards the necessary transport infrastructure that will be required by the Garden Village. Both Councils have secured their internal funding approvals for the respective contributions on this basis.

3.22 **Land Receipts** – Recovery Proceeds includes capital receipts from local authority land assets within the Garden Village boundary that are to be contributed to the infrastructure costs of the Garden Village (including CSLR). This would include the capital receipts from the sale of the County Council land at Cummersdale to be invested in the infrastructure costs of the Garden Village (including CSLR). The land is estimated to have a residential value of £3.6m and in entering this GDA, the Council is agreeing to forego this receipt and to reinvest it in CSLR and / or SCGV infrastructure.

3.23 **Events of Default** – The GDA includes two types of default; ‘Fundamental Default’ and ‘General Default’. Although, there is provision for claw-back, in the event that either Council defaults on the terms and conditions of the GDA, this only applies to ‘Fundamental Defaults’ and there is no claw-back in relation to ‘General Defaults’. It should be noted that, unlike the position with General Defaults (see below paragraph), there is no contractual opportunity to remedy Fundamental Defaults.

- 3.24 **Fundamental Defaults** – In the event of a fundamental default the full value of any grant paid to the Council can be clawed back by Homes England. This could be triggered by the Council doing any act which Homes England thinks could cause it or the funding programme adverse reputation or bring it into disrepute. Homes England has to act reasonably in deciding whether or not a fundamental default has occurred. A fundamental default includes:
- a) *where a report or direction is made against the Council;*
 - b) *where a prohibited act under the Bribery Act (or similar) is committed by either Council, the developer or subcontractor; or*
 - c) *where something is done which in Homes England opinion causes it adverse reputation by either Council, the developer or contractor/ subcontractor including any employees.*
- 3.25 **General Defaults** – Although there is no claw-back in relation to General Defaults, there is provision for the HIF grant to be withheld and no further payments made. The triggers for a General Default are wide ranging and include failure to perform any obligation within the GDA, and specifically the failure to achieve a Milestone. Whilst there is provision to agree a Remediation Plan in such an event, Homes England is not required to extend the Milestone beyond the date which is 6 months after the original Milestone. During the period of agreeing a Milestone Extension the release of any further grant payments could be withheld. Although Homes England could agree a Milestone Extension, this could impact on the Council's ability to achieve HIF expenditure by the longstop date, potentially resulting in a reduction to the Maximum Sum.
- 3.26 **Land Assembly** – By entering the GDA, the Council is agreeing to progress the land assembly for construction of the road, including a Compulsory Purchase Order. A separate report will be made to Cabinet in relation to the commitment to undertake a CPO. However, there is a risk that the land required to build the CSLR cannot be acquired caused by a failed CPO resulting in the CSLR construction not being able to be completed. Landowner discussions are underway with a view to being able to acquire by private agreement the necessary land, and the CPO will only be required if all the necessary land cannot be assembled in this way. If there are delays with the CPO and the land is not assembled in time, the Council will have the option to agree a Milestone Extension with Homes England.
- 3.27 **Collaboration Agreement** – The GDA refers to a “Collaboration Agreement” between the County Council and the City Council that is to be completed before the GDA is completed. The draft Collaboration Agreement is provided as Appendix 3 to this report. The key points are:
- a) Confirm the role of Cumbria County Council and Carlisle City Council in leading the CSLR and SCGV projects respectively
 - b) Confirm the City Council's £5m contribution to the County Council during 2022/23
 - c) Provide an obligation on Carlisle City Council to recover the £10m of up-front funding by the Councils through developer contributions as part of the Housing Delivery Statement
 - d) Sets out the role of Carlisle City Council in discharging conditions and milestones relating to SCGV within the GDA and includes specific reference to their responsibilities in relation to the Housing Delivery Statement.

- e) Requires Carlisle City Council to monitor housing completions as required within the GDA
- f) The City Council accepts responsibility for any cost over-runs or funding short-falls arising as result of their responsibilities in relation to the GDA

4. Options Considered and Risks Identified

Option (a) – Agree Recommendations

- 4.1 This option will allow the GDA to be completed and the development and delivery of CSLR to proceed. There are a number of terms and conditions associated with entering the GDA, as outlined in paragraphs 3.12 to 3.27 above, which should be taken into account in making the decision to enter the GDA. Whilst the GDA contains a number of obligations, the principal risk to the Council in entering the GDA is a financial risk. The financial implications of the GDA are detailed further in Section 6 of this report and include:
- Level of funding
 - Project expenditure delay
 - Responsibility for cost over-runs
 - Potential for claw-back
- 4.2 Recognising the financial risks posed by the GDA, the Council will take a proactive approach in the management of the project working closely with Homes England and Carlisle City Council to minimise the likelihood of the financial risks materialising.

Option (b) – Do not Agree Recommendations

- 4.3 In this option, Cabinet could decide not to agree with the recommendations and not progress any further with the CSLR. The consequence of this would be that the project spend to date would need to revert from capital to revenue expenditure. The expenditure to date incurred by the Council is £4.373m (to 31st March 2020) and £4.450m (to 30th June 2020) against the £5.640m CSLR capital budget. Some of this expenditure £0.587m relates to the purchase of land and buildings, which may remain as capital expenditure, but the remainder would be determined as 'sunk costs' and would have to be written back and charged to the revenue budget and be funded from revenue reserves. This would require the Provisional Accounts for 2019/20 to be amended in respect of expenditure incurred to 31st March 2020. Expenditure from 1st April 2020 would be met from the 2020/21 revenue budget.
- 4.4 Furthermore, as a result of not proceeding with the GDA, the county would have lost the opportunity to secure investment into infrastructure to support economic growth. The delivery of the CSLR has large economic growth benefits for Cumbria in terms of housing delivery through the unlocking of St Cuthbert's Garden Village, but it will also deliver improved east-west connectivity, particularly to West Cumbria. The impact on planned housing growth if the project does not proceed would be detrimental, as CSLR is essential to unlocking St Cuthbert's Garden Village, as the existing road network cannot support the 10,325 housing target. Without CSLR it would only be possible to deliver approximately 1,500 houses. A decision not to enter the GDA would therefore have significant consequences for the Council's reputation with Government and

other stakeholders undermining the Council's credibility and ability to secure funding for other schemes in the county.

5. Reasons for the recommendation/Key benefits

5.1 The HIF investment will deliver significant capital investment and fiscal stimulus into the local and national economy creating construction jobs and associated supply chain benefits in the local economy to support the economic recovery. Longer term this project is seen as critical to supporting the levelling-up agenda through unlocking housing growth with over 10,000 new homes in St Cuthbert's Garden Village. This project is vital to Carlisle, Cumbria and the Borderlands, in being able to grow our population and reverse the trend of declining working age population.

5.2 The process for developing the GDA has included a prolonged period of negotiation with Homes England resulting in the best possible outcome for the Council being achieved. Whilst there remain a number of risks with the project, it is recommended that the Council enters the GDA in recognition of the following benefits:

- It will secure the £134m of external funding investment that has been allocated from the Government's HIF programme
- The funding supports the delivery of the CSLR and thus enables the delivery of SCGV to help Carlisle and Cumbria to increase the working age population
- The road will improve strategic east-west connectivity in and around Carlisle and improve the infrastructure capacity to support the economic growth of Carlisle

5.3 As outlined above, the GDA includes a number of risks that need to be balanced against the longer term benefits. The GDA places onerous obligations on the Council to ensure delivery in order to achieve value for money for the HIF investment. However, the GDA also includes provision for regular reporting and monitoring of project delivery and it is understood that Homes England will work collaboratively with the Councils to ensure the project can be delivered successfully. It is this partnership approach that will be critical to the management of the financial risks associated with the GDA.

6. Financial – What Resources will be needed and how will it be Funded?

6.1 The recommendation of this report is for Cabinet to agree to enter into a Grant Determination Agreement (GDA) with Homes England to receive £134m of Housing Infrastructure Funding (HIF) towards the construction of the Carlisle Southern Link Road (CSLR). To not proceed further with the scheme, costs incurred to date funded from the capital budget would be determined as 'sunk costs' and would need to be funded from revenue sources. This is explained in paragraph 4.3.

6.2 In agreeing to enter the GDA, the Council will be making the following financial commitments:

- a) A forward funding contribution of £5m towards the scheme costs. Repayment of this funding would be from future developer contributions subject to viability

of the SCGV. This will be detailed in the Housing Delivery Statement that is to be completed by September 2021. There is a risk that this forward funding contribution is not recovered.

- b) Agreement to forego a capital receipt from sale of Council owned land at Cummersdale (estimated to be £3.6m) and for reinvestment of the receipt in the infrastructure costs associated with SCGV and/or CSLR (if required).
- c) Responsibility for the management of cost over-run risk.

6.3 In return for the above commitments, the Council will secure £134m of HIF investment to support delivery of a nationally significant project through entering the GDA. However, this investment comes with a number of terms and conditions with associated financial implications and risks.

6.4 **Level of funding** – Homes England has the discretion to reduce the value of the grant of £134m. Paragraph 3.12 sets out the mitigation strategy in respect of this risk to the Maximum Sum. To avoid double-funding, the Maximum Sum could be reduced if income is provided from alternative sources in relation to the infrastructure works. There is provision elsewhere in the GDA that allows for any income from Recovery Proceeds to cover any additional costs for CSLR over and above the forecast scheme cost of £144m and would mitigate this risk in relation to a reduction of the Maximum Sum.

6.5 **Project expenditure delay** - Should the Council progress with the project, the GDA requires that the Council must spend the full £134m provided by Homes England by 31 March 2024. Current assumptions are that the Council will have spent the full £134m by 31 March 2024. If this spend date cannot be achieved, this failure also risks there being a 'general' default. The completion of construction of the road can follow and is planned by the end of May 2024. However, if there are significant delays and the HIF funding is not defrayed before 31 March 2024 this creates the risk that the Council would only be able to claim the expenditure incurred up to that point. There are provisions within the GDA to agree a 'remediation plan' in the event of a delay to the project, however there is no guarantee the availability period for HIF expenditure will be extended beyond March 2024. There are also mitigations to be reflected in the construction contract, with the opportunity to build in 'delay damages' for project delivery overruns to help mitigate the risk of delay in completion.

6.6 **Responsibility for cost over-runs** – In entering the GDA, the Council will be responsible for all cost over-runs. The scheme cost estimate will not be confirmed until October 2021 when tender returns from the contractors and further detailed design work have been undertaken, therefore there will remain a cost risk for the construction contract. If a cost over-run materialises the Council will need to fund any shortfall, this however, cannot be quantified at this stage. The proposed approach for management of this cost risk is set out in the Cost Over-run Strategy provided to Homes England as a Pre Commencement Condition.

6.7 **Potential for claw-back** – Paragraph 3.23 explains that there are fundamental default provisions in the GDA. Where a 'Fundamental Default' is established, Homes England can not only reduce the Maximum Sum available to the Council but can also clawback monies already paid. If claw-back was invoked monies would need to be found from Council resources.

- 6.8 The above financial risks have to be considered in the context of the Council's current financial position. The following should be noted in relation to the availability of funding within current budgets:
- a) Currently the revenue budget dedicated to highways maintenance is £26.026m with £6.065m within Local Committee budgets and £19.961m within the Economy and Infrastructure Directorate budget (principally CNDR £13.9m and Winter Maintenance £3.9m).
 - b) The highways capital budget is funded from the DFT Integrated Transport Block and Highways Maintenance Block (needs and incentive elements) grant of £28.875m and specific contributions and grants for specific highways improvements. These specific sources of funding are ring-fenced. DFT grant is related to annual performance assessment and is subject to annual approval by DFT.
 - c) The Medium Term Financial Plan (2020-2025) agreed in February 2020 set out a cumulative Revenue Budget gap for the financial year of £34.5m compared to the balanced budget set for 2020/21. This was based on a set of assumptions, principal amongst these being that the Fair Funding Review of local government finance would be implemented from 1st April 2021 and that it would result in no less core funding for Council services from various government grants and the share of locally generated business rates than in 2020/21. The Fair Funding Review has been paused in the light of COVID-19 and the government has indicated further detail will follow, expected in the autumn.
- 6.9 Upon entering the GDA, the Council will be able to make an immediate claim to draw-down the expenditure incurred to date. This will enable the Council to claim up to £4.8m of expenditure from Homes England payable on completion of the GDA on 31 July 2020. However, this funding will need to be reinvested, as part of the Council's £5m contribution to the scheme, which will be spent after the HIF funding has been fully spent.
- 6.10 Should Cabinet agree to the recommendations of this report, and the road be constructed, maintenance of the route would be the responsibility of the Council. For illustrative purposes, the consequential estimated increase to the DFT capital grant, given current formula would be in the region of £75k per annum. Annual revenue maintenance requirements of the road would be confirmed as part of scheme design, an initial estimated maintenance cost based on road length would be £40k per annum. The construction of new homes should increase the overall net Council tax base of the county and result in additional Council tax revenues to fund Council services. The delivery of homes is a long term activity, with new home completions projected up to 2049.
- 6.11 In conclusion, agreeing the GDA carries financial implications and risks. The report sets out the opportunities for economic regeneration as a result of the provision of the CSLR and the associated development of the Garden village. The approach to mitigating the key risks associated with the project are set out elsewhere. As with all significant infrastructure projects, CSLR presents both upside and downside risks.

7. Legal Aspects – What needs to be considered?

- 7.1 The legal considerations associated with entering into the GDA are set out in detail above and in the Risk Report included at Appendix 4. By agreeing to the recommendation, Cabinet is giving authority to the Executive Director – Economy & Infrastructure to enter into the GDA with the associated benefits and risks as set out above, along with the discretion to negotiate the final form of the GDA. Such negotiations will not change over-arching principles, but key dates, amongst other things, may change.
- 7.2 It is noted above that Homes England has a wide discretion to reduce the Maximum Sum available for HIF grant of £134m. Any reduction of the Maximum Sum is likely to result in the County Council having insufficient funding to complete the construction of the CSLR or being required to fund the shortfall from other sources. Some mitigations are set out above but Cabinet should be aware that this wide discretion to reduce the maximum sum payable means a reduction could be imposed simply because of a change in government policy towards HIF. However, the most obvious risk in respect of reduction of the Maximum Sum is around the failure to complete the construction of the CSLR by 31 May 2024. Members may consider it unlikely in practice that Government would reduce the funding available for an almost complete CSLR. It is important though that Members are clear that Homes England could, contractually, reduce the Maximum Sum even at a late stage in construction. Whilst this is by no means an unusual clause in such agreements, Members will need to be take this risk into account if it takes the recommended decision.
- 7.3 Similarly, the Fundamental Default provisions are cast widely and it is arguable that a number of eventualities, especially around delay to the project, could give rise to a Fundamental Default. Where a Fundamental Default is established, Homes England can not only reduce the Maximum Sum available to the Council but also clawback monies already paid. Again, Members may consider it unlikely that Government would make use of such contractual mechanisms and mitigations to such risks are set out above. Also, the Council would argue that such draconian measures should only be used in respect of commensurate events. It is important though that Members are clear that this risk is to be taken into account if it takes the recommended decision. For the avoidance of doubt, it is unlikely that these risks can be deferred to other parties involved in the CSLR project.
- 7.4 Cabinet is authorised to approve receipt of external grant funding (paragraph 2.1(f) of the Part 2B of the Constitution) and can therefore delegate that authority to enter into the Grant Funding Agreement on the basis set out in the recommendation.

8. Health & Safety Implications

- 8.1 The Council has a responsibility under the Health & Safety at Work Act 1974 to ensure, as far as is reasonably practicable, that adequate health and safety provisions are in place. In addition the development of the design and planning of the project will be undertaken in accordance with the “Construction Design and Management Regulations 2015”.

8.2 If approved by Cabinet, the County Council will take responsibility for the construction of Carlisle Southern Link Road and the associated construction deliverables outlined in the report. The County Council will therefore also need to work with Carlisle City Council and construction contractors to ensure that adequate health and safety provisions are in place throughout the project.

9. Council Plan Priority – How do the Proposals Contribute to the Delivery of the Council’s Stated Outcomes?

9.1 Delivery of the CSLR will have an important role in supporting the delivery of the Council Plan objectives:

- The economy in Cumbria is growing and benefits everyone – The CSLR will unlock the St Cuthbert’s Garden Village and improve east west connectivity therefore promoting economic growth in West Cumbria.
- Places in Cumbria are well-connected and thriving – The CSLR will improve east west connectivity and promote thriving communities and businesses.
- People in Cumbria are healthy and safe – The CSLR will promote healthy travel choices including walking and cycling provision along its entire length with links into existing cycling and walking networks.

10. What is the Impact of the Decision on Health Inequalities and Equality and Diversity Issues?

10.1 The CSLR scheme development included a statutory 12 week period of public consultation and the outcomes of this has influenced the development of the scheme. The planning application that was submitted in October 2019 for CSLR included an Environmental Statement that included a Health Considerations Summary Report as a supporting document.

Appendices and Background Documents

Appendix 1 – Grant Determination Agreement (enclosed)

Appendix 2 – Schedules and Annexures to Grant Determination Agreement (**copy enclosed for members only**) –**Not for publication by virtue of Paragraph(s) 3 of Part I of Schedule 12A of the Local Government Act 1972, as this report contains exempt information relating to the financial or business affairs of any particular person (including the authority holding that information)**

Appendix 3 – Collaboration Agreement with Carlisle City Council (copy to follow)

Appendix 4 – Risk Report for Grant Determination Agreement (**copy enclosed for members only**) –**Not for publication by virtue of Paragraph(s) 5 of Part I of Schedule 12A of the Local Government Act 1972, as this report contains exempt information in respect of which a claim to legal professional privilege could be maintained in legal proceedings)**

Key Facts

Electoral Division(s): Wetheral, Dalston and Burgh

Executive Decision	Key Decision Included in Forward Plan	Exempt from call-in	Exemption agreed by scrutiny chair	Considered by scrutiny, if so detail below	Environmental or sustainability assessment undertaken?	Equality impact assessment undertaken?
Yes	Yes	Yes	No	No	No	No

Approved by the relevant Cabinet Member/s

Draft Cabinet report shared and discussed with Lead Members on 15 July and 20 July 2020.

Previous relevant Council or Executive decisions

CSLR Preferred Route Decision, Cabinet, 21 June 2018.

CSLR Submission of the Outline Business Case to the Housing Infrastructure Fund, Cabinet 26 July 2018.

CSLR Inclusion of CCC £5m contribution into the Capital Programme, Council 5 September 2019.

Consideration by Overview & Scrutiny

N/A

Background Papers

None

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Housing Infrastructure Grant Determination Agreement (Forward Funding)

dated

2020

Parties

- (1) **Homes England** (the trading name of Homes and Communities Agency), a body corporate under Section 1 of the Housing and Regeneration Act 2008 of One Friargate, Coventry CV1 2GN (including any statutory successor) (**Homes England**);
- (2) **Cumbria County Council** of Cumbria House, 117 Botchergate, Carlisle, CA1 1RD (the **Grant Recipient**); and
- (3) **The Council of the City of Carlisle** of Civic Centre, Rickergate, Carlisle CA3 8QG (the **Recovery Beneficiary**).

Introduction

- (A) Homes England is empowered under Section 19 of the HRA 2008 to make the HIF Funding available.
- (B) The HIF Funding provided under this Agreement is (at its date) made in compliance with the requirements set out in the European Commission's Decision of 20 December 2011 concerning public service compensation granted for Services of General Economic Interest (2012/21/EU).
- (C) Homes England entrusts the Grant Recipient with a public service obligation to carry out the Infrastructure Works as contemplated by this Agreement which may support and facilitate the provision of affordable homes in England for persons failed by market housing.
- (D) The Grant Recipient has submitted proposals to Homes England in respect of the proposed construction and/or delivery of the Infrastructure Works and the Recovery Beneficiary has submitted proposals in respect of the Housing Outputs and Homes England has agreed in principle to make HIF Funding available on terms which are in part set out in the Assurance Framework.
- (E) It is a condition precedent to Homes England to the provision of HIF Funding to the Grant Recipient that the Grant Recipient and Recovery Beneficiary enter into certain agreements which secure, amongst other things:
 - a. the delivery by the Grant Recipient of the Infrastructure Works;
 - b. the facilitation by the Recovery Beneficiary of the Housing Outputs; and
 - c. their wider respective roles and responsibilities to facilitate or contribute to the delivery of infrastructure and/or the future use of the various sites to facilitate an increase in the level of housing in Carlisle.

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- (F) This Agreement sets out the terms and conditions upon which specific amounts of HIF Funding will be advanced to the Grant Recipient by Homes England in relation to the outputs and interventions set out in this Agreement.

Agreed terms

1 **Definitions**

- 1.1 In this Agreement (including in the Introduction and Schedules) the following words and expressions have the following meanings:

Actual Infrastructure Expenditure means the Infrastructure Expenditure actually incurred by the Grant Recipient in delivering the Infrastructure Works;

Annual Forecast means a written forecast (in a form satisfactory to Homes England) provided by the Grant Recipient in respect of its projected delivery of the Infrastructure Works for the Financial Year in which it is supplied;

Annual Review Meeting means a Review Meeting held within the first Quarter in each Financial Year which is to occur after the Grant Recipient has provided the Annual Forecast for that Financial Year to Homes England;

Associated Person means in relation to the Grant Recipient, a person who performs or has performed services for or on the Grant Recipient's behalf;

Assurance Framework means the "Assurance Framework for the Housing Infrastructure Fund – Forward Funding" dated 24 September 2019 and appended at Annexure 6;

Availability Period means the period from the date of this Agreement until 31 March 2024 unless otherwise brought to an end pursuant to clause 2;

Balancing Sum means such sum as represents the amount by which the Public Sector Contribution exceeds the Actual Infrastructure Expenditure incurred by the Grant Recipient;

Base Interest Rate means the base rate of The Royal Bank of Scotland plc or such other rate as Homes England determines (acting reasonably);

Base Value means:

- (a) in relation to any part of the Site which is owned by the Grant Recipient or the Recovery Beneficiary as at the date of this Agreement, its Market Value (on the assumption that such land is valued according to its Existing Use Value) as set out in the Valuation delivered to Homes England by no later than the relevant Milestone Date; or
- (b) in relation to any part of the Site which is to be acquired by the Grant Recipient or the Recovery Beneficiary after the date of this Agreement, an amount equal to the lower of:

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- i the purchase price payable by the Grant Recipient or the Recovery Beneficiary as at the date of the relevant acquisition; or
- ii 120% of its Market Value as at the date of the relevant acquisition;

Best Practice has the meaning ascribed to it in clause 17.8;

Bid means, the submission by the Grant Recipient of its proposal for the delivery of the Infrastructure Works and the delivery or facilitation of the Housing Outputs as more fully set out in:

- (a) the Expression of Interest submitted by the Grant Recipient to Homes England on 27 September 2017 ref HIF/FF/000156;
- (b) the Business Case Submission submitted by the Grant Recipient to Homes England on 22 October 2018 ref HIF/FF/000156/BC/01;
- (c) the MHCLG Confirmation of Award Letter dated 15 February 2019 (from Simon Ridley to Katherine Fairclough); and
- (d) the MHCLG Conditions Letter dated 4 April 2019 (from John McManus to Michael Barry);

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

CDM Regulations means the Construction (Design and Management) Regulations 2015;

CEDR means the Centre for Effective Dispute Resolution;

Certificate of Title means a certificate of title in relation to each Infrastructure Site in the form annexed at Annexure 7 (as such form may be updated by Homes England and notified to the Grant Recipient from time to time);

Claim means an application for drawdown of an instalment of HIF Funding;

Claim Form means a claim form substantially in the form of Schedule 3 or such other form as Homes England will notify the Grant Recipient from time to time;

Collateral Warranties means each collateral warranty in favour of Homes England from a Contractor or any member of the Professional Team (as required by Homes England) in a form satisfactory to Homes England;

Community Proceeds means the amount of all payments received by the Grant Recipient or the Recovery Beneficiary:

- (a) by way of community infrastructure levy,
- (b) by way of Section 106 contributions;
- (c) from the Developer; or

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- (d) other contributions,

in each case to the extent the same are received by the Grant Recipient or the Recovery Beneficiary in relation to the Site and only to the extent the terms of such payment to the Grant Recipient and/or the Recovery Beneficiary permit their application in accordance with Clause 4.6;

Competent Authority means (as the case may be):

- (e) the EU Competent Authorities during such time as the United Kingdom remains a Member State of the European Union or it is otherwise bound to comply with such European Union treaty obligations regulations or other instruments concerning State Aid; or
- (f) the English Competent Authorities if the United Kingdom ceases to be a Member State of the European Union and it is not otherwise bound to comply with such European Union treaty obligations regulations or other instruments concerning State Aid;

Confidential Information means in respect of Homes England all information relating to Homes England or the existence or terms of this Agreement in respect of which the Grant Recipient becomes aware in its capacity as a party to the HIF Documents or which is received by the Grant Recipient in relation to this Agreement or any HIF Document from either Homes England or any of its advisers or from any third party if the information was obtained by that third party directly or indirectly from Homes England or any of its advisors in whatever form in either case (including information given orally and any document electronic file or other means of recording or representing information which includes derives or is copied from such information) and in the case of the Grant Recipient means such specific information as the Grant Recipient shall have identified to Homes England prior to the date hereof as confidential information for the purposes of this Agreement;

Consents means and includes any necessary approval, authorisation, consent, exemption, licence, permit, permission or registration by, of or from any governmental or other authority, the local planning authority, landlord, funder, adjoining land owner or any other person required to undertake the Infrastructure Works;

Contract means each contract entered into or to be entered into by the Grant Recipient or an Infrastructure Developer with a Contractor or Contractors for or in relation to the delivery of any part of the Infrastructure Works;

Contractor means, as the case may be, each contractor or other party (however described) engaged by or on behalf of the Grant Recipient or an Infrastructure Developer for the delivery of the Infrastructure Works;

Contribution Agreement means the agreement to be entered into between the Grant Recipient and the Recovery Beneficiary relating to the payment of the Recovery Beneficiary Contribution;;

Cost Overrun means at any time the amount by which:

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- (a) the aggregate costs and expenses actually incurred by the Grant Recipient in relation to the Infrastructure Works exceed the Total Infrastructure Costs; or
- (b) any individual item of expenditure in relation to the Infrastructure Works exceeds the amount set out in the Expenditure Forecast for that item;

Cost Saving means, at any time, the amount by which Homes England is satisfied that any item of costs and expenses in relation to the Infrastructure Works is less than that set out in the Expenditure Forecast and/or the Expenditure Plan for that item at that time;

CPO means one or more compulsory purchase orders that may be made by a local authority pursuant to Section 226 of the Town and Country Planning 1990 Act, Section 17 of the Housing Act 1985 and/or such other appropriate power of acquisition as the case may be to acquire the Infrastructure Site;

CPO Strategy means a plan for the proposed acquisition of any part of the Infrastructure Site by way of CPO (including details on expected timeframes) in a form satisfactory to Homes England;

Dangerous Substance means any natural or artificial substance (whether in the form of a solid, liquid, gas or vapour) the generation, transportation, storage, treatment, use or disposal of which (whether alone or in combination with any other substance) gives rise to a risk of causing harm to man or any other living organism or causing damage to the Environment or public health and includes, but is not limited to, any controlled, special, hazardous, toxic, radioactive or dangerous waste or substance;

Data Protection Legislation means all legislation and regulatory requirements in force from time to time relating to the use of personal data, including, without limitation (i) any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation, as well as (ii) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to data protection and privacy (for so long as and to the extent that the law of the European Union has legal effect in the UK) and any formal guidance or Codes of Conduct issued by the Information Commissioner (or other competent authority) in each case as amended, superseded or replaced from time to time;

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

Delivery Plan means a plan which sets out the stages in delivery of the Infrastructure Works as annexed at Schedule 8 or otherwise replaced in accordance with clause 2.5;

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

Disposal means a disposal of the whole or any part of:

- (a) the Infrastructure Site; and
- (b) any asset funded by HIF Funding pursuant to this Agreement;

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

EIR Exception means any applicable exemption to EIR;

Encumbrance means any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, standard security, assignation in security, bond and floating charge or other security interest of any kind, and any right of set-off, assignment, trust, flawed asset or other agreement or arrangement whatsoever for the purpose of providing security or having a similar effect to the provision of security;

English Competent Authorities means:

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

Environment means the environment as defined in section 1(2) of the Environmental Protection Act 1990;

Environmental Claim means any claim by any person:

- (a) in respect of losses or liabilities suffered or incurred by that person as a result of or in connection with any violation of Environmental Laws; or
- (b) that arises as a result of or in connection with Environmental Contamination and that could give rise to any remedy or penalty (whether interim or final) that may be enforced or assessed by private or public legal action or administrative order or proceedings;

Environmental Consents means all licences, authorisations, consents or permits of any kind under or relating to Environmental Laws;

Environmental Contamination means the following and the consequences thereof:

- (a) any release, emission, leakage or spillage at or from the Infrastructure Site by any person into any part of the Environment of any Dangerous Substance; or
- (b) any accident, fire, explosion or sudden event which adversely affects the Environment and which is attributable to the operations, management or control of the Infrastructure Site by any person including (without limitation) the storage, handling, labelling or disposal of Dangerous Substances;

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Environmental Law means any common or statutory law, regulation, publicly available code of practice, circular or guidance note (if not having the force of law being of a kind that is customary for the relevant person (or persons of its status or type carrying on a similar business) to comply with) issued by any official body, concerning the protection of human health, the workplace or the Environment;

EU Competent Authorities means:

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

Event of Default means a General Default or a Fundamental Default;

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

Existing Use Value shall have the meaning given to that term by the Royal Institute of Chartered Surveyors from time to time

Expenditure Forecast means the forecast set out in Annexure 2, comprising amongst other things a budget and cashflow of Infrastructure Expenditure as against the Delivery Plan and showing the proposed drawdowns of HIF Funding during each Financial Year within the Availability Period subject to such replacement in accordance with clause 2.5 and any subsequent amendments variations or updates to the same which may be made with the consent of Homes England pursuant to clause 8.1;

Final Certificate means in relation to the Infrastructure Works a certificate provided by the Grant Recipient certifying that:

- (a) the Infrastructure Works have been constructed in accordance with the Infrastructure Details;
- (b) the Highways, sewers drains and other services ancillary to and reasonably necessary for the proper enjoyment of the Infrastructure Works have been completed commissioned and are ready for use; and
- (c) all planning conditions relating to the Infrastructure Site and the Infrastructure Works have been satisfied in accordance with the most up-to-date planning permission (to the satisfaction of Homes England);

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;

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

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

FOIA Exemption means any applicable exemption to the FOIA;

Fundamental Default means the occurrence of any of the following:

- (a) a Report or Direction is made;
- (b) the Grant Recipient, the Recovery Beneficiary or where applicable any Infrastructure Developer, Contractor, subcontractor, employee, officer or agent commits any Prohibited Act (in respect of which the Waiver Condition has not been satisfied);
- (c) there has been an act/omission on the part of the Grant Recipient, the Recovery Beneficiary or an Infrastructure Developer or any of its contractors (including Contractors) that in Homes England's opinion (acting reasonably) harms the reputation of Homes England, the Housing Infrastructure Funding Programme or to bring them into disrepute;

General Default means the occurrence of any of the following:

- (a) a Milestone Failure occurs or is in the opinion of Homes England (acting reasonably) likely to occur (having regard to the information supplied pursuant to clause 10 and 11) and such Milestone Failure is not the direct result of a Milestone Extension Event;
- (b) there has been an act/omission on the part of the Grant Recipient, the Recovery Beneficiary or a Developer or any of its contractors (including Contractors) that in Homes England's opinion (using its absolute discretion) has the potential to harm the reputation of Homes England, the Housing Infrastructure Funding Programme or to bring them into disrepute;
- (c) the Grant Recipient fails to perform and/or observe any obligation or restriction on it under any Infrastructure Related Document (to which it is a party) such that delivery of the Infrastructure Works in the opinion of Homes England (acting reasonably) is unlikely to be achieved in accordance with the requirements of this Agreement;
- (d) the Recovery Beneficiary fails to perform and/or observe any obligation or restriction on it under any Infrastructure Related Document (to which it is a party) such that delivery of the Infrastructure Works in the opinion of Homes England (acting reasonably) is unlikely to be achieved in accordance with the requirements of this Agreement

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- (e) any representation or warranty made by the Grant Recipient pursuant to clause 3 is incorrect in any material respect when made or repeated;
- (f) any representation or warranty made by the Recovery Beneficiary pursuant to clause 3 is incorrect in any material respect when made or repeated;
- (g) any Consent is withdrawn or revoked, where such withdrawal or revocation is likely to have a Material Adverse Effect;
- (h) any Infrastructure Related Document is terminated without the prior consent of Homes England and such termination is likely in the opinion of Homes England (acting reasonably) to have a Material Adverse Effect;
- (i) the Grant Recipient fails to pay any sum due under a HIF Document on the due date for payment thereof provided that if Homes England is satisfied that such failure to pay any amount due hereunder is due solely to technical delays in the transmission of funds and such amount is paid within two (2) Business Days, this limb (i) will not apply for the purposes of this definition;
- (j) Homes England (acting reasonably) considers (whether as a result of its due diligence or otherwise) that the Grant Recipient does not have sufficient funds or resources available to it to complete the Infrastructure Works in accordance with the Infrastructure Details;
- (k) a Disposal other than a Permitted Disposal has occurred without the prior consent of Homes England;
- (l) there is a breach of any of the conditions at clause 7.4;
- (m) clause 26.3 applies;
- (n) any other material breach by the Grant Recipient of any of its obligations under this Agreement has occurred;
- (o) the Final Certificate issued by the Grant Recipient's Section 151 Officer is inaccurate or misleading in any respect;
- (p) there is a failure by the Grant Recipient or the Recovery Beneficiary to apply Recovery Proceeds in accordance with clause 4.6;
- (q) there is a failure by the Grant Recipient to comply (or secure compliance) with a Remediation Plan where one is approved by Homes England pursuant to clause 12.2; or
- (r) Homes England determines (acting reasonably) that proper progress against the Grant Recipient's Delivery Plan has not been made by the Grant Recipient in delivering the Infrastructure Works;

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- (s) the Grant Recipient fails to secure legal and beneficial ownership and vacant possession of the Infrastructure Site by 31 March 2022;

Good Industry Practice means that degree of skill, care, prudence and foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced contractor (engaged in the delivery of works or outputs of the same type as the Infrastructure Works or Housing Outputs (as applicable)) under the same or similar circumstances;

Grant Recipient Contribution means £5,000,000, payable at the times and in the manner set out in the Expenditure Forecast;

Grant Recipient Monitoring Report means the monitoring report to be prepared and delivered to Homes England by the Grant Recipient in accordance with clause 10.3.2;

Health and Safety Legislation means any applicable health and safety legislation, statutory instruments or regulations (including but not limited to the Health and Safety at Work etc. Act 1974) and any guidance and/or codes of practice relating to them;

HIF Document means:

- (a) this Agreement;
- (b) any other document designated as such by the Grant Recipient and Homes England; and
- (c) any document entered into, pursuant to, or which amends or varies any document referred to in paragraphs (a) or (b) above;

HIF Funding means the funding made available or to be made available by Homes England to the Grant Recipient under this Agreement for the purposes of application towards Infrastructure Expenditure incurred or to be incurred by the Grant Recipient in delivering or procuring the delivery of the Infrastructure Works to facilitate the Housing Outputs;

Highways means roads, cycleways, footpaths, pavements, accessways, squares, courtyards, driveways, forecourts, entranceways and ancillary verges, landscaped areas, lighting, street furniture, drains, other utilities and associated works;

Historic Expenditure means Infrastructure Expenditure incurred:

- (a) between the date of submission of the Grant Recipient's expression of interest for the Housing Infrastructure Fund and the date hereof; and
- (b) which was specifically requested in the Bid for inclusion within the HIF Funding,

and which is an amount not exceeding £4,798,202;

HMRC means Her Majesty's Revenue & Customs;

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Homes England Senior Officer means the person notified as such by Homes England to the Grant Recipient;

Housing Delivery Statement means the statement for the housing delivery timetable including planning, site assembly, site marketing and profiling of Housing Output delivery as annexed at Annexure 3;

Housing Developer means any developer who enters into a contract with the Grant Beneficiary for the delivery of the Housing Outputs

Housing Outputs means the dwellings which are to be delivered or facilitated pursuant to the HIF Funding further details of which are set out at Schedule 2 (as the same may be amended from time to time in accordance with the terms of this Agreement);

Housing Output Target Dates means each date set out in Schedule 2 by which the relevant Housing Output Target should be achieved (as the same may be revised by Homes England in accordance with clause 8.3)

Housing Output Target means each stage in the delivery of the Housing Outputs identified in Schedule 2;

Housing Sites means each area of land upon which the Housing Outputs will be situated as identified on the plan annexed at Annexure 5;

Housing Start on Site Date means the date identified in Schedule 2 on which:

- (a) a Housing Developer has taken possession of a Housing Site; and
- (b) the relevant Housing Start on Site Works on that Housing Site have commenced;

Housing 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) vibroflotation, piling, boring for piles or pile driving; or
- (d) drainage works specific for the buildings on the relevant Housing Site;

HRA 2008 means the Housing and Regeneration Act 2008;

Increased Value means, in relation to any part of the Site, the Market Value of that part of the Site on the assumptions that planning permission for the Infrastructure Works and/or the Housing Outputs (as applicable) relevant to that Site (or part thereof) have been obtained and the Infrastructure Works have been completed;

Information means:

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- (a) in relation to the FOIA has the meaning given under section 84 of the FOIA and which is held by Homes England at the time of receipt of an RFI; and
- (b) in relation to the EIR has the meaning given under the definition of "environmental information" in section 2 of the EIR and which is held by Homes England at the time of receipt of an RFI;

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

Infrastructure Details means information:

- (a) provided by the Grant Recipient in relation to the Infrastructure Works, which shall include:
 - i the descriptive and other details in respect of the Infrastructure Works as set out in Schedule 1;
 - ii the Delivery Plan;
 - iii the Expenditure Forecast;
 - iv the Management Plan;
 - v Milestone Dates;
 - vi all Consents which are available;
 - vii the proposed timing of all drawdowns of HIF Funding and any other funding sources; and
- (b) provided by the Recovery Beneficiary in relation to the Housing Outputs to be facilitated by the delivery of the Infrastructure Works and the projected dates for their achievement,

all in accordance with the Bid and each as varied from time to time in accordance with the terms of this Agreement;

Infrastructure Developer means any developer who enters into a contract with the Grant Recipient for the delivery of the Infrastructure Works;

Infrastructure Expenditure means the costs of delivering the Infrastructure Works as set out in the Expenditure Forecast which Homes England is satisfied either have been or will be reasonably and properly incurred by the Grant Recipient in delivering the Infrastructure Works and where any costs relate to both construction works and professional fees (including design) then the maximum proportion of HIF Funding which can be claimed in relation to professional fees shall be included in the Infrastructure Expenditure (such proportion to be determined by Homes England) and including Historic Expenditure and Preliminary Costs;

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Infrastructure Milestones means the stages in the delivery of the Infrastructure Works set out in Schedule 1 as may be extended from time to time pursuant to clause 8.2 or clause 8.3;

Infrastructure Related Documents means

- (a) Contracts;
- (b) Collateral Warranties;
- (c) drawings, plans and specifications;
- (d) planning permissions required for the Infrastructure Works and the provision of the Housing Outputs and all compulsory purchase orders, road closures and approvals of reserved matters or details provided pursuant to them and all other licences and approvals under any applicable planning legislation or regulations, the building and fire regulations and any other statute or bylaw of any relevant authority which are necessary to carry out and complete the Infrastructure Works and the Housing Outputs;
- (e) any guarantees, warranties and representations given or made by and any rights or remedies against all or any of the valuers, professional advisers, contractors or sub-contractors or manufacturers, suppliers and installers of any fixtures;
- (f) rights and claims to which the Grant Recipient or a Developer is now or may hereafter become entitled in relation to the Infrastructure Works;
- (g) other grant agreements relating to the funding of Infrastructure Works; and
- (h) the Contribution Agreement;

and any other document the parties agree in writing from time to time will be designated as an Infrastructure Related Document;

Infrastructure Site means the land upon which the Infrastructure Works are to be constructed as identified on the plan annexed at Annexure 4;

Infrastructure Start on Site means the date on which all pre-planning conditions have been satisfied and the Grant Recipient or the Infrastructure Developer, as applicable has control of the Infrastructure Site to enable the Infrastructure Works to commence;

Infrastructure Start on Site Date means, subject to clause 2.5, the date or dates identified in Schedule 1 on which Infrastructure Start on Site is to have occurred;

Infrastructure Works means construction of the Carlisle Southern Link Road and the outputs described in the Infrastructure Details together with associated infrastructure and any other construction on the Infrastructure Site in respect of which Homes England has agreed to provide the HIF Funding in accordance with this Agreement (as such

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Infrastructure Works may be varied from time to time with the prior written consent of Homes England);

Infrastructure Works Practical Completion means completion of the Infrastructure Works in accordance with the definition of "Practical Completion" (or equivalent) in the relevant Contract(s);

Infrastructure Works Practical Completion Date means the relevant Milestone Date whereby Infrastructure Works Practical Completion must be achieved;

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

Interest means interest accruing on the relevant amount at the Base Interest Rate from the date of receipt by the Grant Recipient of that amount up to and excluding the date of payment by the Grant Recipient to Homes England;

Land Value Increase means, in relation to a part of the Site, the amount by which the Increased Value exceeds the Base Value for that part of the Site provided always that if, following any Valuation, the Land Value Increase is negative, the Land Value Increase shall be deemed to be zero;

Law means any applicable law, Legislation, 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

Legal Opinion means a legal opinion in the form set out in Schedule 4 given by the Grant Recipient's Solicitor;

Legislation means:

- (a) any Act of Parliament;
- (b) any subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978;
- (c) any exercise of the Royal Prerogative;
- (d) any enforceable community right within the meaning of section 2 of the European Communities Act 1972;

in each case in the United Kingdom; and

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- (e) any regulations, orders, by-laws or codes of practice of any local or statutory or competent authority having jurisdiction over the territory in which the Infrastructure Works are situated.

Management Plan each detailed plan prepared from time to time by the Grant Recipient, and approved by its cabinet and/or Section 151 Officer, setting out all actual, identified and anticipated Cost Overruns and setting out (in such detail as Homes England may reasonably require) how each such Cost Overrun will be mitigated, managed and/or funded;

Market Value means the valuation of a property's market value, determined by a Chartered Surveyor who is a registered Valuer, in accordance with the guidance set out in the Red Book;

Material Adverse Effect means any present or future event or circumstances which could, in the opinion of Homes England (using its absolute discretion):

- (a) materially impair the ability of the Grant Recipient to perform and comply with its obligations under any HIF Document or Infrastructure Related Document;
- (b) materially or adversely affect the assets or financial condition of the Grant Recipient; or
- (c) materially impair the validity or enforceability of, or the effectiveness or ranking of any HIF Document or any security granted or purporting to be granted pursuant to any HIF Document or the rights or remedies of Homes England under any HIF Document or Infrastructure Related Document;

Maximum Sum means the sum identified in Schedule 1 being the maximum amount of HIF Funding to be provided by Homes England to the Grant Recipient under this Agreement subject to any reduction pursuant to clause 2.2;

Milestones means the Infrastructure Milestones;

Milestone Date means each date set out in Schedule 1 by which the relevant Milestone must have been achieved (as the same may be replaced in accordance with clause 2.5 and revised by Homes England in accordance with clause 8.3) otherwise a General Default will occur;

Milestone Extension Events means any of the following:

- (a) exceptionally adverse weather conditions provided that any extension permitted on this ground will be restricted to the number of days for which the adverse weather continued;
- (b) the exercise after the date of this Agreement by the United Kingdom Government of any statutory power which directly affects the execution of the Infrastructure Works by restricting the availability or use of labour

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which is essential to the proper carrying out of the Infrastructure Works or preventing the Grant Recipient or an Infrastructure Developer from, or delaying in, securing such goods or materials or such fuel or energy as are essential to the proper carrying out of the Infrastructure Works;

- (c) the use or threat of terrorism and/or the activity of the relevant authorities in dealing with such use or threat;
- (d) fire, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation, earthquakes, riot and civil commotion;
- (e) failure by any statutory undertaker, utility company or other like body to carry out works or provide services which the Grant Recipient or the Infrastructure Developer has taken all reasonable steps open to it to procure and expedite;
- (f) any failure or major shortage of power, fuel or transport;
- (g) any blockade or embargo;
- (h) any:
 - i official or unofficial strike;
 - ii lockout;
 - iii go-slow; or
 - iv other dispute,

generally affecting the construction industry or a significant sector of it or an Infrastructure Developer engaged in the delivery of the Infrastructure Works to a material extent;
- (i) the exercise after the date of this Agreement by the United Kingdom Government (excluding for the avoidance of doubt, the Grant Recipient) of any statutory power which directly affects the Grant Recipient's obligations under this Agreement;
- (j) any reasonable delays in a statutory planning process (including compulsory purchases and planning permission applications); or
- (k) any impediment, prevention or default, whether by act or omission by Homes England except to the extent caused or contributed to by any default, whether by act or omission, of the Grant Recipient.

Unless:

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- (a) any of the events arises (directly or indirectly) as a result of any wilful default or wilful act or negligent act of the Grant Recipient, any Contractor or an Infrastructure Developer; or
- (b) in respect of the event referred to in (e) above, such event arises as a result of any failure by the Grant Recipient or the Infrastructure Developer (whether wilful or otherwise) to notify the relevant statutory undertaker or utility company of the requirement for works or services to be completed by the date required to enable the relevant Milestone to be achieved.

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

Monitoring Report has means a Grant Recipient Monitoring Report or a Recovery Beneficiary Monitoring Report;

Monitoring Surveyor means such suitably qualified monitoring surveyor as may be approved by Homes England and appointed by the Grant Recipient on terms satisfactory to Homes England pursuant to clause 6.6.7;

Notifiable Event means an event of the type described in clause 10.1;

Open Book means the transparent and full disclosure of information to be undertaken in utmost good faith and to include the declaration of all information which the Grant Recipient is required to maintain keep or disclose under this Agreement and any other financial components such as price, profit margins, central office overheads, site overheads, preliminaries, contingencies and the cost of all materials, goods, equipment, work and service, apportionments of these items with all and any books of accounts, correspondence, agreements, orders, invoices, receipts and other documents available for inspection;

Permitted Disposal means:

- (a) any disposal expressly contemplated in this Agreement; and/or
- (b) the disposal of part or parts of the Site upon which an electricity sub-station, gas generation or pumping station or other statutory services or infrastructure have been or are to be constructed or installed and the immediate curtilage of the same together with ancillary easements; and/or
- (c) disposals made pursuant to a planning obligation pursuant to section 106 of the Town & Country Planning Act 1990 or the Local Government (Miscellaneous Provisions) Act 1982 or section 33 and/or the Local Government Act 1972 section 111 and the Highways Act 1980 section (s) 38 and/or 278;
- (d) and any other disposal which Homes England agrees from time to time will become a Permitted Disposal;

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Permitted Encumbrance means:

- (a) any lien arising solely by operation of Law in the ordinary course of the Grant Recipient's business in respect of any obligation which is not more than thirty (30) days overdue for settlement;
- (b) any Encumbrance arising out of title retention provisions in a supplier's standard conditions of supply in respect of goods supplied to the Grant Recipient in the ordinary course of its business;
- (c) any Encumbrance created pursuant to this Agreement; and
- (d) any Encumbrance granted with the prior written consent of Homes England;

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

Planning Performance Agreement means each agreement entered into between the Recovery Beneficiary (in its capacity as the local planning authority) and each Housing Developer, together with associated stakeholders (as applicable) in relation to the project management of a planning application for the Housing Output;

Practical Completion means as the context requires:

- (a) in relation to the Infrastructure Works, Infrastructure Works Practical Completion; and
- (b) in relation to the Housing Outputs, the meaning ascribed to "Practical Completion" (or term with equivalent effect) in the relevant Contract;

Pre Commencement Conditions means the conditions set out in Schedule 7;

Preliminary Costs means Tranches 3-6 inclusive, as set out in the Expenditure Forecast and marked as "Preliminary Costs" to be incurred by the Grant Recipient prior to satisfaction of clause 4.2 up to an aggregate maximum of £14,696,302;

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

Procurement Law means (as the case may be):

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

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

Professional Team means the Infrastructure Developer, any architect, any civil engineer and any other consultant or advisor with a design or supervisory responsibility for the Infrastructure Works appointed or engaged by the Grant Recipient or an Infrastructure Developer in connection with the Infrastructure Works;

Prohibited Act means:

- (a) offering, giving or agreeing to give to any servant of Homes England any gift or consideration of any kind as an inducement or reward:
 - i for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of a HIF Document; or
 - ii for showing or not showing favour or disfavour to any person in relation to a HIF Document;
- (b) entering into a HIF Document 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 to Homes England;
- (c) committing any offence:
 - i under legislation creating offences in respect of fraudulent acts;
 - ii at common law in respect of fraudulent acts in relation to this Agreement; or
 - iii under the Bribery Act 2010; or
- (d) defrauding or attempting to defraud or conspiring to defraud Homes England;

Public Sector Financial Assistance means any funding (received or receivable by the Grant Recipient or the Recovery Beneficiary) to finance any part of the Infrastructure Works or Housing Outputs from public sector bodies including but not limited to funding by Homes England (other than the HIF Funding), 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 Act 1993 and 1998;

Public Sector Contribution means any funding (excluding the Grant Recipient Contribution) received or receivable by the Grant Recipient or an Infrastructure Developer to finance any part of the Infrastructure Works or Housing Outputs from public sector bodies including but not limited to funding by Homes England (including HIF Funding), funding from the European Commission, government bodies (whether national or local) or

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bodies in receipt of lottery funds from the National Lottery Distribution Fund pursuant to the National Lotteries Act 1993 and 1998;

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

Recovery Beneficiary Contribution means £5,000,000, payable at the times and in the manner set out in the Expenditure Forecast;

Recovery Beneficiary Monitoring Report means the monitoring report to be prepared and delivered to Homes England by the Recovery Beneficiary in accordance with clause 10.3.3;

Recovery Proceeds means:

- (a) without double counting of any amount received under paragraph (c) below, any consideration received by the Grant Recipient or the Recovery Beneficiary in relation to any disposal of a part or whole of the Site;
- (b) Community Proceeds;
- (c) without double counting of any amount received under paragraph (a) above, an amount equal to each Land Value Increase;
- (d) without double counting of any amount received under paragraph (a) or (b) above, the amount of borrowings raised against any Land Value Increase or
- (e) means the proceeds of a claim against
 - i any landowner from whom the Site (or any part thereof) has been acquired;
 - ii the provider of any due diligence report (in its capacity as provider of the same) in connection with the acquisition, development or financing of the Site, the Infrastructure Works and/or the Housing Output; or
 - iii any member of the Professional Team or any other contractor, consultant or professional engaged in relation to the Infrastructure Works or Housing Output;

Recovery Strategy means the strategy for the collection and application of Recovery Proceeds in form and content acceptable to Homes England, as annexed at Annexure 8;

Red Book means the "Red Book" (The RICS Valuation Standards - Global and UK, 7th edition), which is the code of practice and guidance for all members of the Royal Institution of Chartered Surveyors;

Regulatory Body means 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 Homes England;

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Remediation Plan means the plan described in clause 12.2.1;

Report means a report under Section 114(3) or Section 114A of the Local Government Finance Act 1988 or Section 5 of the Local Government and Housing Act 1989;

Request for Information/RFI shall have the meaning set out in the FOIA or any request for information under EIR which may relate to the Infrastructure Works or the Housing Outputs, any HIF Document or any activities or business of Homes England;

Required Standards means the requirements of this Agreement, Good Industry Practice, all Consents, Legislation and unless otherwise agreed with Homes England, the requirements of the relevant local authority's Development Plan (as defined in section 38 of the Planning and Compulsory Purchase Act 2004);

Retention means a cost or expense referred to in the Expenditure Forecast and payable under an Infrastructure Related Document on or after Practical Completion;

Review Meeting means a meeting of the type described in clause 10.4;

RIDDOR means Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (as amended from time to time);

Section 151 Officer means an officer of the Grant Recipient appointed under section 151 of the Local Government Act 1972;

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 sale or lease and leaseback effected for such purpose, a blocked account, set-off or similar 'flawed asset' arrangement);

Site means the Infrastructure Site and the Housing Sites;

Solicitors means a firm of solicitors approved by Homes England (acting reasonably and having regard, inter alia, to the number of partners, relevant experience and professional indemnity cover of any proposed firm) from time to time;

Special Contractual Provisions means the conditions set out in Schedule 6;

State Aid means (as the case may be):

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

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State Aid Confirmation means written confirmation from a firm of reputable solicitors with expertise in State Aid Law that (at the time at which such confirmation is given) the terms of the State Aid Opinion remain valid and correct;

State Aid Law means any European Union state aid laws (including without limitation under Article 107 of the Treaty on the Functioning of the European Union and/or any applicable judgment, court order, statute, statutory instrument, regulation, directive or decision (insofar as legally binding));

State Aid Opinion means the opinion as to the State Aid treatment of the Infrastructure Works provided pursuant to the Pre Commencement Conditions;

Tax means any tax, levy, impost, duty or other charge or withholdings and any charges of a similar nature, together with interest thereon and penalties with respect thereto, if any, and any payments made on or in respect thereof and Taxation or taxation and Taxes or taxes shall be construed accordingly;

Term means the period of time from the date hereof until 30 June 2049 subject to earlier termination by Homes England of the entirety of this Agreement;

Total Infrastructure Costs means, if all costs in relation to the Infrastructure Works:

- (a) have been incurred, the aggregate of such costs; and
- (b) have not yet been incurred, the actual and forecasted value (as relevant) of the aggregate of such costs

each as such costs are identified in the Expenditure Forecast;

Undrawn Amount means such part of the Maximum Sum as has not been paid to the Grant Recipient under this Agreement;

United Kingdom Competition Requirement means any Legislation which:

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

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

- (a) State Aid which has been granted in contravention of Article 108(3) Treaty of the Functioning of the European Union (**TFEU**), does not benefit from an exemption from notification and has not been approved by a decision of the European Commission under Article 107(2) or (3) TFEU;

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- (b) State Aid which has been granted after the United Kingdom ceases to be a Member State of the European Union to the extent that the same is granted contrary to or is an infringement of any United Kingdom Competition Requirement;

Valuation means a valuation of the Grant Recipient or the Recovery Beneficiary's (as applicable) interest in the relevant part of the Site by the Valuer, supplied at the request of and addressed to Homes England, and prepared on the basis of the market value as that term is defined in the then current Statements of Asset Valuation Practice and Guidance Notes issued by the Royal Institution of Chartered Surveyors;

Valuer means such reputable firm of surveyors as is a member of the Royal Institute of Chartered Surveyors as may be appointed by the Grant Recipient and approved by Homes England;

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

Waiver Condition means provision of satisfactory evidence by the Grant Recipient or Recovery Beneficiary (as applicable) to Homes England that the relevant Prohibited Act was committed by:

- (a) an employee acting independently of the Grant Recipient or Recovery Beneficiary (as applicable) and such employee's employment is terminated within twenty (20) Business Days of Homes England serving notice on the Grant Recipient or Recovery Beneficiary (as applicable) of such Prohibited Act; or
- (b) a Contractor (or any employee of a Contractor not acting independently of the Contractor) or an Infrastructure Developer (or any employee of an Infrastructure Developer not acting independently of the Infrastructure Developer) and the relevant Infrastructure Related Document is terminated within twenty (20) Business Days of Homes England serving notice on the Grant Recipient of such Prohibited Act; or
- (c) an employee of an Infrastructure Developer or a Contractor acting independently of such Contractor and such employee's employment is terminated within twenty (20) Business Days of Homes England serving notice on the Grant Recipient of such Prohibited Act; or
- (d) any person not specified in paragraphs (a), (b) or (c) and the Grant Recipient or Recovery Beneficiary (as applicable) (or any Contractor or an Infrastructure Developer) has severed links with such person (whether his employment, appointment or any other link) within twenty (20) Business Days of Homes England serving notice on the Grant Recipient or Recovery Beneficiary (as applicable) of such Prohibited Act

where acting independently means not acting with the authority or knowledge of any one or more of the directors or senior officers of the Grant Recipient, Recovery Beneficiary or an Infrastructure Developer or relevant Contractor.

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1.2 Interpretation

- 1.2.1 The masculine includes the feminine and vice versa.
- 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, Annexure or section heading is, except where it is expressly stated to the contrary, a reference to such condition, sub-condition, paragraph, Schedule, Annexure 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, regulation, determination or similar instrument shall (except where expressly stated otherwise) be construed as a reference to the enactment, order, regulation, determination 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 corporations and their successors and permitted assignees or transferees.
- 1.2.7 Headings are for convenience of reference only.
- 1.2.8 A time of day shall be a reference to London time.
- 1.2.9 A party means a party to this Agreement.
- 1.2.10 The words includes or including are to be construed without limitation.
- 1.2.11 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.
- 1.2.12 A paragraph in a Schedule shall be construed as references to a paragraph in that particular Schedule.
- 1.2.13 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.
- 1.2.14 In any case where the consent or approval of Homes England (or any officer of Homes England) is required or a notice is to be given by or to Homes England, such consent or approval or notice shall only be validly given if it is in writing and signed by (if relevant) the officer stipulated in this Agreement or such other person as may be specified to the other parties from time to time. Any consent,

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approval or refusal to consent or approve should be issued within a reasonable time frame.

- 1.2.15 An obligation to do anything includes an obligation to procure its being done.
- 1.2.16 Any restriction includes an obligation not to permit infringement of the restriction.
- 1.2.17 The terms Housing Site and Infrastructure Site include each and every part of such site and estate or interest in it.
- 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 No review comment or approval by Homes England under the provisions of this Agreement shall operate to exclude or limit the Grant Recipient's obligations or liabilities under this Agreement save where Homes England have confirmed the said review comment or approval in writing.
- 1.2.20 The Grant Recipient shall be responsible as against Homes England for the acts or omissions of any Infrastructure Developer as if they were the acts or omissions of the Grant Recipient.
- 1.2.21 Neither the giving of any approval, consent, examination, acknowledgement, knowledge of the terms of any agreement or document nor the review of any document or course of action by or on behalf of Homes England shall, unless otherwise expressly stated in this Agreement or agreed in writing by Homes England, relieve the Grant Recipient of any of its obligations under any HIF Document or any of the Infrastructure Related Documents or of any duty which it may have hereunder to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, examination, acknowledgement or knowledge nor confer impose or imply any liability or responsibility on or on behalf of Homes England in respect of or in connection with the matter to or in relation to which such approval consent examination acknowledgement was given or review made.
- 1.2.22 Save where a contrary intention is shown or where an express discretion is given by this Agreement, Homes England will act in a reasonable manner in deciding whether to give any consent, agreement, determination or approval or express its satisfaction and whether to give any such consent, agreement, determination or approval or express its satisfaction subject to restrictions, terms or conditions unless in each case to do so would fetter its statutory powers, rights or obligations.

2 **Provision of HIF Funding**

- 2.1 Homes England (in exercise of its powers under section 19 of the HRA 2008) agrees to make available to the Grant Recipient, during the Availability Period, HIF Funding in an aggregate principal amount equal to the Maximum Sum on the terms set out in this Agreement.

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- 2.2 The Grant Recipient acknowledges and agrees that the Maximum Sum may be reduced by Homes England:
- 2.2.1 in the exercise of its rights under this Agreement; or
 - 2.2.2 to accommodate factors such as (but without limitation):
 - (a) changes to the Infrastructure Details (excluding those changes contemplated by clause 2.5);
 - (b) variations arising out of the operation of clause 8.2;
 - (c) changes to the Infrastructure Works or the Housing Outputs agreed between the parties; or
 - (d) increases in income or other sources of financial assistance becoming available to the Grant Recipient or a Developer in relation to the delivery of the Infrastructure Works.
- 2.3 The Availability Period will come to an end in relation to all Undrawn Amounts on termination of this Agreement.
- 2.4 The Grant Recipient acknowledges and agrees that Homes England's obligation to provide the HIF Funding is at all times subject to Homes England receiving any approvals Homes England may require (whether internally or from central Government).
- 2.5 No later than 11 September 2020, the Grant Recipient shall provide for the approval of Homes England the following information that reflects and is consistent with the Availability Period and Maximum Sum contemplated by this Agreement:
- 2.5.1 revised Expenditure Forecast which shall include the Grant Recipient and the Recovery Beneficiary's Contributions and the revised Preliminary Costs;
 - 2.5.2 revised Milestones and Milestone Dates;
 - 2.5.3 revised Infrastructure Start on Site Dates;
 - 2.5.4 revised Delivery Plan which reflects the revised Milestones and revised Milestone Dates;
 - 2.5.5 evidence of the Grant Recipient's CPO Strategy (or other strategy for land acquisition to the extent such acquisition will not be undertaken by way of CPO) and progress made towards acquisition of the land necessary for the for the Site;
 - 2.5.6 a copy of the Grant Recipient's procurement strategy; and
 - 2.5.7 revised Management Plan,

(the "**Revised Documents**").

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Notwithstanding any other provision of this Agreement, the obligation on Homes England to make available any HIF Funding (other than a Claim for Historic Expenditure) is conditional on the Revised Documents being approved by Homes England. The date at which such approval is provided shall be referred to as the "**Effective Date**".

3 Representations and warranties

As at the date of this Agreement, on the date of each Claim and the date of each Monitoring Report (by reference to the facts and circumstances then existing):

3.1 the Grant Recipient makes the representations and warranties set out in Part 1 of Schedule 5 to Homes England; and

3.2 the Recovery Beneficiary makes the representations and warranties set out in Part 2 of Schedule 5 to Homes England.

4 Payment of HIF Funding

4.1 Initial conditions precedent

Homes England's obligations under this Agreement are subject to the condition precedent that it has conducted due diligence (including financial and legal due diligence) satisfactory to it in relation to the Infrastructure Works and has confirmed to the Grant Recipient that the Pre Commencement Conditions have been satisfied or waived.

4.2 Conditions Precedent to each Claim for HIF Funding in respect of Preliminary Costs

The obligation of Homes England to make available HIF Funding in relation to Preliminary Costs and Historic Expenditure (without double counting) is subject to clause 2.5 and the further conditions precedent that, at or before the time of a Claim and at or before the time Homes England pays HIF Funding that it has or confirmed to the Grant Recipient that it has received evidence from the Section 151 Officer that the Grant Recipient has incurred the costs relating to the Claim (in a form satisfactory to Homes England) and such costs form part of the Preliminary Costs and relate to the Infrastructure Works in whole or in part.

4.3 Conditions Precedent to each Claim for HIF Funding

4.3.1 The obligation of Homes England to make available any HIF Funding (other than in respect of Preliminary Costs and Historic Expenditure) is subject to clause 2.5 and the further conditions precedent that, at or (in the case of the matters set out in sub-paragraphs (b), (f), (g) and (j)) before the time of a Claim and at or (in the case of the matters set out in such sub-paragraphs) before the time Homes England pays HIF Funding that it has or (in the case of the matters set out in sub-paragraphs (c), (g), and (n)) the Monitoring Surveyor has, confirmed to the Grant Recipient that it or the Monitoring Surveyor (as applicable) has received all of the following in form and substance satisfactory to Homes England:

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- (a) evidence from the Section 151 Officer that the Grant Recipient has sufficient funds (in addition to the HIF Funding and the Recovery Beneficiary Contribution) whether from its own resources or otherwise to complete the Infrastructure Works;
- (b) each Infrastructure Related Document executed by the Grant Recipient and all other relevant parties as is then required to deliver such part of the Infrastructure Works which form the subject of the Claim;
- (c) evidence of the Infrastructure Developer's capability, capacity and resourcing to be able to deliver the Infrastructure Works by the Infrastructure Works Practical Completion Date;
- (d) a valid Claim made in accordance with clause 4.4;
- (e) the amount of the Claim is in accordance with the Expenditure Forecast, as determined by Homes England in its absolute discretion;
- (f) unless otherwise agreed with Homes England, a copy of the grant of detailed planning permission satisfactory to Homes England (acting reasonably) including approval of siting, design, access and use, landscaping and materials for the whole of the Infrastructure Works;
- (g) copies of policies, certificates or cover notes relating to each contract or policy of insurance taken out by or on behalf of the Grant Recipient in respect the Infrastructure Works have been provided;
- (h) the Contribution Agreement;
- (i) such evidence as it may require (acting reasonably) to be satisfied as to the payment to date of and the remaining level and availability of:
 - i the Grant Recipient Contribution; and
 - ii the Recovery Beneficiary Contribution;
- (j) evidence that all necessary Consents as are then required have been obtained and all other matters are in place to enable the Infrastructure Works be commenced; and
- (k) a Delivery Plan which incorporates the Milestones and Milestone Dates;
- (l) if required by Homes England, an updated opinion (satisfactory to Homes England acting reasonably) given by a firm of reputable solicitors who have an expertise in State Aid Law as to the State Aid treatment of the Infrastructure Works;
- (m) evidence satisfactory to Homes England demonstrating that the delivery arrangements relating to all HIF Funding for the Infrastructure Works accord with the Delivery Plan;

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- (n) to the extent not separately required under paragraph (b) above, where requested by Homes England, the Collateral Warranties delivered in accordance with the Infrastructure Related Documents;
- (o) a satisfactory Valuation in respect of the Infrastructure Site;
- (p) if requested by Homes England, an updated Valuation of the relevant part of the Site;
- (q) where the Claim or any part of it relates to a Retention, evidence that such Retention will be ring-fenced from any other funds of the party who is under the obligation to hold the Retention; and
- (r) in relation to any Claim to fund the acquisition of any part of the Infrastructure Site, a Certificate of Title in a form acceptable to Homes England in respect of the ownership of that part of the Infrastructure Site being acquired and any other parts of the Infrastructure Site acquired by the Grant Recipient using its own funds (to the extent not already provided) and the Grant Recipient's estate or interest in them (being either the freehold estate or a lease for a term of 99 years or more on terms acceptable to Homes England) issued to Homes England by Solicitors appointed by the Grant Recipient certifying among other things that: (a) the Infrastructure Site is free from any conditions, restrictions, covenants or third party interests which do or might affect the right to carry out and maintain the Infrastructure Works and (b) the Grant Recipient has sufficient rights appurtenant to its estate or interest in the Infrastructure Site to enable Infrastructure Works to be fully carried out and fully serviced without the need to acquire further land or obtain any rights from any other party.

4.3.2 The obligation of Homes England to make available any HIF Funding is also subject to the conditions precedent that at the time of the Claim and at the time of Homes England paying such HIF Funding:

- (a) the Grant Recipient has (or will have as at the time payment of the relevant HIF Funding) all rights required in the Infrastructure Site to secure access to deliver or procure the delivery of the Infrastructure Works which are the subject of the relevant Claim;
- (b) no Event of Default has occurred and is continuing or would result from payment of the proposed HIF Funding;
- (c) Homes England has received such evidence as Homes England may reasonably require that all matters represented and warranted by the Grant Recipient under clause 3 are true and correct as if made at the date of each Claim and would be true and correct immediately after the making of any such HIF Funding; and

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- (d) prior receipt by Homes England of any approvals Homes England may require whether internally or as required by Legislation or by central Government.

4.4 **Mechanics and payment of HIF Funding**

- 4.4.1 A Claim will not be regarded as having been validly made by the Grant Recipient unless:
 - (a) it is submitted on a Claim Form which must be signed by the Section 151 Officer and is submitted to Homes England within the Availability Period and prior to the 20th day of the month in which the Claim is required;
 - (b) it relates to Infrastructure Expenditure for which the Grant Recipient has not submitted any other Claim or received any other HIF Funding and it is accompanied by written evidence satisfactory to Homes England that such Infrastructure Expenditure has been (or, in exceptional circumstances and always at Homes England's discretion, will be) incurred in the relevant Financial Year in which the Claim is made together with confirmation from the Section 151 Officer that it has verified and approved the Claim provided that if any amount of HIF Funding is retained by the Grant Recipient for the purposes of a Retention such Retention shall be deemed to relate to Infrastructure Expenditure incurred in the relevant Financial Year;
 - (c) it accords with the Expenditure Forecast and the Delivery Plan or is accompanied by evidence satisfactory to Homes England (in its absolute discretion) to justify any deviation;
 - (d) it is for an amount which (if paid) would not cause the Maximum Sum to be exceeded;
 - (e) if it the Claim is for Preliminary Costs and/or Historic Expenditure (without double counting), the conditions at clauses 4.1, 4.2 and 4.3.2 (save for 4.3.2(a)) have been satisfied and
 - (f) and if the Claim is for Infrastructure Expenditure other than Preliminary Costs, the conditions at clauses 4.1 and 4.3 have been satisfied.
- 4.4.2 Subject to the terms of this Agreement, Homes England will pay each undisputed instalment of HIF Funding to the Grant Recipient within twelve (12) Business Days of receipt of a valid Claim.
- 4.4.3 Any amount of HIF Funding not claimed by the Grant Recipient during the Availability Period will no longer be made available to the Grant Recipient.
- 4.4.4 The Grant Recipient may not make more than one Claim per calendar month unless Homes England has agreed otherwise in writing in advance of any ad hoc Claims.

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4.5 Use of HIF Funding

- 4.5.1 The HIF Funding will be the sole property of the Grant Recipient and must be used by the Grant Recipient for Infrastructure Expenditure only.
- 4.5.2 Without affecting the obligations of the Grant Recipient in any way, Homes England is not bound to monitor or verify the application of any amount drawn pursuant to this Agreement.

4.6 Use of Recovery Proceeds

- 4.6.1 The Grant Recipient must (or, if the Recovery Beneficiary is the recipient, the Recovery Beneficiary must), within ten (10) Business Days of receipt, apply (by actual expenditure or allocation in the relevant budget satisfactory to Homes England) all Recovery Proceeds as follows:
- (a) In the case of Recovery Proceeds received by the Grant Recipient:
 - i towards any remaining Infrastructure Expenditure, including, for the avoidance of doubt, funding payment of Cost Overruns or repaying any sums borrowed in relation to Infrastructure Expenditure (including for the avoidance of doubt interest, capital and any fees in relation to such borrowings); and
 - ii once no further Infrastructure Expenditure remains, towards funding delivery of the Housing Output (and, for the avoidance of doubt, supporting infrastructure and facilities related to the Housing Output (other than the Infrastructure Site)) or other housing developments and related infrastructure within the county of Cumbria;
 - (b) in the case of Recovery Proceeds received by the Recovery Beneficiary, towards payments to be made to the Grant Recipient for application in accordance with (a) above as set out in the Contribution Agreement and funding delivery of the Housing Output (and, for the avoidance of doubt, supporting infrastructure and facilities related to the Housing Output (other than the Infrastructure Site)).
- 4.6.2 Clause 4.6.1 shall cease to apply once the aggregate amount of Recovery Proceeds which has been received by the Grant Recipient and/or the Recovery Beneficiary and applied by them in accordance with clause 4.6.1 (without double counting) exceeds the Maximum Sum.

5 Repayment and Overpayments

- 5.1 If the Grant Recipient is required to repay any amount of HIF Funding to Homes England, all such repayments shall be considered to be a debt due on demand and must be paid in cleared funds within twenty (20) Business Days to Homes England into such bank account as Homes England shall notify to the Grant Recipient from time to time.

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- 5.2 If the Grant Recipient does not pay any amount it is obliged to pay under this Agreement when it is due, the Grant Recipient shall pay default interest on such outstanding amount from the due date until the date of actual payment (both before and after judgment) at a rate per annum equal to 2% above the Base Interest Rate.
- 5.3 All payments by the Grant Recipient under or in connection with this Agreement shall be made without set-off or counterclaim, free and clear of and without any deduction or withholding, including, without limitation, for or on account of all taxes except for taxes which must be deducted by Law.
- 5.4 If Homes England (acting reasonably) considers at any time that any part of the Maximum Sum was not expended by the Grant Recipient on Infrastructure Expenditure (without double counting) or if at any time Homes England has made any overpayment to the Grant Recipient or has paid the Grant Recipient any sum in excess of the Maximum Sum the Grant Recipient must immediately on written demand repay to Homes England such amount as may be stipulated by Homes England together with Interest.
- 5.5 Where a Balancing Sum has arisen the Grant Recipient shall repay to Homes England a sum equal to the Balancing Sum within twenty (20) Business Days of becoming aware of the Balancing Sum's existence or the request of Homes England, whichever is earlier.
- 5.6 Where the Grant Recipient has made a Claim which (in part or in whole) relates to a Retention and such Retention has not been paid by the Grant Recipient under the relevant Infrastructure Document within 2 years after the date of the relevant Claim, the Grant Recipient shall repay to Homes England such amount of the Claim which related to the Retention.

6 **Delivery obligations**

6.1 **Infrastructure Works commencement and completion**

- 6.1.1 The Grant Recipient acknowledges that Homes England has allocated the HIF Funding up to the Maximum Sum on the understanding that the Infrastructure Works will be delivered in accordance with the Delivery Plan that is to be provided in accordance with clause 2.5.
- 6.1.2 The Recovery Beneficiary must use its reasonable endeavours to facilitate that the Housing Output Targets are achieved by the Housing Output Target Dates and in accordance with the Housing Delivery Statement.
- 6.1.3 Save to the extent that to do so would conflict with their respective obligations under clause 4.6, the Grant Recipient and Recovery Beneficiary shall ensure that the Recovery Proceeds are collected and applied in accordance with the Recovery Strategy.
- 6.1.4 The Grant Recipient will procure that Infrastructure Works are delivered in accordance with the Infrastructure Details and the Infrastructure Works commence by the Infrastructure Start on Site Date and are completed by the date of Infrastructure Works Practical Completion and in any event by 31 May 2024.

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6.2 **Developers, Contractors and employees**

- 6.2.1 The Grant Recipient must procure that the Infrastructure Developer complies with the terms of the Infrastructure Related Documents which relate to the Infrastructure Works, and the Grant Recipient will enforce and procure the enforcement of the terms of the Infrastructure Related Documents at all times.
- 6.2.2 The Grant Recipient must take all necessary steps to satisfy Homes England that its procurement policies and procedures in relation to employees, suppliers, Contractors and the Infrastructure Developer (as applicable) are suitable and competent in all respects to allow the proper performance of all work or tasks in relation to the Infrastructure Works.
- 6.2.3 The Grant Recipient must ensure that all Contracts entered into in connection with the Infrastructure Work are competitively procured (utilising a documented decision making process) and that the Infrastructure Expenditure represents fair market costs.

6.3 **Infrastructure Works**

- 6.3.1 The Grant Recipient shall procure that the Infrastructure Works are:
- (a) conducted and completed in accordance with all Consents and the technical specifications and to the Required Standards; and
 - (b) carried out in a good and workmanlike manner; and
 - (c) carried out in compliance with the provisions of the Considerate Constructors Scheme save that where there shall be any conflict between the provisions of this Agreement and the provisions of the said scheme the provisions of this Agreement shall prevail.
- 6.3.2 The Grant Recipient shall provide to Homes England a Final Certificate promptly upon completion of the Infrastructure Works.

6.4 **Insurances**

- 6.4.1 The Grant Recipient shall procure that:
- (a) at all times during the carrying out of the Infrastructure Works there shall be maintained full and proper insurance policies including policies in respect of all buildings upon the Infrastructure Site and all works undertaken in carrying out the Infrastructure Works and all unfixed goods and materials in connection with such works for, in every case, the full reinstatement or replacement costs of them from time to time including professional fees (**Insurance Policies**); and
 - (b) Homes England is a named beneficiary of such Insurance Policies.

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- 6.4.2 The Grant Recipient shall supply evidence of such insurance policies (satisfactory to Homes England) within five (5) Business Days of written request from Homes England.
- 6.4.3 If any building upon the Infrastructure Site or any works forming part of the Infrastructure Works, or any materials or goods required to undertake such works are destroyed or damaged (other than as necessary as part of the carrying out of the Infrastructure Works), the Grant Recipient shall procure the rebuilding, reinstatement or replacement of such building, work, goods or materials in accordance with the provisions of this Agreement as soon as reasonably practicable. If the insurance proceeds shall be insufficient the Grant Recipient shall make up any deficiency out of its own monies.
- 6.4.4 The Grant Recipient shall not do or permit or suffer to be done anything which may render any policy or policies of insurance void or voidable.

6.5 **Planning**

The Grant Recipient must ensure that:

- 6.5.1 where required by Homes England, sufficient Planning Performance Agreements are in place in relation to each Housing Site; or
- 6.5.2 it uses its reasonable endeavours to secure the grant of a planning permission satisfactory to Homes England to deliver the Infrastructure Works; and
- 6.5.3 no change is made to the arrangements contemplated in this clause 6.5 without Homes England's prior written consent (acting reasonably).

6.6 **Other**

- 6.6.1 The Grant Recipient and the Recovery Beneficiary must take all reasonable steps to procure that the Housing Outputs are delivered in accordance with the Required Standards.
- 6.6.2 The Grant Recipient will allow Homes England and/or any nominated representative or agent to visit the Infrastructure Site at reasonable times and on reasonable notice for the purposes of monitoring the Grant Recipient's progress as against each Milestone and its relevant Milestone Date.
- 6.6.3 Until such time as the Infrastructure Works have been fully delivered in accordance with the terms of this Agreement, the Grant Recipient will ensure that Homes England has the right to be represented at each project meeting relating to the same and that such representative (the details of which are to be advised by Homes England to the Grant Recipient) is provided with reasonable notice of all such meetings and all relevant meeting materials.
- 6.6.4 The Grant Recipient shall:
- (a) meet all Cost Overruns from its own resources; and

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- (b) on request from Homes England, deliver to Homes England an updated Management Plan.

6.6.5 The parties agree that for the purposes of this Agreement "delivered" when used in the context of the Infrastructure Works or Housing Outputs shall be construed to mean that the Infrastructure Works or Housing Outputs (as the context requires) have reached the applicable Practical Completion.

6.6.6 The Grant Recipient must ensure that any on-lending or other advance to any third party (including, for the avoidance of doubt, the Recovery Beneficiary) by the Grant Recipient of the whole or a part of the Maximum Sum:

- (a) is approved in principle by Homes England in advance;

- (b) is in the case of

- i a loan, protected by such security arrangements as would be expected by a prudent lender advancing its own funds to the borrowing organisation with a view to ensuring their repayment in accordance with the terms of the on-lending agreement; or

- ii a grant, protected by such arrangements as would be expected of a prudent grant giver advancing its own funds to the Grant Recipient with a view to ensuring the proper application of the grant monies for the purposes for which they were advanced and appropriate arrangements for their recovery; and

- (c) is compliant with State Aid requirements and ensures the repayment (together with interest and any penalty) of any sums found to be Unlawful State Aid.

6.6.7 The Grant Recipient must provide a State Aid Confirmation to Homes England every 6 months during the Term or at such other intervals as Homes England may agree from time to time.

6.7 Valuation

The Grant Recipient must ensure that:

6.7.1 all information supplied by it or on its behalf to the Valuer for the purposes of each Valuation was true and accurate as at its date or (if appropriate) as at the date (if any) at which it is stated to be given;

6.7.2 any financial projections contained in the information referred to in clause 6.7.1 above have been prepared as at their date, on the basis of recent historical information and on the basis of reasonable assumptions;

6.7.3 it has not omitted to supply any information within its knowledge, having made all due and careful enquiry, to the Valuer which, if disclosed, would adversely affect any Valuation; and

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6.7.4 as at the date of the first Claim, nothing has occurred since the date the information referred to in paragraph 6.7.1 above was supplied which, if it had occurred prior to the relevant Valuation of the Site or the Housing Outputs, would have adversely affected that Valuation.

6.8 If required by Homes England, the Grant Recipient shall appoint a Monitoring Surveyor to review, monitor progress and report on delivery as against the Delivery Plan and Expenditure Forecast on such terms as Homes England shall reasonably require.

7 **Regulatory and operational obligations**

7.1 **Consents**

The Grant Recipient will procure that no Infrastructure Works are commenced and/or continued without all necessary Consents being received and in particular will procure that no work constituting development for which planning permission is required under the Town and Country Planning Act 1990 is carried out without having obtained detailed planning consent and will provide such documents as Homes England requires to demonstrate compliance with this clause 7.1.

7.2 **Public procurement**

The Grant Recipient must comply with all applicable Procurement Laws in connection with the procurement of the Infrastructure Works or any services relating to them and must further ensure that the procurement of works, equipment, goods and services by the Grant Recipient relating to such Infrastructure Works are based on value for money.

7.3 **Legislation (including Health & Safety and Equality & Diversity)**

7.3.1 The Grant Recipient (in relation to delivery of the Infrastructure Works) and the Recovery Beneficiary (in relation to delivery of the Housing Outputs) must comply with and assist and co-operate with Homes England in order that it can comply with (and (so far as it is legally able) require third parties who benefit from this HIF Funding do the same) all applicable legal obligations and statutory requirements in relation to delivery of the Infrastructure Works or Housing Outputs, including, but not limited to:-

- (a) EU and UK Planning and Environmental legislation;
- (b) State Aid Law;
- (c) State Aid Law, including but not limited to N7471A/99 and N747/8/99 Partnership Support for Regeneration (1) Support for Speculative Developments and (2) Support for Bespoke Developments;
- (d) any relevant Health and Safety Legislation;
- (e) Modern slavery legislation;
- (f) Employment legislation;

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- (g) CDM Regulations;
- (h) RIDDOR;
- (i) the Equality Act 2010;
- (j) Equal opportunities (in relation to race, sex, disability, faith and sexuality);
- (k) Financial regulations and legislation;
- (l) Copyright and Data Protection Legislation.

7.3.2 The Grant Recipient shall maintain or procure that there is maintained an accurate record of all health, safety and environmental incidents which occur on or in connection with the Infrastructure Works and shall (if requested) provide a report to the Homes England Senior Officer as part of the Monitoring Report arrangements.

7.4 Disposals

7.4.1 The Grant Recipient must not, without the prior written consent of Homes England, dispose of the whole or any part of the Infrastructure Site save by way of a Permitted Disposal.

7.4.2 In granting any consent under clause 7.4.1 Homes England may impose such conditions as it deems to be appropriate to such consent including a requirement that any disponent registers a restriction on title in favour of Homes England and/or agrees to be bound by clauses similar in effect to clause 7.4.1.

7.4.3 The Grant Recipient must not and shall procure that no Infrastructure Developer or Contractor shall grant any lender security over assets funded, or part funded, by this HIF Funding unless the Grant Recipient has first obtained Homes England's written consent.

7.4.4 The Grant Recipient must not transfer any land acquired with the benefit of HIF Funding to the Infrastructure Developer to enable or facilitate the provision of the Infrastructure Works for a value which is less than Market Value.

7.5 Other

7.5.1 The Grant Recipient must:

- (a) supply to Homes England a copy of any Valuation of the Infrastructure Site the Grant Recipient obtains, promptly upon obtaining it.
- (b) provide Homes England or any Regulatory Body with such information as may be requested to demonstrate compliance with the Grant Recipient's obligations under clauses 6 and 7; and
- (c) ensure the availability and application of the Grant Recipient Contribution in the form, quantum and timescale required pursuant to this Agreement.

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7.5.2 The Grant Recipient must comply with the terms of the Assurance Framework as it applies to Category 4 projects.

8 Variations and Milestone Date Amendments

8.1 Subject to clause 2.5, the Grant Recipient may not make any amendment to the Infrastructure Works or the Infrastructure Details without the prior written consent of Homes England other than amendments which have no material impact upon the delivery of the Infrastructure Works and no impact on the Total Infrastructure Costs, the Expenditure Forecast or the achievement of Milestones.

8.2 If a Milestone Failure occurs or is in the reasonable opinion of Homes England likely to occur (having regard to the information supplied pursuant to this Agreement) and such Milestone Failure is not the result of a Milestone Extension Event Homes England shall be entitled (but not obliged) to (acting reasonably):

8.2.1 exercise the rights described under clause 12; or

8.2.2 agree by exchange of written correspondence a revised Milestone Date with the Grant Recipient in which case any relevant condition of this Agreement shall apply (changing that which needs to be changed) to the revised Milestone Date.

8.3 Where any Milestone Failure occurs or is in the reasonable opinion of Homes England likely to occur (having regard to the information supplied to Homes England pursuant to this Agreement or otherwise) and Homes England (acting reasonably) determines that such failure is the result of a Milestone Extension Event Homes England shall extend the relevant Milestone 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 save that Homes England shall not for any reason be required to extend beyond the date which is 6 months after the original Milestone Date for that Milestone.

8.4 Where it becomes apparent that a material amendment to the Delivery Plan, the Expenditure Forecast, the Bid, the Infrastructure Works or the Housing Outputs is or will be required, the Grant Recipient and/or the Recovery Beneficiary (as applicable) must, immediately upon becoming aware of such required amendment, notify Homes England and the parties must cooperate in good faith with a view to identifying what steps are available to the Grant Recipient to ensure delivery of the Infrastructure Works and/or Housing Outputs or otherwise agreeing variations to the same.

8.5 Until such time as a resolution is agreed between the parties, Homes England will be under no obligation to make HIF Funding available pursuant to any further Claims or otherwise to the Grant Recipient.

8.6 Where the parties fail to agree a resolution pursuant to clause 8.4 within three (3) months of the date of notification under clause 8.4, Homes England will be entitled to exercise its rights under clause 12.3.

9 Special Contractual Provisions

9.1 The parties agree that the Special Contractual Provisions have effect.

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10 **Notifications, reporting and audit**

10.1 The Grant Recipient and the Recovery Beneficiary (in the latter case, so far as it is aware) shall notify Homes England:

10.1.1 immediately upon any change (whether actual or estimated) required to the Infrastructure Details other than any change permitted under this Agreement;

10.1.2 immediately upon becoming aware of any event which:

- (a) has or might have a Material Adverse Effect on the Grant Recipient; or
- (b) has a detrimental effect on any aspect of the Infrastructure Works and/or the Housing Outputs including, but not limited to, any Milestone Failure;
- (c) prejudices or might prejudice the Grant Recipient's ability to deliver the Infrastructure Works in accordance with the Infrastructure Details;
- (d) prejudices or might prejudice the Grant Recipient's ability to provide the Grant Recipient Contribution;
- (e) prejudices or might prejudice the Recovery Beneficiary's ability to provide the Recovery Beneficiary Contribution; or
- (f) has resulted in or might give rise to the making of a Report or Direction.

10.1.3 as soon as reasonably practicable on becoming aware of any claim brought against the Grant Recipient arising out of or relating to the activities of the Grant Recipient in relation to the HIF Funding;

10.1.4 immediately upon there being a proposed change to:

- (a) any Infrastructure Related Documents which is material;
- (b) the use of any asset funded by means of HIF Funding made available under this Agreement (including the purposes for which it is to be used and/or any time periods for which the asset is to be used);
- (c) the ownership of any asset funded by means of HIF Funding made available under this Agreement

10.1.5 immediately upon the occurrence of an Event of Default;

10.1.6 immediately upon becoming aware of any investigations into or findings of any breach of:

- (a) any equality or anti-discrimination legislation or regulations directly or indirectly related to the Infrastructure Works (or any part of them) whether or not the Grant Recipient and/or the Infrastructure Developer and/or any other third party is responsible for the breach or is the subject of the

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investigation (as appropriate) (such notice to be addressed to the Homes England Senior Officer); and/or

- (b) the Data Protection Legislation whether or not the Grant Recipient and/or the Infrastructure Developer and/or any other third party is responsible for the breach or is the subject of the investigation (as appropriate) (such notice to be addressed to the Homes England Senior Officer); and/or
- (c) any challenge under, investigations into or findings of any breach of the Procurement Laws whether or not the Grant Recipient and/or the Infrastructure Developer and/or any other third party is responsible for the breach or is the subject of the investigation (as appropriate) (such notice to be addressed to the Homes England Senior Officer);

10.1.7 immediately upon becoming aware of:

- (a) any audit or statutory or regulatory investigation in relation to any aspect of the Infrastructure Works;
- (b) the occurrence of any act/omission of the Grant Recipient or of any Contractors, the Infrastructure Developer or subcontractors that harms or has the potential to harm the reputation of Homes England, the Ministry of Housing, Communities and Local Government or to bring them into disrepute; or
- (c) any event or circumstance which would cause the terms of the State Aid Opinion to be misleading or inaccurate or which would cast doubt upon its continuing validity

10.1.8 immediately upon becoming aware that the Maximum Sum is greater than is necessary to deliver the Infrastructure Works to which it relates;

10.1.9 immediately, in the event of the receipt by it of any other income or funds or other Public Sector Financial Assistance or guarantees of them, or the offer of same, in respect of the Infrastructure Works or the Housing Outputs beyond any amounts of the same notified by the Grant Recipient to Homes England as part of or in connection with its Bid; and/or

10.1.10 immediately upon becoming aware that any information given or supplied in relation to the Pre Commencement Conditions becomes misleading or inaccurate.

10.2 **Resolution**

In the event of notification by the Grant Recipient under this clause 10, if applicable and if requested by Homes England, the Grant Recipient will provide, together with such notification, a proposal for resolution or mitigation of the event and will take into account all representations of Homes England on such proposals.

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10.3 Annual Forecast and Monitoring Reports

10.3.1 The Grant Recipient must provide Homes England with its Annual Forecast within one calendar month of the start of each Financial Year.

10.3.2 Within ten (10) Business Days of (a) the first day of each calendar month until the Maximum Sum has been paid to the Grant Recipient (or within such longer period as Homes England may at its absolute discretion agree) and thereafter (b) each Quarter Date (or within such longer period as Homes England may at its absolute discretion agree) the Grant Recipient must provide Homes England with a report (the **Grant Recipient Monitoring Report**) which provides details on:

- (a) progress in achieving the Infrastructure Works and the Housing Outputs;
- (b) the Grant Recipient's progress against the Delivery Plan and Expenditure Forecast;
- (c) the need for changes to the Delivery Plan or Expenditure Forecast;
- (d) the occurrence of any Milestone Failure;
- (e) the implications of any Notifiable Events;
- (f) progress on engagement with relevant landowners, developers and promoters (if applicable) in accordance with the Delivery Plan;
- (g) any amendments made to the Infrastructure Works or Infrastructure Details made pursuant to clause 8.1;
- (h) the amount of all Recovery Proceeds which have been received or become payable in the period and to date, together with details of their application in accordance with clause 4.6
- (i) whether a Balancing Sum has arisen; and
- (j) such other matters in relation to the performance of this Agreement as are notified by either party to the other in writing at least fifteen (15) Business Days prior to the relevant Quarter Date.

10.3.3 Within ten (10) Business Days of (a) the first day of each calendar month until the Maximum Sum has been paid to the Grant Recipient (or within such longer period as Homes England may at its absolute discretion agree) and thereafter (b) each Quarter Date (or within such longer period as Homes England may at its absolute discretion agree) the Recovery Beneficiary must provide Homes England with a report (the **Recovery Beneficiary Monitoring Report**) which provides details on:

- (a) progress in achieving the Housing Outputs; and

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- (b) the amount of all Recovery Proceeds which have been received or become payable in the period and to date, together with details of their application in accordance with clause 4.6.
- 10.3.4 Any Annual Forecast or Monitoring Report provided pursuant to this Agreement must be signed by the Section 151 Officer and the Grant Recipient acknowledges that any representations or confirmations made in such Annual Forecasts and Monitoring Reports are true and accurate in all material respects.
- 10.3.5 Notwithstanding the provisions of clauses 10.3.1 and 10.3.2, Homes England may, if it considers (acting reasonably) that sufficient progress is not being made against the most recent Delivery Plan, request that the Grant Recipient provides additional reports containing such information as it reasonably requests to enable it monitor progress of the Infrastructure Works and the Housing Outputs more closely.
- 10.3.6 Homes England or the Grant Recipient may call a Review Meeting at any time to discuss (amongst other things) the contents of any Annual Forecast or any matter arising out of the Monitoring Reports provided that the party requesting the meeting:
 - (a) gives not less than 15 Business Days prior written notice to the other of such meeting; and
 - (b) includes with the notice an agenda for such meeting.
- 10.3.7 The Grant Recipient shall provide Homes England as soon as is reasonably practicable with such information or reports as Homes England shall reasonably require to support or facilitate the meetings referred to in this Agreement and to monitor the performance of the Grant Recipient's obligations under this Agreement.
- 10.3.8 Homes England and the Grant Recipient shall each use all reasonable endeavours to ensure that any representatives at any meeting held pursuant to this clause 10.3 have the necessary authority and knowledge to deal with the items on the agenda for such meeting.
- 10.3.9 Subject to the prior approval of the other party (such approval not be unreasonably withheld or delayed) either party may request that additional persons attend a meeting to provide detailed or particular advice or information.
- 10.3.10 Save as otherwise agreed between the parties, any meeting under this clause 10.3 shall be minuted by the Grant Recipient and such minutes shall be distributed within ten (10) Business Days following the meeting to Homes England and any other attendee.
- 10.3.11 Nothing in this clause 10.3 shall prevent Homes England from requesting (whether on behalf of itself or any Government office) at any other time information from the Grant Recipient in respect of any of the items listed in this

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clause 10.3 and the Grant Recipient shall promptly respond to any such request.

10.4 **Annual Review**

10.4.1 Homes England, the Grant Recipient and the Recovery Beneficiary shall attend an Annual Review Meeting within ten (10) Business Days (or within such longer period as Homes England may at its absolute discretion agree) of the first Quarter Date in each Financial Year to discuss (but without limitation):

- (a) progress in achieving the Infrastructure Works and the Housing Outputs;
- (b) the Grant Recipient's projections in relation to its future performance in achieving the Housing Outputs;
- (c) the Grant Recipient's progress against the Delivery Plan and Expenditure Forecast;
- (d) the need for changes to the Delivery Plan or Expenditure Forecast;
- (e) the occurrence of any Milestone Failure;
- (f) the implications of any Notifiable Events;
- (g) the Annual Forecast;
- (h) such other matters in relation to the performance of this Agreement as are notified by either party to the other in writing at least five (5) Business Days prior to the date of the Annual Review Meeting.

10.5 **Inspection and audit facilities**

10.5.1 The Grant Recipient shall as and when requested by Homes England, make available on an Open Book basis and in a timely manner to Homes England where required in connection with this Agreement or the HIF Documents a copy of each of:

- (a) 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 or the HIF Documents; and
- (b) 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 Infrastructure Works or the Housing Outputs and which have been supplied to the Grant Recipient for the purposes of this Agreement.

10.5.2 The Grant Recipient shall at all times:

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- (a) maintain a full record of particulars of all the income received and expenditure incurred by the Grant Recipient in respect of the Infrastructure Works;
 - (b) when required to do so by Homes England, provide a summary of any of the income and expenditure referred to in clause 10.5.2(a) as Homes England may require to enable it to monitor the performance by the Grant Recipient of its obligations under this Agreement; and
 - (c) provide such facilities as Homes England may require for its representatives to visit any place where the records are held and examine the records maintained under this clause 10.5.
- 10.5.3 The Grant Recipient shall ensure that it and each Developer keeps on an Open Book basis (in accordance with generally accepted accounting practice) separate books of account for items relating to the Infrastructure Works which identify items of revenue received and expenditure incurred in relation to the same.
- 10.5.4 On the expiry of this Agreement or (if earlier) upon termination thereof, the Grant Recipient shall, if requested to do so, deliver up to Homes England all the data, materials, documents and accounts referred to in this clause 10.5 which it has in its possession, custody or control and shall procure the handing over to Homes England such data, materials, documents and accounts referred to in clause 10 or as otherwise directed by Homes England.
- 10.5.5 The Grant Recipient must (and shall procure that each Developer does) for a period of 10 (ten) years from the date of the last payment made to the Grant Recipient under this Agreement retain all of the data, documents, materials and accounts referred to in this clause 10.5 and the Grant Recipient may retain such data, documents, materials and accounts in electronic form only which may for the avoidance of doubt comprise copies where the originals have been supplied to Homes England pursuant to this clause 10.

11 **Change in financial circumstances**

- 11.1 The Grant Recipient and/or (as the case may be) the Recovery Beneficiary shall notify Homes England immediately where there is or has been any change in its or a Developer's financial circumstances which has or might have a Material Adverse Effect, including for the avoidance of doubt any withdrawal or reduction of any funding or income available to the Grant Recipient or the Recovery Beneficiary relative to the delivery of the Infrastructure Works, or any reduction or withdrawal in relation to the Grant Recipient Contribution or the Recovery Beneficiary Contribution.
- 11.2 In the event that Homes England (acting reasonably) believes that any change notified to it pursuant to clause 11.1 or which it otherwise becomes aware of has or might have a Material Adverse Effect, Homes England shall be entitled to exercise any of the rights and remedies set out in clause 12.

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12 Events of Default

- 12.1 Where a Fundamental Default has (in Homes England's opinion (acting reasonably)) occurred Homes England shall on the service of written notice be entitled forthwith and without any liability to the Grant Recipient to:
- 12.1.1 terminate this Agreement in its entirety;
 - 12.1.2 suspend or alter the timing of the payment of any HIF Funding for such period as Homes England will determine in its sole discretion;
 - 12.1.3 withhold and cancel any further payment of HIF Funding due to the Grant Recipient under this Agreement;
 - 12.1.4 require the Grant Recipient immediately to repay the HIF Funding and all other amounts due under this Agreement together with Interest; and
 - 12.1.5 reallocate or redirect such part of the HIF Funding (which has not yet been paid to the Grant Recipient) to such other person or for such purpose as Homes England in its discretion considers appropriate.
- 12.2 Where a General Default has (in Homes England's opinion (acting reasonably)) occurred and is in the opinion of Homes England (using its absolute discretion) capable of remedy:
- 12.2.1 the Grant Recipient or Recovery Beneficiary (as applicable) (the **Defaulting Party**) must submit a proposed remediation plan (the **Remediation Plan**) to Homes England within twenty (20) Business Days of the occurrence of the General Default setting out the Defaulting Party's proposals for the steps to be taken to remedy or mitigate the effects of the General Default and a basis for testing whether this has been achieved within an appropriate timeframe;
 - 12.2.2 Homes England will notify the Defaulting Party as to whether the Remediation Plan is approved as submitted within twenty (20) Business Days of its receipt;
 - 12.2.3 if the Remediation Plan is not approved, the Defaulting Party's Senior Officer and Homes England Senior Officer (acting in good faith with a view to securing delivery of the Infrastructure Works) must meet as soon as practicable (and in any event within ten (10) Business Days of Homes England's notification under clause 12.2.2 or such later date as Homes England may agree) to try to agree a revised Remediation Plan. In default of agreement, a General Default shall be continuing and the Homes England shall be entitled freely to exercise the rights under clause 12.3 without any further suspension of its rights to do so;
 - 12.2.4 if the Remediation Plan is approved, the Defaulting Party must comply with the obligations set out in the Remediation Plan and any failure to do so will be treated as a General Default entitling Homes England to exercise its rights under clause 12.3 free of any rights of suspension which would otherwise benefit the Grant Recipient; and

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- 12.2.5 within ten (10) Business Days of the end of the timeframe specified in the Remediation Plan, the Defaulting Party's Senior Officer and the Homes England Senior Officer must meet to review the efficacy of the Remediation Plan in remedying or mitigating the effects of the General Default. If in the opinion of Homes England (acting reasonably) the Remediation Plan has not been effective, Homes England shall be entitled in its absolute discretion either to extend the timeframe for the Remediation Plan's operation or to declare that the Remediation Plan has failed in which case a General Default shall be deemed to have occurred entitling Homes England to exercise its rights under clause 12.3 free of any rights of suspension which would otherwise benefit the Grant Recipient.
- 12.3 Subject to clause 12.4, in the circumstances contemplated in clauses 8.6 and 12.2 or where a General Default is in the opinion of Homes England (using its absolute discretion) incapable of remedy, Homes England shall be entitled forthwith and without any liability to the Grant Recipient to:
- 12.3.1 terminate this Agreement in its entirety;
- 12.3.2 suspend or alter the timing of the payment of any HIF Funding for such period as Homes England will determine in its sole discretion;
- 12.3.3 withhold and cancel any further payment of HIF Funding due to the Grant Recipient under this Agreement; and/or
- 12.3.4 reallocate or redirect such part of the HIF Funding (which has not yet been paid to the Grant Recipient) to such other person or for such purpose as Homes England in its discretion considers appropriate.
- 12.4 Nothing in clause 8 or 12.2 shall require Homes England to agree any measure or extension which would delay the delivery of the Infrastructure Works beyond 31 March 2024;
- 12.5 Any exercise by Homes England of its rights under clauses 12.1 or 12.3 will be without prejudice to any other right of action or remedy of Homes England (including any claim for damage) in respect of the relevant Event of Default.
- 13 **Public relations and publicity**
- 13.1 The Grant Recipient will ensure that, where appropriate, publicity is given to the Infrastructure Works by drawing attention to the benefits and opportunities afforded by it. In acknowledging the contribution and investment made by Homes England, the Grant Recipient must comply with any guidance on publicity provided by or on behalf of Homes England from time to time.
- 13.2 The Grant Recipient must not publicise or promote the HIF Funding without Homes England's prior written agreement.

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- 13.3 The Grant Recipient shall not refer to Homes England or the HIF Funding in any publicity and/or promotional material relating to the Infrastructure Works without first receiving Homes England's written approval to such references.
- 13.4 Homes England reserves the right to use all data provided by the Grant Recipient in relation to the HIF Funding for publicity or promotional purposes.
- 13.5 The Grant Recipient grants to Homes England a non-exclusive, royalty free licence (to the extent it can grant such a licence) to use any photographs, records, images, articles or illustrations relating to the Infrastructure Works undertaken by or for the Grant Recipient for use in any publicity or advertising, whether published alone or in conjunction with any other person.
- 13.6 The Recovery Beneficiary grants to Homes England a non-exclusive, royalty free licence (to the extent it can grant such a licence) to use any photographs, records, images, articles or illustrations relating to the Housing Outputs undertaken by or for the Grant Recipient for use in any publicity or advertising, whether published alone or in conjunction with any other person.
- 14 **Reputation of the parties**
- 14.1 The Grant Recipient will not, and will use all reasonable endeavours to procure that the Developer(s) will not knowingly do or omit to do anything in relation to the HIF Documents, the Infrastructure Works and Housing Outputs or in the course of their other activities that may bring the standing of Homes England into disrepute or attract adverse publicity for Homes England.
- 14.2 No party will publish any statement, orally or in writing, relating to the other parties which might damage that other party's reputation or that of any of its officers or employees.
- 14.3 The Grant Recipient has not at any time, engaged in any activity, practice or conduct that would constitute an offence under the Bribery Act 2010.
- 14.4 The Grant Recipient is not ineligible to be awarded any contract or business under the Public Contracts Regulations or section 26 of the Utilities Contracts Regulations 2006 (SI 2006/6) (each as amended).
- 14.5 The Grant Recipient will not engage (directly or indirectly) in any activity, practice or conduct that would constitute an offence under the Bribery Act 2010.
- 14.6 The Grant Recipient will maintain in place adequate procedures in line with guidance published by the Secretary of State under section 9 of the Bribery Act 2010 designed to prevent any Associated Person of a person from bribing another person (within the meaning given in section 7(3) of the Bribery Act 2010) intending to obtain or retain business or an advantage in the conduct of the business of a person. The Grant Recipient shall supply to Homes England, promptly on request of Homes England, copies of such documentation or other evidence as is reasonably requested by Homes England to enable Homes England to satisfy itself that such procedures are in place.

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14.7 The Grant Recipient shall supply to Homes England, promptly on becoming aware of them, details of any investigation, enquiry or enforcement proceedings by any governmental, administrative or regulatory body relating to any offence or alleged offence under the Bribery Act 2010 against it.

15 **Confidentiality and freedom of information**

15.1 **Confidentiality**

15.1.1 Each party recognises that under the HIF Documents it may receive Confidential Information belonging to the other.

15.1.2 Each party agrees to treat all Confidential Information belonging to the other parties as confidential and not to disclose such Confidential Information or any other confidential information relating to Homes England 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 the relevant HIF Document.

15.1.3 The obligations of confidence referred to in clause 15.1 will not apply to any Confidential Information which:

- (a) is in, or which comes into, the public domain otherwise than by reason of a breach of a HIF Document or of any other duty of confidentiality relating to that information; or
- (b) is obtained from a third party without that third party being under an obligation (express or implied) to keep the information confidential; or
- (c) is lawfully in the possession of the other party before the date of this Agreement and in respect of which that party is not under an existing obligation of confidentiality; or
- (d) is independently developed without access to the Confidential Information of the other party.

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

- (a) to enable the disclosing party to perform its obligations under any HIF Document or Infrastructure Related Document; or
- (b) by any applicable law or by a court, arbitral or administrative tribunal in the course of proceedings before it including without limitation any requirement for disclosure under the FOIA and the EIR and the Grant Recipient acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and Homes England may nevertheless be obliged to disclose such Confidential Information; or

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- (c) 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
- (d) In order to give proper instructions to any professional adviser of that party who also has an obligation to keep any such Confidential Information confidential.

15.1.5 The Grant Recipient and the Recovery Beneficiary will ensure that all Confidential Information obtained from Homes England under or in connection with any HIF Document:

- (a) is given only to such of its and their respective employees, professional advisors, Contractors, Developers or consultants engaged to advise it in connection with this Agreement as is strictly necessary for the performance of the HIF Document and only to the extent necessary for the performance of that HIF Document;
- (b) is treated as confidential and not disclosed (without Homes England's prior written approval) or used by any such staff or professional advisors, Contractors or consultants or Developers otherwise than for the purposes of that HIF Document; and
- (c) where it is considered necessary in the opinion of Homes England (using its absolute discretion) the Grant Recipient and the Recovery Beneficiary will procure that such staff, professional advisors, Contractors, Developers or consultants sign a confidentiality undertaking before commencing work in connection with this Agreement.

15.1.6 Nothing in this clause 15.1 shall prevent Homes England:

- (a) disclosing any Confidential Information for the purpose of:
 - i the examination and certification of Homes England's accounts; or
 - ii any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which Homes England has used its resources; or
- (b) disclosing any Confidential Information obtained from the Grant Recipient:
 - i to any other department, office or agency of the Crown; or
 - ii to any person engaged in providing any services to Homes England for any purpose relating to or ancillary to a HIF Document or any person conducting an Office of Government Commerce gateway review;
- (c) provided that in disclosing information under clauses 15.1.6(b)i or 15.1.6(b)ii Homes England discloses only the information which is necessary for the purpose concerned and requires that the information is

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treated in confidence and that a confidentiality undertaking is given where appropriate.

- 15.1.7 Nothing in this clause 15.1 shall prevent a party from using any techniques, ideas or know-how gained during the performance of the HIF Documents 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.
- 15.1.8 Nothing in the clause 15.1 shall prevent Homes England from publishing information relating to Total Infrastructure Costs, the Infrastructure Expenditure, the Maximum Sum, the Infrastructure Works or the Housing Outputs.
- 15.1.9 Nothing in this clause 15 shall prevent the disclosure of information as between the Grant Recipient and Recovery Beneficiary as relevant to meeting their respective obligations pursuant to the terms of this Agreement.

15.2 Freedom of information

15.2.1 The parties to this Agreement are FOIA Authorities and:

- (a) are subject to legal duties which may require the release of information; and
- (b) FOIA Authorities may be under an obligation to provide Information subject to a Request for Information.

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

- (a) any Information is Exempted Information or remains Exempted Information; and/or
- (b) any Information is to be disclosed in response to a Request for Information;

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

15.2.3 Subject to clause 15.2.4 below, each party acknowledges that the Relevant FOIA Authority may disclose Information:

- (a) without consulting the other; or
- (b) following consultation with the other party and having taken (or not taken, as the case may be) its views into account.

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- 15.2.4 Without in any way limiting clauses 15.2.2 and 15.2.3, in the event that the Relevant FOIA Authority receives a RFI, the Relevant FOIA Authority will, where appropriate, as soon as reasonably practicable notify the other party.
- 15.2.5 Each party will assist and co-operate as requested by the Relevant FOIA Authority to enable the Relevant FOIA Authority to comply with its disclosure requirements under FOIA and EIR within the prescribed periods for compliance and in particular without limitation will (and will procure that its agents and subcontractors will), at their own cost:
- (a) transfer any RFI received to the Relevant FOIA Authority as soon as practicable after receipt and in any event within two (2) Business Days of receiving a RFI;
 - (b) provide all such assistance as may be required from time to time by the Relevant FOIA Authority and supply such data or Information as may be requested by the Relevant FOIA Authority;
 - (c) provide the Relevant FOIA Authority with any data or Information in its possession or power in the form that the Relevant FOIA Authority requires within thirty (30) Business Days (or such other period as the Relevant FOIA Authority may specify (acting reasonably)) of the Relevant FOIA Authority requesting that Information; and
 - (d) permit the Relevant FOIA Authority to inspect any records as requested from time to time.
- 15.2.6 Nothing in this Agreement will prevent the Relevant FOIA Authority from complying with any valid order, decision, enforcement or practice recommendation notice issued to it by the Information Commissioner under FOIA and / or EIR in relation to any Exempted Information.
- 15.2.7 Each party acknowledges and agrees that the Relevant FOIA Authority may in its absolute discretion redact all or part of the Information within a RFI prior to its publication. In so doing and in its absolute discretion the Relevant FOIA Authority may take account of any EIR Exceptions and FOIA Exemptions. The Relevant FOIA Authority may in its absolute discretion consult with the other party regarding any redactions to the Information to be published pursuant to this clause 15. The Relevant FOIA Authority will make the final decision regarding publication and/or redaction of the Information.
- 15.2.8 The obligations in this clause 15 will survive the expiry or termination of the HIF Documents 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 a HIF Document or of any other duty of confidentiality relating to that information.

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15.3 **Publication of information before Parliament**

The Grant Recipient acknowledges that the National Audit Office has the right to publish details of the HIF Documents in its relevant reports to Parliament.

16 **Data protection**

16.1 The parties will co-operate with one another in order to enable each party to fulfil its statutory obligations under the Data Protection Legislation.

16.2 Without prejudice to the generality of clause 16.1, the Grant Recipient warrants and represents that it has obtained all and any necessary registrations, notifications and consents required by the Data Protection Legislation to Process Personal Data for the purposes of performing its obligations under this Agreement. The Grant Recipient undertakes at all times during the term of this Agreement to comply with the Data Protection Legislation (and the data protection principles contained therein) in processing all Personal Data in connection with this Agreement and shall not perform its obligations under this Agreement in such a way as to cause Homes England to breach any of its applicable obligations under the Data Protection Legislation.

17 **Intellectual property**

17.1 Subject to the provisions of this clause 17.1 the Grant Recipient (in relation to the Infrastructure Works) and the Recovery Beneficiary (in relation to the Housing Outputs) hereby grant, to the extent they can grant, to Homes England a perpetual, transferable, non-exclusive, royalty-free licence (carrying the right to grant sub-licences) to copy, use (from computer disk or otherwise) and to make publicly available all and any Intellectual Property Rights, drawings, reports, specifications, calculations and other documents and information provided by them or which are or become owned by them and which relate to the Infrastructure Works or the Housing Outputs (as applicable), for any purpose either relating to this Agreement or to the dissemination by Homes England of Best Practice.

17.2 To the extent that any of the data, materials and documents referred to in clause 17.1 are generated by or maintained on a computer or in any other machine readable format, the Grant Recipient or the Recovery Beneficiary (as applicable) shall if requested by Homes England procure for the benefit of Homes England at the cost of the Grant Recipient or the Recover Beneficiary (as applicable) the grant of a licence or sub-licence for the term of this Agreement and supply any relevant software and/or database to enable Homes England making such request to access and otherwise use such data for the purposes referred to in clause 17.1.

17.3 No party shall infringe any third party's Intellectual Property Rights in connection with this Agreement.

17.4 The Grant Recipient shall fully indemnify Homes England within five (5) Business Days of demand under this clause 17.4 against any action, claim, demand, proceeding, cost, charge or expense arising from or incurred by it by reason of any infringement or alleged infringement by the Grant Recipient of any Intellectual Property Rights of any third party by the activities described in this clause 17.4, any breach by the Grant Recipient of this clause 17.4 and against all costs and damages of any kind which Homes England may

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incur in connection with any actual or threatened proceedings before any court or adjudication body.

- 17.5 The Recovery Beneficiary shall fully indemnify Homes England within five (5) Business Days of demand under this clause 17.4 against any action, claim, demand, proceeding, cost, charge or expense arising from or incurred by it by reason of any infringement or alleged infringement by the Recovery Beneficiary of any Intellectual Property Rights of any third party by the activities described in this clause 17.4, any breach by the Recovery Beneficiary of this clause 17.4 and against all costs and damages of any kind which Homes England may incur in connection with any actual or threatened proceedings before any court or adjudication body.
- 17.6 The Grant Recipient and the Recovery Beneficiary shall only be entitled to revoke the licence granted to Homes England under clause 17.1 on the termination of the whole of this Agreement.
- 17.7 The Grant Recipient and the Recovery Beneficiary shall provide whatever assistance and explanation is required by Homes England to enable it to disseminate Best Practice (including the methods by which the Infrastructure Works were conducted).
- 17.8 Homes England's decision as to what constitutes Best Practice shall be final (and Homes England acknowledges that it does not intend to use this clause 17.8 to make commercially sensitive information publicly available).
- 17.9 Homes England shall be entitled to amend any of the Intellectual Property Rights or information provided under this clause 17.9 or to combine them with any other information or know how as it thinks fit when compiling and publishing Best Practice in exercise of the right conferred under clause 17.1.

18 **Further assurance**

At any time upon the written request of Homes England the Grant Recipient and the Recovery Beneficiary will 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 Homes England the full benefit of this Agreement or any other HIF Document and of the rights and powers therein granted.

19 **Indemnity**

The Grant Recipient shall:

- 19.1 be liable for and will indemnify Homes England in full against any expense, liability, loss, claim or proceedings arising under statute or at common law in respect of personal injury to or death of any person whomsoever or loss of or damage to property whether belonging to Homes England or otherwise or any claim by any third party arising out of or in the course of or caused or contributed to by the Grant Recipient and/or the performance or non-performance or delay in performance by the Grant Recipient of its obligations under any of the HIF Documents except to the extent that the same is due to any wilful neglect of Homes England and/or the Recovery Beneficiary; and

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19.2 be liable for and shall indemnify Homes England against any expense, liability, loss, claim or proceedings arising directly or indirectly from or in connection with any breach of the terms of this Agreement by or otherwise through the default or negligence of the Grant Recipient.

20 **Senior Officers**

20.1 **Authority of the Grant Recipient Senior Officer**

The Grant Recipient represents to Homes England that the Grant Recipient Senior Officer has full authority to act on its behalf for all purposes under the HIF Documents. Homes England and the Homes England Senior Officer are entitled to treat any act of the Grant Recipient Senior Officer in connection with the HIF Documents as being expressly authorised by the Grant Recipient (save where the Grant Recipient has notified Homes England that such authority has been revoked) and Homes England will not be required to determine whether any express authority has in fact been given.

20.2 **Grant Recipient Senior Officer's power to delegate**

The Grant Recipient Senior Officer may authorise any of its subordinates to exercise its powers under the HIF Documents by notice to Homes England.

20.3 **Authority of the Homes England Senior Officer**

Homes England represents to the Grant Recipient that the Homes England Senior Officer has full authority to act on its behalf for all purposes under the HIF Documents. The Grant Recipient is entitled to treat any act of the Homes England Senior Officer in connection with the HIF Documents as being expressly authorised by Homes England (save where Homes England has notified the Grant Recipient that such authority has been revoked) and the Grant Recipient will not be required to determine whether any express authority has in fact been given.

20.4 **Homes England Senior Officer's power to delegate**

The Homes England Senior Officer may authorise any of its subordinates to exercise any of its powers under any HIF Document by notice to the Grant Recipient.

20.5 **Notices**

Subject to clause 28, any notice, information, instructions or public communication given in writing to the Homes England Senior Officer or the Grant Recipient Senior Officer will be deemed to have been given to their respective appointing party.

21 **No agency, partnership or employment**

21.1 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 for any purpose whatsoever.

21.2 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 Homes

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

- 21.3 The Grant Recipient will not say or do anything which may pledge the credit of or otherwise bind Homes England or that may lead any other person to believe that the Grant Recipient is acting as Homes England.

22 **Assignment and sub contracting**

- 22.1 Homes England will be entitled to assign, transfer or novate its rights and obligations under this Agreement.

- 22.2 The Grant Recipient will not be entitled to assign, transfer or novate its rights and obligations under this Agreement.

23 **Value Added Tax**

- 23.1 The parties understand and agree that the HIF Funding by Homes England under this Agreement is not consideration for any supply for Value Added Tax (VAT) purposes whether by the Grant Recipient or otherwise.

- 23.2 If, notwithstanding the agreement and understanding of the parties as set out in clause 23.1 above, it is determined that the HIF Funding is consideration for a supply for VAT purposes, the HIF Funding shall be treated as inclusive of any VAT.

- 23.3 All sums or other consideration payable to or provided by the Grant Recipient to Homes England at any time will be deemed to be exclusive of all VAT payable and where any such sums become payable or due or other consideration is provided, the Grant Recipient will pay to Homes England all the VAT payable upon the receipt of a valid VAT invoice.

24 **No fettering of discretion/statutory powers**

Nothing contained in or carried out pursuant to any HIF Document or apparently or impliedly contained in this Agreement or any of the deeds and documents referred to herein and no consents given by Homes England or the Grant Recipient will unlawfully prejudice Homes England's or the Grant Recipient's (as appropriate) rights, powers or duties and/or obligations in the exercise of its functions or under any statutes, byelaws, instruments, orders or regulations.

25 **Fees and Expenses**

25.1 **Costs**

Each party shall pay its own costs in connection with the negotiation, preparation, and execution of this Agreement, and all documents ancillary to it.

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25.2 Variations and Enforcement Costs

The Grant Recipient shall, forthwith on demand, pay to Homes England the amount of all costs and expenses (including legal fees and irrecoverable VAT relating thereto) incurred by it:

25.2.1 in connection with the variation or amendment (where such variation or amendment is proposed by the Grant Recipient) of, or the enforcement or preservation of any rights under, any HIF Document; or

25.2.2 in investigating any Event of Default which has or is believed to have occurred.

25.3 The Grant Recipient shall not be required to pay any costs or expenses of the type contemplated in Condition 25.2.2 if the results of Homes England's investigation reveal that there is no Event of Default.

26 State Aid

26.1 The parties acknowledge that HIF Funding will only be provided where such payment is compliant with State Aid requirements.

26.2 If the HIF Funding is found to constitute Unlawful State Aid (or is under investigation or subject to judicial proceedings in relation to State Aid compliance) then:

26.2.1 the parties acting in good faith will seek to restructure the arrangements surrounding the project which includes the Infrastructure Works and the terms of this Agreement to the extent necessary to ensure State Aid compliance; and/or

26.2.2 the parties shall promptly cooperate in good faith to provide evidence that the project which includes the Infrastructure Works (or the restructured Infrastructure Works) is or will be State Aid compliant.

26.3 If the project which includes the Infrastructure Works is found to constitute Unlawful State Aid and/or is not capable of being restructured so as to be compliant then the Grant Recipient must repay any sum of Unlawful State Aid plus such interest as is prescribed by State Aid Law within fifteen (15) Business Days of Homes England issuing it with a written demand for payment.

26.4 Homes England may review this Agreement, at any time prior to or following the withdrawal of the United Kingdom from the European Union, to ensure that the provisions of the Agreement comply with any United Kingdom Competition Requirements which may be applicable to it or the parties and to ensure that no Unlawful State Aid has or is likely to arise.

26.5 If as a result of any review undertaken in accordance with clause 26.4 it is found that a United Kingdom Competition Requirement applies or will apply to this Agreement then the Grant Recipient and Homes England shall amend this Agreement to the extent necessary to ensure that the provisions of this Agreement are compatible with any applicable United Kingdom Competition Requirement.

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27 **Co-operation**

27.1 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 Infrastructure Works and the Housing Outputs and in particular will (subject to clause 27.2):

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

27.1.2 not interfere with the rights of any other party (nor its employees, agents, representatives, contractors or subcontractors) in performing its obligations under this Agreement nor in any other way hinder or prevent any other party (nor its employees, members, agents, representatives, contractors or subcontractors) from performing those obligations provided that this provision shall not prevent any party from exercising its express rights under this Agreement; and

27.1.3 ensure that the Infrastructure Works are delivered in an economically commercial manner.

27.2 Nothing in clause 27.1 shall:

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

27.2.2 relieve a party from any obligation contained in this Agreement.

27.3 The Grant Recipient shall co-operate fully and in a timely manner with any reasonable request from time to time:

27.3.1 of any auditor (whether internal or external) of Homes England to provide documents, or to procure the provision of documents, relating to the Infrastructure Works, and to provide, or to procure the provision of, any oral or written explanation relating to the same; and/or

27.3.2 of the Monitoring Surveyor to provide the information or documents, relating to the Infrastructure Works, and to provide, or to procure the provision of, any oral or written explanation relating to the same;

27.3.3 of Homes England where Homes England is required under any legislation to provide any document relating to the Infrastructure Works or the Housing Outputs to any person.

27.4 The Grant Recipient shall fully co-operate and procure that any Developer co-operates with any reasonable request made by the Monitoring Surveyor which relates to the Infrastructure Works.

27.5 The Grant Recipient shall promptly and fully co-operate with any request for information or evidence or for it to provide an explanation to Homes England (to the extent this arises

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from compliance with State Aid requirements or if Homes England is required to provide to a third party such information or evidence either under Legislation or by a competent authority).

28 **Notices**

28.1 The Grant Recipient contact for all enquiries at Homes England is the HIF Programme Management Office.

All correspondence with Homes England must be in writing and either be delivered at or sent by first class post to:

Homes England, 11th Floor, No.1 Mann Island, Liverpool, L3 1BP with a copy to:

HIF Programme Management Office, Homes England, One Friargate, Coventry CV1 2GN

28.2 Any notice or other communications between the parties shall be accepted as having been received:

28.2.1 if sent by first class post, three (3) days after posting exclusive of the day of posting, or

28.2.2 if delivered by hand, on the day of delivery,

28.2.3 in the case of Homes England addressed as set out above and in the case of the Grant Recipient, Cumbria House, 117, Botchergate, Carlisle CA1 1RD.

28.3 Either of Homes England or the Grant Recipient may change the details of service by notice in accordance with the above.

29 **Rights of third parties**

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

30 **Entire agreement**

30.1 This Agreement and the conditions herein contained together with the Schedules and Annexures constitute the entire agreement between the parties in relation to its subject matter and may only be varied or modified in accordance with clause 37.

30.2 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 Homes England of whatsoever nature on the faith of which the Grant Recipient is entering into this Agreement.

31 **Severance**

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

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extent be omitted from this Agreement and shall not affect the validity, legality or enforceability of the remaining parts of this Agreement.

32 **Cumulative rights and enforcement**

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

33 **Waiver**

33.1 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.

33.2 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.

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

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

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

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

34 **Disclaimer**

Homes England will not be liable to the other party for any advice given by a representative of Homes England. In addition, Homes England gives no assurance as to the suitability or viability of the Infrastructure Works or the Housing Outputs and no endorsement of the same.

35 **Dispute Resolution**

35.1 All disputes and differences arising out of or in connection with this Agreement (a **Dispute**) shall be resolved pursuant to the terms of this clause 35.

35.1.1 In the event that the Grant Recipient or Homes England 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 clause 35.

35.1.2 Representatives of the parties (who should rank at least as Assistant Director (or equivalent)) 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.

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- 35.1.3 Where either no representatives of both parties are available to meet within the period set out in clause 35.1.2 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 Homes England's Chief Investment Officer (the **Senior Executives**).
- 35.1.4 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.
- 35.1.5 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 clause 35.2.
- 35.2 In the circumstances contemplated in clause 35.1.5, 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:
- 35.2.1 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; and
- 35.2.2 the mediation shall start not later than twenty eight (28) days after the date of the ADR notice.
- 35.3 In the event that either the mediation referred to in clause 35.2 has terminated or the Grant Recipient has failed to participate in the mediation Homes England may:
- 35.3.1 require the Grant Recipient immediately to repay the HIF Funding and all other amounts due under this Agreement together with Interest;
- 35.3.2 terminate this Agreement in its entirety;
- 35.3.3 withhold and cancel any further payment of HIF Funding due to the Grant Recipient under this Agreement; and/or
- 35.3.4 reallocate or redirect such part of the HIF Funding (which has not yet been paid to the Grant Recipient) to such other person or for such purpose as Homes England in its discretion considers appropriate.
- 35.4 Homes England reserves the right to invite the Developer to attend any meeting held pursuant to clause 35.1. The parties agree that the Developer shall be entitled to express an opinion at such meeting, but any opinion so expressed shall not be binding upon either of Homes England or the Grant Recipient.

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36 **Governing law**

This Agreement shall be governed by and construed in accordance with the Laws of England and Wales and subject to the provisions of clause 35 the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

37 **Amendment**

37.1 The parties agree that (save as otherwise provided) this Agreement may be amended by agreement in writing between Homes England and the Grant Recipient.

37.2 In granting any consent or waiver under this Agreement Homes England may impose such conditions as it deems to be appropriate to such consent.

38 **Survival of this Agreement**

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

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.

39 **Miscellaneous**

39.1 Any approval by Homes England or any person on behalf of Homes England pursuant to this Agreement of any matter submitted by the Grant Recipient for approval will not be deemed to be an acceptance by Homes England of the correctness or suitability of the contents of the subject of the approval or consent.

39.2 The parties will and will ensure that their respective officers and employees will act at all times in a way which is compatible with the Convention Rights within the meaning of the Human Rights Act 1998.

39.3 A certificate by Homes England as to any sum payable hereunder by the Grant Recipient will be conclusive save in the case of manifest error.

40 **Several Liability**

The liability and obligations of the Grant Recipient and Recovery Beneficiary (the "**Promisors**") under this Agreement are several. Each Promisor is only liable in respect of losses arising from its own breach save that the Grant Recipient and Recovery Beneficiary each expressly acknowledge and agree that and right Homes England may have to seek repayment of any HIF Funding may be exercised solely against the Grant Recipient.

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In witness of which this Agreement has been duly executed as a deed and is delivered and takes effect on the date written at the beginning of this Agreement.

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By virtue of paragraph(s) 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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By virtue of paragraph(s) 5 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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