

**Homes England – Grant Funding Agreement in relation to:**

Programme: Housing Infrastructure Fund (Marginal Viability Fund)

Project: Seasons Phase 3, Thurnscoe Housing Development, Barnsley

**Dated** **2019**

**Parties:**

- (1) **Homes and Communities Agency (trading as Homes England)** of Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington WA3 7QH (**Homes England**); and
- (2) **Barnsley Metropolitan Borough Council** of Westgate Plaza, 1 West Street, Westgate, Barnsley, S70 2DR (the **Local Authority**).

**PCS No: 29767 Seasons Phase 3, Thurnscoe Housing Development, Barnsley**  
**Homes England Programme:** Housing Infrastructure Fund (Marginal Viability Fund)

**Recitals**

- 1.1 Homes England agrees to make the Grant Funding available to the Local Authority on the terms of this Agreement.
- 1.2 These recitals, the schedules (including Standard Terms and Conditions of Funding) and the Appendices to this Agreement are incorporated into and form part of this Agreement.
- 1.3 Subject to the terms of this Agreement, the Local Authority may seek to deliver the Project by providing funding to [developer-partners/third parties] who will procure the HIF Funded Infrastructure Works.
- 1.4 Prior to the date of this Agreement:
  - 1.4.1 the Local Authority has provided satisfactory evidence to Homes England that it has entered into a 100% claw-back agreement with Keepmoat Homes up to the value of the grant of £2,039,085 plus a 65:35 split in favour of the Local Authority on anything over and above the £2,039,085 to allow the Local Authority to receive a satisfactory proportion of any Funding or Receipts that are surplus to the costs of delivering the Project, in order to re-invest these funds in the delivery of additional housing;
  - 1.4.2 the Local Authority has provided written confirmation to Homes England that, should the costs of delivering the Project increase or statutory affordable housing requirements become more onerous to the extent that the Project becomes unviable, the Local Authority shall decrease the sum requested from Keepmoat Homes for the Site sufficiently that the Project becomes viable, such requested sum never to be greater in value than the Market Value and;
  - 1.4.3 the Local Authority has provided satisfactory evidence to Homes England that this Agreement is fully compliant with State Aid Law.

**General**

- 1.5 All definitions and principles of interpretation set out in the standard terms and conditions of Funding specified in **Schedule 2** shall apply to this Agreement (including the schedules to this Agreement), together with the Project specific definitions set out in **0** and the schedules and the Appendix to this Agreement are incorporated into and form part of this Agreement.
- 1.6 The Local Authority acknowledges and agrees that Homes England's obligation to provide the Funding is subject to Homes England receiving any approvals Homes England may require (whether internally or from central Government) and on central Government making funds available to Homes England for the Funding. Homes England will not be in breach of its obligations under this Agreement if it is unable to provide the Funding should any such approval and/or funding not be forthcoming.
- 1.7 The key principles of the proposed Funding for the Project are as follows:

<b>Total Commitment</b>	means up to two million thirty nine thousand and eighty five pounds (£2,039,085.00)
<b>Project</b>	means: 1. the HIF Funded Infrastructure Works; and 2. the Wider Project;
<b>HIF Funded Infrastructure Works</b>	means the infrastructure works to be funded by the Housing Infrastructure Fund (Marginal Viability Fund) pursuant to this Agreement including but not limited to the remediation of gradient by ground remodelling, the construction of highways as principal infrastructure for the site to enable access to serviced development plots, drainage works associated within the primary highway infrastructure along with associated surface water drainage and the delivery of 6,751 square metres of public open space at the Site;
<b>Wider Project</b>	means the residential development of not less than 311 Residential Units on the Site together with associated infrastructure or any other construction on the Site;
<b>Site</b>	means all of the land and buildings known as lad on the north and south sides of Lingamoor Leys, Thurnscoe registered at Land Registry under Title Number SYK536243 and identified on the plan at Appendix 1 to this Agreement;
<b>Availability Period for Funding</b>	means the period from the date of this Agreement until 31 March 2021
<b>Outputs and Milestones</b>	See <b>Schedule 3</b>
<b>HIF Funded Infrastructure Works Start Date</b>	<b>July 2020</b>

<b>Start Date of Project</b>	<b>February 2021</b>
<b>Project Completion Date</b>	<b>December 2026</b>
<b>Restriction on title</b>  In favour of Homes England requiring Homes England's consent to dispositions made in relation to the Site	<b>Yes</b>

### 3. **Conditions Precedent to Funding**

#### 3.1 Conditions precedent to each Claim for Funding

3.1.1 Homes England's obligations under this Agreement to make available any Funding is subject to the conditions precedent more particularly specified in **paragraph 1, Schedule 4**, each being in a form and substance satisfactory to Homes England at the time:

- (a) when the Local Authority delivers a Claim Form to Homes England; and
- (b) when such Funding is to be made available to the Local Authority.

3.2 The conditions precedent required by Homes England pursuant to this Clause 3 are for the sole benefit of Homes England and may only be waived or otherwise deferred by Homes England in writing at its entire discretion.

#### 3.3 **Funding**

Subject to clauses 1.6 and 3.1 and the Standard Terms and Conditions of Funding and the other matters set out in this Agreement, Homes England will pay the Funding on the terms set out in this Agreement.

#### 3.4 **Reporting**

The Local Authority will provide Homes England with the Monitoring and Progress Report in accordance with paragraph 9 to the Standard Terms and Conditions.

#### 3.5 **Repayment**

The Local Authority will repay any overpayment of the Funding in accordance with paragraph 8 to the Standard Terms and Conditions.

#### 3.6 **Communications**

3.6.1 The Local Authority 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, Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington WA3 7QH

with a copy to

HIF Programme Management Office, Homes England, Windsor House, 50 Victoria Street, London SW1H 0TL.

3.6.2 Any notice or other communications between us shall be accepted as having been received;

(a) if sent by first-class post, three days after posting exclusive of the day of posting; or

(b) if delivered by hand, on the day of delivery,

in the case of Homes England addressed as set out above and in the case of the Local Authority addressed to Barnsley Metropolitan Borough Council, Westgate Plaza, 1 West Street, Westgate, Barnsley, S70 2DR.

Either of Homes England or the Local Authority may change the details of service by notice in accordance with the above.

### 3.7 **Amendments to the Agreement**

Homes England may amend or vary the Agreement where either:

(a) mandatory changes are required by the UK or EU laws or regulations; and/or

(b) by mutual written consent between the Local Authority and Homes England.

## 4. **TERMINATION**

Homes England reserves the right to terminate this Agreement by notice in writing and / or to implement paragraph 7 of **Schedule 2** with immediate effect where:

(a) the Local Authority fails to achieve any Output or Milestone;

(b) the Local Authority fails to remedy any breach of this Agreement which is capable of remedy within 14 days of Homes England requesting the Local Authority to do so;

(c) the Local Authority becomes Insolvent;

(d) the Local Authority commits a breach of this Agreement which is incapable of remedy.

**IN WITNESS** whereof this document has been executed as a deed by the parties hereto but is not intended to have legal effect until it has been unconditionally delivered and dated

The common seal of )  
**HOMES AND COMMUNITIES AGENCY** )  
is hereunto affixed in the presence of: )

.....

Name:  
Authorised Signatory

The common seal of )  
**BARNSELY METROPOLITAN BOROUGH COUNCIL** )  
is hereunto affixed in the presence of: )

.....

Name:  
Authorised Signatory

## PROJECT SPECIFIC DEFINITIONS

The following terms shall have the following meanings when used in this Agreement (unless the context requires otherwise).

<b>Adverse Condition</b>	means a condition imposed in a Planning Permission or requirement in any Statutory Agreement regulating the development or use of the Sites which is unacceptable to Homes England in its absolute discretion.
<b>Appeal</b>	<p>means any of the following:</p> <ol style="list-style-type: none"> <li>(1) an appeal to the Secretary of State under section 76 of the Planning Act against refusal of an application for Planning Permission;</li> <li>(2) any application or appeal to any court in respect of the decision of the Local Authority or the Secretary of State in relation to an application for Planning Permission;</li> <li>(3) any reconsideration by the Local Authority or the decision arising out of any application or appeal as described in (1) or (2) above;</li> <li>(4) any further proceedings, application or appeals arising out of (2) or (3) above.</li> </ol>
<b>Assurance Framework</b>	means the assurance framework for the Housing Infrastructure Fund – Marginal Viability Funding provided by Homes England to the Local Authority on 26 October 2018.
<b>Cashflow Recovery Amount</b>	Not applicable.
<b>Development Costs</b>	<p>means the costs of:</p> <ol style="list-style-type: none"> <li>1. the remediation, preparatory works and construction of 4,410 square metres of roads and footpaths to be constructed as principal infrastructure for the site to enable access to serviced development plots;</li> <li>2. drainage works within the primary highway infrastructure along with associated surface water drainage at a capacity of 1,662 linear metres along with 3,050 cubic metres' surface water attenuation; and</li> <li>3. works associated with delivering the primary area of public open space of 6,751 square metres;</li> </ol> <p>as set out in the Cashflow which Homes England is satisfied will be reasonably and properly incurred by the Local Authority in carrying out the HIF Funded Infrastructure Works, such costs must constitute capital expenditure in accordance with Regulations made under the Local Government Act 2003.</p>
<b>Disposal</b>	means a transfer, disposal or grant of any legal or equitable interest in or over the Site or part thereof (other than (in relation to any land assets) by way of grant of a legal charge or the grant of a licence not creating exclusive possession terminable on 3 months' notice or less) including by way of lease and the terms “ <b>Dispose</b> ” and “ <b>Disposed</b> ” shall be

	construed accordingly.
<b>End Date</b>	The date specified in Schedule 3 by which Homes England may exercise any Clawback provision.
<b>Keepmoat Homes</b>	means Keepmoat Homes Limited with company number 02207338 of the Waterfront, Lakeside Boulevard, Doncaster, South Yorkshire, DN4 5PL.
<b>Local Authority Senior Officer</b>	means the employee of the Local Authority holding the title of 'Section 151 Officer' or any such other person with equivalent seniority notified to Homes England by the Local Authority.
<b>Market Value</b>	<p>means in relation to the Site or any part or parts thereof (including in each case the works (or the relevant part thereof) thereon) the Market Value as defined in the Practice Statement Number PS 3.2 of the RICS Appraisal and Valuation Standards 6th Edition as varied from time to time BUT (in addition to the assumptions mentioned in that definition) on the following further assumptions in relation to the Site (or relevant part or parts of it:</p> <ul style="list-style-type: none"> <li>a) the Disposal is subject to and with the benefit of any subsisting leases which are Permitted Disposals or agreements for the same but otherwise sold with vacant possession free from all charges and other encumbrances;</li> <li>b) the Local Authority has a good and marketable title;</li> <li>c) all necessary consents for any works have been obtained and the same can be lawfully used;</li> <li>d) any damage caused by any insurable risk has been made good;</li> <li>e) it has the benefit of all easements and rights necessary for the beneficial use and occupation of it; and</li> <li>f) which complies with; <ul style="list-style-type: none"> <li>i. the Local Authority's obligations to obtain Market Value under the Local Government Act 1972; and</li> <li>ii. State Aid Law (as defined under paragraph 8 of <b>Schedule 2</b>).</li> </ul> </li> </ul>
<b>Planning Act</b>	means the Town and Country Planning Act 1990 including any amendment, modification or re-enactment of it for the time being in force.
<b>Planning Permission</b>	means detailed planning permission (whether granted by the Local Authority or the Secretary of State or pursuant to an Appeal) for the delivery of the HIF Funded Infrastructure Works.
<b>Programme</b>	<p>means an up-to-date programme for the delivery of the Project, detailing the following:</p> <ol style="list-style-type: none"> <li>1. the process by which designs will be produced and agreed;</li> <li>2. the process by which Satisfactory Planning Permission will be secured;</li> <li>3. the process by which the Project will be tendered;</li> <li>4. when works will be commenced on the Site;</li> <li>5. the date of completion of the HIF Funded Infrastructure Works;</li> <li>6. the date of commencement of the Wider Project; and</li> <li>7. the date of completion of the Wider Project.</li> </ol>
<b>Project Completion</b>	The date by which the Project is actually completed to Homes England's reasonable satisfaction and in accordance with the terms of this

<b>Date</b>	Agreement.
<b>Receipts</b>	<p>means the aggregate of all proceeds or other receipts of the Local Authority or any other such party as provided for by this Agreement in relation to the Project including but not limited to:</p> <p>(a) all rents, licence fees and other income or sums received or receivable; and</p> <p>(b) all proceeds received or receivable or the amount or value of all consideration received or receivable from any disposal of any part of the Site;</p> <p>(c) the proceeds of any insurance policy;</p> <p>(d) interest (if any) accruing on any items listed at (a) to (c) above,</p> <p>but excluding:</p> <p>(a) Funding.</p>
<b>Satisfactory Planning Permission</b>	means Planning Permission which is free from any Adverse Condition.
<b>Secretary of State</b>	means the secretary of state or other minister or authority for the time being having or entitled to exercise the powers conferred by sections 77 and 79 of the Planning Act (including were appropriate an inspector or other appropriate officer having authority to act on his behalf).
<b>Standard Terms and Conditions of Funding</b>	means the standard terms and conditions of funding contained at <b>Schedule 2.</b>
<b>Statutory Agreement</b>	means an agreement or undertaking whether made under section 106 of the Planning Act or any other statutory provision which is a pre-requisite to the grant of Planning Permission.
<b>Title Letter</b>	means the certificate of title to the land in form set out in Appendix 3
<b>Wider Project Costs</b>	means the development costs that relate to the Wider Project.



## SCHEDULE 2

### STANDARD TERMS AND CONDITIONS OF FUNDING

#### 1. DEFINITIONS

1.1 In these Standard Terms and Conditions the following words and expressions have the following meanings:

**Agreement** means this agreement, the attached schedules and annexes pursuant to which Homes England makes Funding available to the Local Authority from time to time and incorporating these Standard Terms and Conditions;

**Availability Period** means as defined in paragraph 2.3 to the Agreement;

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

**Cashflow means** the cashflow for the Project as detailed at Appendix 2 setting out information including but not limited to:

- (a) total costs;
- (b) envisaged total Receipts;
- (c) total source(s) of funding for the Project;

as updated from time to time with the approval of Homes England and provided to Homes England pursuant to the Monitoring and Progress Report;

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

**Claim** means an application for Funding;

**Claim Day** means a day on which a Claim for Funding is submitted in accordance with the terms of this Agreement, such day being no later than the 20th day within a Claim Month save where the Claim Month falls during March when the day is to be no later than the 15th of March;

**Claim Month** means for the purposes of this Agreement:

- (a) the month on which the first Claim for Funding is received by Homes England; and
- (b) the month which is every third month following the month on which the first Claim for Funding is received by Homes England.

**Claim Form** means the document in the form of the template annexed as Appendix 4 to be completed and provided by the Local Authority to the nominated Homes England contact at agreed intervals to claim Funding;

**Clawback** means Homes England's right to recover the whole or any part of the Funding under paragraph 7 of Schedule 2;

**Data Protection Legislation and DPL** means (i) unless and until the General Data Protection Regulation (EU) 2016/679 (the GDPR) is no longer directly applicable in the UK, the GDPR, the Law Enforcement Directive (Directive (EU) 2016/680) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 2018 (the DPA) and (iii) all applicable Law relating to the processing of personal data and privacy;

**EU Procurement Regulations** means all applicable United Kingdom and European procurement legislation and any implementing measures and any other legislation in connection with the procurement of works, supplies or services including European Union directives 89/665/EEC, 2004/17/EC and 2014/24/EU, United Kingdom Statutory Instruments 1991/268, 1995/201, 1993/3228, 2006/6 and 2015/102 (Public Contracts Regulations 2015) insofar as the same are applicable;

**Financial Year** means the period from 1<sup>st</sup> April in one year to the 31<sup>st</sup> March in the subsequent calendar year;

**Funding** means funding made or to be made under the Agreement or the principal amount of each advance of Funding made by Homes England under the Agreement or the aggregate amount of all advances of Funding which have been made by Homes England as a financial contribution towards the Project;

**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 Funded Infrastructure Works** means as defined in paragraph 2.3 to the Agreement;

**Initial Cashflow** means the cashflow for the Project as detailed at Appendix 2 setting out information including but not limited to:

- (a) total costs;
- (b) envisaged total Receipts;
- (c) total source(s) of funding for the Project.

**Insolvency** means where the Local Authority is unable to pay its debts as they fall due or are insolvent (within the meaning of s.123(1) of the Insolvency Act 1986 in the case of a company, or s.268 of the Insolvency Act 1986 in the case of an individual) or the Local Authority enters into any arrangement with creditors, or a liquidator, trustee in bankruptcy, receiver, administrator, administrative receiver or similar is appointed, or possession or enforcement or any other similar process is taken against the Local Authority or any of its assets and Insolvent shall be interpreted accordingly;

**Monitoring and Progress Report** means a report (including the Cashflow) prepared by the Local Authority and submitted to Homes England, the means of submission and the location of the form being as notified by Homes England to the Local Authority from time to time in writing;

**Milestones** means the key events and stages as agreed between the Local Authority and Homes England in relation to the Project as detailed in Schedule 3 and **Milestone Dates** shall be construed accordingly;

**Outputs** means the specific targets and objectives agreed between the Local Authority and Homes England as detailed in Schedule 3;

**Permitted Disposal** means a disposal:

- (a) of freehold or leasehold disposal part or parts of the Site in an arm's length transaction; and/or
- (b) of part or parts of the Site pursuant to a lease, or licence and in an arm's length transaction; and/or
- (c) 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
- (d) 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; and/or
- (e) any other disposal which Homes England agrees (in writing) from time to time will become a Permitted Disposal,

provided that in the case of a Disposal the contracted sale price is at Market Value and the Disposal is in line with the Project Details.

**Project** means the project to which the Funding relates, details of which are set out in paragraph 1.7 to the Agreement;

**Project Completion Date** means the date by which the work on the Project is to be completed as defined in paragraph 1.7 to the Agreement;

**Project Details** means information provided by or on behalf of the Local Authority in relation to the Project, which shall include, without limitation:

- (a) the descriptive and other details in respect of the Project as set out in the definitions of Project, the Milestones and the Outputs;
- (b) all details of the works required to complete the Project;
- (c) the Cashflow;
- (d) the timing for Disposals,

each as may have been varied from time to time with Homes England's prior agreement in accordance with the terms of the Agreement;

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

**Regulatory Body** means any UK or EU Government department or agency or any other regulatory body having jurisdiction whether regional, national or local and including, but not limited to, the Ministry for Housing, Communities and Local Government, UK central Government, the European Commission or any successor such department, agency or regulatory body which, whether under statute, rules, regulations, codes of practice or otherwise, is entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of Homes England;

**Site** means as defined in paragraph 1.7 to the Agreement;

**Start Date** means the date by which the work on the Project is to be started as defined in paragraph 1.7 to the Agreement;

**Total Commitment** means as defined in paragraph 1.7 to the Agreement;

**Wider Project** means as defined in paragraph 1.7 to the Agreement;

**Wider Project Milestones** means each Wider Project Milestone set out in Schedule 3;

## 1.2 Interpretation

1.2.1 A reference to:

- (a) the masculine includes the feminine and vice versa;
- (b) the singular includes the plural and vice versa; and
- (c) a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees.

1.2.2 Any reference in the Agreement (including, for the avoidance of doubt, these Standard Terms and Conditions) to any condition, sub-condition, paragraph, schedule, appendix or section heading is, except where it is expressly stated to the contrary, a reference to such condition, sub-condition, paragraph, schedule, appendix or section heading of the Agreement.

1.2.3 Any reference to any enactment, order, regulation or similar instrument (including any Legislation) shall (except where expressly stated otherwise) be construed as a reference to the same as amended, replaced, consolidated or re-enacted.

1.2.4 A time of day shall be a reference to London time.

1.2.5 A party means a party to the Agreement.

1.2.6 The words includes or including are to be construed without limitation.

1.2.7 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 the Agreement or such other person as may be specified to the other parties from time to time.

1.2.8 If there is any ambiguity or conflict between the implied terms and the express terms of the Agreement then the express terms shall prevail.

1.2.9 No review comment or approval by Homes England under the provisions of the Agreement shall operate to exclude or limit the Local Authority's obligations or liabilities under the Agreement save where Homes England have confirmed the said review comment or approval in writing.

1.2.10 The Local Authority shall be responsible as against Homes England for the acts or omissions of any contractor as if they were the acts or omissions of the Local Authority.

1.2.11 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 the Agreement or agreed in writing by Homes England, relieve the Local Authority of any of its obligations under the Agreement or of any duty which it may have to ensure its correctness, accuracy or suitability nor does it 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, or acknowledgement was given or review made.

1.2.12 "disposal" includes a sale, transfer, assignment, grant, lease, licence, declaration of trust or other disposal, whether voluntary or involuntary and "dispose" will be construed accordingly.

1.2.13 any reference to "works" in the Agreement (including these Standard Terms and Conditions) shall mean the works to be carried out on each Site to enable the delivery of a Project in accordance with the Agreement, the Project Details, the Project Documents, the consents, the authorisations and the Agreement.

## 2. PROVISION OF FUNDING

Homes England (in exercise of its powers under the Housing and Regeneration Act 2008) agrees to make available to the Local Authority during the Availability Period the Funding in an aggregate principal amount equal to the Total Commitment.

### 3. PRE-CONDITIONS OF FUNDING

Homes England's obligations under this Agreement are subject to it having received all documents and other evidence detailed in **Schedule 4** each in form and substance to the satisfaction of Homes England.

### 4. WARRANTIES AND REPRESENTATIONS

In accepting this offer (and every time the Local Authority submits a claim form) the Local Authority warrants and confirms to Homes England that:

4.1 it:

4.1.1 is a legally constituted body and has the full capacity and authority and all necessary consents to enter into and perform the obligations under this Agreement; and

4.1.2 acknowledges that it constitutes valid, legal and binding obligations of and on the Local Authority which are enforceable against it;

4.2 all information, documents and accounts provided by the Local Authority or on its behalf, from time to time are and will be true, valid and correct;

4.3 it is not in breach of any law, regulation, agreement or obligation which affects or may affect its ability to commit to this Agreement;

4.4 is not under any statutory obligation to carry out the Project or any part of it;

4.5 is not aware of any fact or circumstance that may affect the successful completion of the Project or otherwise constitutes a breach of this Agreement;

4.6 is not aware of any fact or circumstance whereby the Project is not proceeding in accordance with the Cashflow;

4.7 it will ensure that all the necessary consents and licences are in place and maintained for the duration of the Project without limitation;

4.8 it will ensure that all necessary planning consents and property licences for the Project are in place and maintained for the duration of the Project. If any such consents or licences are varied in any way or revoked it must inform Homes England in writing immediately;

4.9 it has full legal control and good title to the Site and all other assets (including Intellectual Property Rights) necessary to enable delivery of the Project and has all such further rights as are necessary to comply with its obligations in this Agreement;

4.10 It will comply with the Assurance Framework;

4.11 All:

(a) Development Costs saved or recovered;

(b) any Wider Project Costs saved or recovered;

(c) any Receipts to the extent that they exceed the projected amount for such Receipts in the Initial Cashflow;

(d) the Cashflow Recovery Amount (if applicable);

and

(e) any other monies the Local Authority is required to recover from a contractor, developer and/or Site owner as stipulated in the Cashflow,

may be retained by the Local Authority subject to:

(f) Homes England's written approval; and

(g) any conditions imposed by Homes England (in its entire discretion) as a term of such approval, and

any such monies must be used for further housing delivery;

4.12 it has in place legally binding arrangements with its contractors, developers and Site owners to recover any:

(a) savings;

(b) recoveries;

(c) Receipts exceeding projections, which are made and/or required to be made by a contractor and/or Site owner (as applicable);

(d) the Cashflow Recovery Amount (if applicable);

and

(e) any other monies the Local Authority is required to recover from a contractor, developer and/or Site owner as stipulated in the Cashflow,

such that the Local Authority can comply with its obligation in paragraph 4.11;

4.13 it will ensure that Homes England is recognised as a third party pursuant to the Contracts (Rights of Third Parties) Act in contracts with its contractors, developers and site owners (as applicable) such that Homes England's interest in paragraphs 4.11 and 4.12 pursuant to paragraph 7.2.6 will be recognised;

4.14 it will comply with EU Procurement Regulations (to the extent that the same apply);

4.15 it will procure that all contractors comply with EU Procurement Regulations (to the extent that the same apply); and

4.16 it has appointed a Principal Designer and Principal Contractor (each being as defined by the CDM Regulations) and has provided Homes England with a copy of the notification to the Health and Safety Executive of the particulars specified in schedule 1 of the CDM Regulations.

## 5. PAYMENT OF FUNDING

### 5.1 Mechanics and payment of Funding

5.1.1 Claims must be submitted:

(a) during a Claim Month: and

(b) on a Claim Day,

save where a Claim Month would fall during the months of January and February of a given year when such Claim must be submitted during the month of March on a Claim Day.

5.1.2 Claims can be submitted in advance of spend but only where the spend by the Local Authority will be incurred in the relevant Financial Year, save where a Claim Month falls in March for which the Claim must relate to Development Costs already incurred.

5.1.3 Only one Claim can be made in a Claim Month unless otherwise agreed by Homes England in writing.

5.1.4 A Claim will not be regarded as having been validly made by the Local Authority unless:

- (a) it is submitted on a Claim Form which must be signed by the Local Authority Senior Officer and it is:
    - i received by Homes England no later the time period specified in paragraph 5.1.1; and
    - ii delivered during the Availability Period; and
  - (b) it relates to Development Costs and for which the Local Authority has not submitted any other Claim or received any other funding and it is accompanied by written evidence satisfactory to Homes England that the Development Costs have been or will be incurred within a 12 month period ending 31 March in the relevant Financial Year in which the Claim is made together with confirmation from the Local Authority Senior Officer that it has verified and approved the Claim;
  - (c) it accords with the Cashflow and each Milestone is to be met by the relevant Milestone Date or is accompanied by evidence satisfactory to Homes England (at its absolute discretion) to justify any deviation; and
  - (d) it is for an amount which (if paid) would not cause the Total Commitment to be exceeded.
- 5.1.5 Subject to the terms of the Agreement, Homes England will pay Funding to the Local Authority within twelve (12) Business Days of receipt of a valid Claim.
- 5.1.6 Any amount not drawn by the Local Authority under Agreement during the Availability Period will be automatically cancelled.

## 5.2 Use of Funding

- 5.2.1 The Funding will be the sole property of the Local Authority and will be used by the Local Authority for Development Costs only in line with the Milestones and the Cashflow.
- 5.2.2 Without affecting the obligations of the Local Authority in any way, Homes England is not bound to monitor or verify the application of any amount provided pursuant to the Agreement.

## 6. LOCAL AUTHORITY DELIVERY OBLIGATIONS

The Local Authority will procure that:

- 6.1.1 the Project commences by the Start Date and is carried out in accordance with the Milestone Dates and the Cashflow; and
- 6.1.2 the Wider Project Milestones are achieved.

## 7. CLAWBACK ON DEFAULT

- 7.1 In the event that Homes England in its sole and absolute discretion determines that an event of default has occurred in respect of the events listed at paragraph 7.2 (**Event of Default**) Homes England has the right to call an Event of Default by issue of a notice to the Local Authority in respect of the same.
- 7.2 An Event of Default occurs where:
- 7.2.1 any representation or warranty made by the Local Authority pursuant to paragraph 4 is materially incorrect when made or repeated;
  - 7.2.2 the Local Authority fails to achieve any Output or Milestone;
  - 7.2.3 the Local Authority becomes Insolvent or any steps are taken by any person toward such Insolvency;
  - 7.2.4 the Local Authority commits a material breach any of the terms and conditions of the Agreement and/or any other agreement the Local Authority has with Homes England (and fails to remedy such

breach within 14 days of Homes England asking the Local Authority to do so);

- 7.2.5 the Local Authority does not comply with paragraph 9;
- 7.2.6 the Local Authority does not comply with any conditions on it to permit a retention pursuant to paragraph 4.11(g); and/or
- 7.2.7 subject to the provisions of paragraph 4.11, any amount of Funding has not been spent by the Local Authority on Development Costs.

## 7.3 Homes England's rights

Where an Event of Default has occurred Homes England at its absolute discretion may by notice to the Local Authority:

- 7.3.1 pursuant to clause 7.2.2 only, consider and agree a revised Milestone Date with the Local Authority in which case any relevant condition of this Agreement shall apply mutatis mutandis to the revised Milestone Date; and
- 7.3.2 pursuant to clause 7.2.3 only, require the Local Authority to prepare a plan to remedy and/or mitigate the effects of the Event of Default and submit the plan to Homes England within five (5) Business Days of such request for approval. Homes England (at its absolute discretion);
  - (a) may approve the terms of the plan to remedy in writing in which case any relevant condition of this Agreement shall apply mutatis mutandis to the terms of the plan to remedy albeit the Event of Default shall continue until such time as it is remedied to Homes England's satisfaction; or
  - (b) decline to approve the terms of the plan to remedy with the Event of Default continuing.

## 7.4 Acceleration

On and at any time after the occurrence of an Event of Default which is continuing Homes England may by notice to the Local Authority suspend or withhold payment of any instalments and/or recover all or part of the Funding (or to the value thereof, together with costs and expenses), any such recoveries to be paid to Homes England within three (3) Business Days of Homes England's demand.

## 8. OVERPAYMENTS

Homes England may vary or withhold any or all of the payments of Funding under this Agreement and/or require repayment of any or all Funding already paid to the extent that:

- 8.1 repayment or recovery is required under or by virtue of 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 Law"); and/or
- 8.2 Homes England is otherwise required to repay or recover such Funding in whole or in part by or to the European Commission. Any Funding required to be repaid in accordance with this Clause 8 will bear interest at such rate as required under or by virtue of State Aid Law from the date of Homes England's notice requiring

repayment to the date of repayment (both before and after judgement) or such other period as may be required under or by virtue of State Aid Law.

## **9. APPLICANT NOTIFICATION AND REPORTING OBLIGATIONS**

### **9.1 Reporting**

The Local Authority will:

- 9.1.1 from the date of this Agreement until the end of the Availability Period, and no later than ten (10) Business Days following each Quarter Date, the Local Authority will provide the Monitoring and Progress Report to Homes England save that the first Monitoring and Progress Report shall be the period commencing on the date of this Agreement and ending on the next Quarter Date;
- 9.1.2 once the Availability Period has expired, except where Homes England has confirmed to the Local Authority in writing (within three calendar months following the expiration of the Availability Period) that the provisions of paragraph 9.1.1 are to remain effective (at its discretion), the Local Authority will provide the Monitoring and Progress Reports to Homes England twice a year, such reports to be provided no later than ten (10) Business Days following the end of March and September of the relevant Financial Year until the Project Completion Date or such other date that Homes England notifies the Local Authority of in writing;
- 9.1.3 notwithstanding paragraphs 9.1.1 and 9.1.2, provide Homes England with more frequent Monitoring and Progress Reports should it be requested to do so by Homes England (at its absolute discretion);
- 9.1.4 provide Homes England with such other information as Homes England may reasonably require in connection with the Project (including without limitation evidence that a Claim relates to Development Costs) and the Outputs and Milestones; and
- 9.1.5 procure that the Local Authority's Representative and/or any other officers appointed by the Local Authority to deal with the Project will attend such meetings as Homes England may reasonably request to review progress in relation to the Project.

### **9.2 Inspection and Audit Facilities**

The Local Authority will:

- 9.2.1 allow or procure access to its premises for Homes England, its internal auditors or its other duly authorised staff or agents or any Regulatory Body and will allow such persons to inspect and take copies of documents relating to the Project. Homes England will be entitled to interview the Local Authority's employees to obtain oral and/or written explanations of documents;
- 9.2.2 provide Homes England, in writing, with any such information about the Funding and/or the Project and/or the Programme as it requires for the conduct of its statutory functions or which may be required by any Regulatory Body in respect of its regulatory and / or compliance functions;

- 9.2.3 allow Homes England or persons authorised by it to inspect, audit and take copies of all reports, books, accounting records and vouchers which relate to the Funding and the Project provided that Homes England does not impede or obstruct the progress of the Project; and

- 9.2.4 at all times retain documentary evidence to support each Claim and will maintain full and accurate accounts for the Project in accordance with all applicable law and accounting standards and (to the extent that no accounting standard is applicable) use generally accepted accounting principles and practices of the United Kingdom then in force. For the purpose of this paragraph 9.2.4 "Accounting Standards" means the statements of standard accounting practice referred to in section 464 of the Companies Act 2006 issued by the Accounting Standards Board.

## **10. TITLE TO THE LAND**

- 10.1 The Local Authority will procure that the Local Authority's solicitor provides a Title Letter in respect of the Site to Homes England in accordance with paragraph 1.5 of Schedule 4 to this Agreement.

## **11. DISPOSALS**

- 11.1 The Local Authority will procure that the whole and any part or parts of the Site are disposed of by way of a Permitted Disposals only and will not make any other Disposal of the Site or any part thereof without the consent of Homes England such consent not to be unreasonably withheld.

## **12. CONDUCT**

- 12.1 The Local Authority must comply with and assist and co-operate with Homes England in order that it can comply with (and require third parties who benefit from this Funding and any appointed contractors do the same) all applicable legal obligations and statutory requirements in relation to the Project, including, but not limited to:
  - 12.1.1 EU and UK Planning and Environmental legislation
  - 12.1.2 EU 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
  - 12.1.3 Any relevant health and safety legislation
  - 12.1.4 Modern slavery
  - 12.1.5 Employment legislation
  - 12.1.6 CDM Regulations
  - 12.1.7 Equal opportunities (in relation to race, sex, disability, faith and sexuality)
  - 12.1.8 Financial regulations and legislation
  - 12.1.9 Copyright and Data Protection legislation
- 12.2 The Local Authority must not grant any lender security over assets funded, or part-funded, by this Funding unless the Local Authority has first obtained Homes England's written consent.
- 12.3 In carrying out the Project the Local Authority must not act directly or indirectly in any way that will bring Homes England into disrepute.
- 12.4 The Local Authority must inform Homes England immediately if any of its directors, officers or partners are a) disqualified, or b) subject to

- investigation or challenge which may have a detrimental effect upon Homes England and/or the Project.
- 12.5 The Local Authority must advise Homes England immediately of any threat of or any notice or any resolution in respect of any Insolvency.
- 12.6 The Local Authority will act in good faith to achieve the Milestones and Outputs and will provide evidence of this to Homes England as required by Homes England.
- 12.7 The Local Authority will provide Homes England with such evidence that it requires that the Development Costs and Wider Project Costs have been incurred.
- 12.8 Homes England agrees, and the Local Authority accepts that the Local Authority:
- 12.8.1 is a "client" as defined by the CDM Regulations and warrants that it will make suitable arrangements for the managing the Project and maintaining and reviewing these arrangements throughout, so the Project is carried out in a way that manages health and safety risks in accordance with applicable Legislation including but not limited to the CDM Regulations;
- 12.8.2 will act as the only client in respect of the Project and the Local Authority hereby agrees to be the only client under the CDM Regulations for the Project;
- 12.8.3 shall comply fully with all the duties of the client under the CDM Regulations.
- 12.9 The Local Authority will procure that all contractors comply at all times with the Health and Safety Legislation and the CDM Regulations and the requirements of the Health and Safety Executive;

### 13. INSURANCE

- 13.1 The Local Authority must take out and maintain with a reputable insurance company adequate insurance of the type and level of cover which it is reasonable to expect from a business such as that operated by the Local Authority.
- 13.2 The Local Authority must produce a schedule of all appropriate insurance cover and copies of all relevant cover notes and insurance policies to Homes England within 10 days of any such request being made by Homes England.

### 14. CONFIDENTIALITY, FREEDOM OF INFORMATION, DATA PROTECTION, INTELLECTUAL PROPERTY, PUBLIC RELATIONS AND PUBLICITY

#### 14.1 Definitions

In this paragraph 14 the following words and expressions have the following meanings:

**Confidential Information** means any and all information whether disclosed or otherwise made available by one Party to another (or otherwise obtained or received by a Party) whether before or after the date of this Agreement including but not limited to:

- (a) know-how, confidential, commercial and financial information and all other information which should reasonably be treated as confidential (whether marked confidential or otherwise);
- (b) the existence or terms of this Agreement or other information relating to the Project; and

(c) information relating to a Party's business and affairs, its customers, employees and suppliers;

in whatever form in each case (including but not limited to information given orally or in writing or in any document electronic file or machine readable form or other means of recording or representing information whatsoever) and including any information (in whatever form) derived from such information

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

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

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

**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;

**Information** means in relation to:

- (a) FOIA 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) EIR 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 6 of the DPA;

**Intellectual Property** includes, without limit, all copyright (and future copyright), patents, trademarks and service marks (whether registered or not) design rights, registered designs, database rights, moral rights and know-how together with the right to register, protect, enforce and exploit the above anywhere in the world.

**Pre-existing Intellectual Property Rights** means any Intellectual Property provided or used by the Local Authority in connection with the Project which exists as at the date of the Agreement.

**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 Project, any Agreement or any activities or business of Homes England.

#### 14.2 Confidentiality and freedom of information

##### 14.2.1 Confidentiality

- (a) Each party recognises that under the Agreement it may receive Confidential Information belonging to the other.
- (b) Each party agrees to treat all Confidential Information belonging to the other as confidential and not to disclose such Confidential Information or any other confidential information relating to Homes England arising or coming to its attention during the currency of the 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 Agreement.
- (c) The obligations of confidence referred to in paragraph 14.2.1(a) above will not apply to any Confidential Information which:
- i is in, or which comes into, the public domain otherwise than by reason of a breach of the Agreement or of any other duty of confidentiality relating to that information; or
  - ii is obtained from a third party without that third party being under an obligation (express or implied) to keep the information confidential; or
  - iii is lawfully in the possession of the other party before the date of the Agreement and in respect of which that party is not under an existing obligation of confidentiality; or
  - iv is independently developed without access to the Confidential Information of the other party.
- (d) Each party will be permitted to disclose Confidential Information to the extent that it is required to do so:
- i to enable the disclosing party to perform its obligations under the Agreement; or
  - ii 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 Local Authority 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
  - iii 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
  - iv 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.
- (e) The Local Authority will ensure that all Confidential Information obtained from Homes England under or in connection with the Agreement:
- i is given only to such of its employees, professional advisors, Contractors or consultants engaged to advise it in connection with the Agreement as is strictly necessary for the performance of the Agreement and only to the extent necessary for the performance of the Agreement;
  - ii 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 otherwise than for the purposes of the Agreement;
  - iii where it is considered necessary in the opinion of Homes England the Local Authority will ensure that such staff, professional advisors, contractors or consultants sign a confidentiality undertaking before commencing work in connection with the Agreement.
- (f) Nothing in this paragraph 14.2.1 shall prevent Homes England:
- i disclosing any Confidential Information for the purpose of:
    - A the examination and certification of Homes England's accounts; or
    - B 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
  - ii disclosing any Confidential Information obtained from and the Local Authority:
    - A to any other department, office or agency of the Crown; or
    - B to any person engaged in providing any services to Homes England for any purpose relating to or ancillary to the Agreement or any person conducting an Office of Government Commerce gateway review; or
  - iii provided that in disclosing information under paragraphs 14.2.1(f)(ii)(A) or 14.2.1(f)(ii)(B) above Homes England discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.
- (g) Nothing in this paragraph 14.2.1 shall prevent a party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.
- 14.2.2 Freedom of information**
- (a) The Local Authority acknowledges that Homes England is subject to legal duties

which may require the release of information under the FOIA and/or the EIR and that Homes England may be under an obligation to provide Information subject to a Request for Information.

- (b) Homes England shall be responsible for determining at its absolute discretion whether:
  - i any Information is Exempted Information or remains Exempted Information; or
  - ii any Information is to be disclosed in response to a Request for Information.
- (c) Subject to paragraph 14.2.2(d) below, the Local Authority acknowledges that Homes England may be obliged under the FOIA or the EIR to disclose Information:
  - i without consulting the Local Authority ; or
  - ii following consultation with the Local Authority and having taken (or not taken, as the case may be) its views into account.
- (d) Without in any way limiting paragraphs 14.2.2(b) and 14.2.2(c) above, in the event that Homes England receives a Request for Information, Homes England will, where appropriate, as soon as reasonably practicable notify the Local Authority .
- (e) The Local Authority will assist and co-operate with Homes England as requested by Homes England to enable Homes England to comply with its disclosure obligations under the FOIA and the EIR within the prescribed periods for compliance and in particular without limitation will (and shall procure that its agents, contractors and sub-contractors will), at their own cost:
  - i provide all such assistance as may be required from time to time by Homes England and supply such data or information as may be requested by Homes England; and
- (f) Nothing in the Agreement will prevent Homes England from complying with any valid order, decision, enforcement or practice recommendation notice issued to it by the Information Commissioner under the FOIA and / or the EIR in relation to any Exempted Information.
- (g) To the extent that the Local Authority becomes a FOIA Authority subject to the FOIA and the EIR during the course of the Agreement this paragraph will apply mutatis mutandis to both parties.
- (h) The obligations in this paragraph 14.2.2 will survive the expiry or termination of the Agreement for a period of two (2) years or, in respect of any particular item of Confidential Information, until such earlier time as that item of Confidential Information reaches the public domain otherwise than by reason of a

breach of the Agreement or of any other duty of confidentiality relating to that information.

#### 14.2.3 **Publication of information before Parliament**

The Local Authority acknowledges that the National Audit Office has the right to publish details of the Agreement in its relevant reports to Parliament.

#### 14.3 **Data Protection**

For the purposes of this paragraph 14.3, "**Personal Data**" and "**Process**" shall have the meanings ascribed to them in the Data Protection Legislation as amended or re-enacted from time to time.

##### 14.3.1 **Cooperation**

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

##### 14.3.2 **Registrations, notifications and consents**

The Local Authority warrants and represents that it has obtained all and any necessary registrations, notifications and consents required by the DPL to Process Personal Data for the purposes of performing its obligations under the Agreement. The Local Authority undertakes at all times during the term of the Agreement to comply with the DPL (and the data protection principles contained therein) in processing all Personal Data in connection with the Agreement and shall not perform its obligations under the Agreement in such a way as to cause Homes England to breach any of its applicable obligations under the DPL.

#### 14.4 **Intellectual Property Rights**

14.4.1 All Intellectual Property Rights arising from the Project hereby vest in Homes England, other than Pre-existing Intellectual Property Rights, unless specifically detailed and agreed in writing with Homes England.

14.4.2 Homes England is entitled to make publicly available Best Practice arising from the Project ("Project Know-how") and (subject to Clause 14.4.3) the Local Authority hereby grant to Homes England a licence to use such Project Know-how in accordance with this Clause. Homes England will have the right to amend the Project Know-how or to combine with any other know how as it thinks fit when compiling and publishing what it regards as Best Practice.

14.4.3 If the Intellectual Property Rights in Project Know-how are owned by a third party, the Local Authority will use your reasonable endeavours to obtain a licence for Homes England to use such Project Know-how in accordance with this Clause 14. The Local Authority will notify Homes England where the Local Authority are unable to obtain such licence and will identify which parts of the Project Know-how Homes England is not licensed to use ("Excluded Know how").

14.4.4 Subject to Clause 14.4.3 the Local Authority will provide Homes England with complete copies of and access to all



information and know-how relating to or derived from the Project (including the methods by which the Project was conducted). The Local Authority will provide all assistance and explanation requested by Homes England to enable it to disseminate Best Practice.

- 14.4.5 The Local Authority agrees to indemnify Homes England and keep it indemnified at all times against all or any costs, claims, damages or expenses incurred by Homes England, or for which Homes England may become liable, with respect to any intellectual property infringement claim or other claim relating to the Intellectual Property Rights arising from the Project or the Project Know-how.

## 15. INDEMNITY

The Local Authority will be liable for and will indemnify Homes England in full for any expense, liability, loss, claim or proceedings arising under statute, tort (including negligence), contract and/or at common law in respect of personal injury to or death of any person or loss of or damage to property (whether belonging to Homes England or otherwise) or any claim by any third party arising directly or indirectly out of or caused or contributed to by the Project and/or the performance or non-performance or delay in performance by the Local Authority of its obligations under this Agreement except to the extent that the same is due to any act or neglect of Homes England.

## 16. ACCESS TO INFORMATION

- 16.1 The Local Authority is required to provide Homes England, in writing, any such information about the Funding as it requires for the conduct of its statutory functions or which may be required by any Regulatory Body in respect of its regulatory and / or compliance functions.
- 16.2 The Local Authority is required to record for Homes England any such information as may be required to monitor and evaluate the performance of the Agreement. The Local Authority is required to retain this information for access by Homes England or any Regulatory Body for a minimum period of 10 years from the Completion Date.
- 16.3 The Local Authority is required to promptly provide to Homes England, at its reasonable request, access to all and any information about the Project including the location(s) at which the Project will be/ has delivered, Outputs and / or beneficiaries of the Funding from the Start Date up to and including the End Date.

## 17. TRANSFER

The offer of Funding is personal to the Local Authority. Save as expressly contemplated by the Agreement or as otherwise specifically agreed in writing by Homes England the Local Authority may not assign, novate, transfer, sub-contract or dispose of in any other way either the benefit of the Funding or any of your obligations under this Agreement.

## 18. VAT

The Local Authority and Homes England both understand and agree that the Funding by Homes England under this Agreement is not consideration for

any supply for Value Added Tax ("VAT") purposes whether by the Local Authority or otherwise. If, notwithstanding the agreement and understanding of the Local Authority and Homes England, it is determined that the Funding is consideration for a supply for VAT purposes, the Funding shall be treated as inclusive of any VAT.

## 19. CHANGES

The Local Authority must advise Homes England immediately if the Local Authority want or require to make any changes to the Project including, but not limited to, changes to any of the Outputs, Milestones, Start Date, End Date, Project Completion Date, Development Costs and Wider Project Costs and/or funding of the Project. Any changes must be agreed, in writing, with Homes England before taking effect.

## 20. PUBLICITY

- 20.1 The Local Authority will ensure that, where appropriate, publicity is given to the Project by drawing attention to the benefits and opportunities afforded by it. In acknowledging the contribution and investment made by Homes England the Local Authority must comply with any guidance on publicity provided by or on behalf of Homes England from time to time.
- 20.2 The Local Authority must not publicise or promote the Funding without Homes England's prior written agreement.
- 20.3 The Local Authority shall not refer to Homes England or the Funding in any publicity and/or promotional material relating to the Project without first receiving Homes England's written approval to such references.
- 20.4 Homes England reserves the right to use all data provided by the Local Authority in relation to the Funding for publicity or promotional purposes.

## 21. Fees and Expenses

### 21.1 Variations and Enforcement Costs

The Local Authority shall within three (3) Business Days of demand on demand, pay to Homes England the amount of all costs and expenses (including legal fees and irrecoverable VAT relating thereto) incurred by it:

- 21.1.1 in connection with the variation or amendment of, or enforcement or preservation of any rights under, the Agreement; or
- 21.1.2 in investigating any Event of Default which has occurred.

## 22. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties relating to its subject matter and supersedes all prior negotiations, representations and undertakings whenever occurring.

## 23. FURTHER ASSURANCE

On the written request of Homes England, the Local Authority will promptly execute and deliver or procure the execution and delivery of any further documents necessary to obtain for Homes England the full benefit of this Agreement.

24. **APPLICABLE LAW**

This Agreement is governed and interpreted in accordance with English Law and subject to the jurisdiction of the courts of England and Wales. If any provision of this Agreement is found to be invalid, illegal or unenforceable by a court of competent jurisdiction

such provision shall be severed from it and the remainder of the provisions of this Agreement shall otherwise remain in full force and effect.

### SCHEDULE 3

#### 1. MILESTONES

##### Part A: HIF Funded Infrastructure Milestones

MILESTONE	MILESTONE DATE
Commencement of procurement of HIF Funded Infrastructure Works	31 July 2020
Start Date	30 September 2020
Submission of first Claim for Funding	31 August 2020
HIF Funded Infrastructure Works Start Date	31 July 2020
Completion of HIF Funded Infrastructure Works	28 February 2021
Reserved Matters Planning Permission achieved for the HIF Funded Infrastructure Works	31 July 2019
Unconditional contract entered into by the Council with a developer or building contractor for the HIF Funded Infrastructure Works	30 September 2020

##### Part B: Wider Project Milestones

MILESTONE	MILESTONE DATE
Commencement of procurement of Wider Project	Phase 1 - commenced 2011
Wider Project start date	Phase 2 - commenced May 2018 Phase 3 - after completion of the HIF Funded Infrastructure Works
Reserved Matters Planning Permission achieved for the Wider Project	31 May 2019
Unconditional contract entered into by the Local Authority with a developer or building contractor for the Wider Project	30 September 2020
311 residential units commenced	31 December 2020
Project Completion Date	31 December 2026
Local Authority to have undertaken a scheme reappraisal and submit its proposal to Homes England in accordance with paragraph 4.11 of the Standard Terms & Conditions as to how the monies recovered will be used for further housing delivery (the <b>Further Housing Plan</b> )	1 month after Project Completion Date, such date being 31 January 2027
Local Authority to have gained approval for the Further Housing Plan in accordance with paragraph 4.11 of the Standard Terms & Conditions.	2 months after Project Completion Date, such date being 28 February 2027
End Date	31 December 2028

#### 2. OUTPUTS

OUTPUT	Measure
Number of residential units practically completed (Programme Completion)	311

## SCHEDULE 4

### PRE-CONDITIONS

1. In additional to Clause 1.6 of this Agreement, Homes England will not be obliged to advance any Funding under this Agreement (even where a Claim Form has been submitted) unless:
  - 1.1 Homes England is satisfied that the Local Authority are not in breach of this Agreement;
  - 1.2 the Local Authority has provided satisfactory evidence to Homes England that the Local Authority has complied with the Local Authority representations and warranties set out in Clause 4 of Schedule 2;
  - 1.3 the Local Authority has provided Homes England with a copy of the legal opinion it has received for the Project in relation to EU State Aid Law, such legal advice shall be provided by a firm of reputable solicitors with expertise in EU State Aid Law;
  - 1.4 Homes England is satisfied (acting reasonably) that contractors have or will be appointed with sufficient capability, experience and funding to deliver the Project by the Project Completion Date;
  - 1.5 The Local Authority has issued (or procured the issue) to Homes England of the Title Letter in respect of the Site for which Funding is claimed;
  - 1.6 the Local Authority has provided Homes England with confirmation from its legal advisors that it has received legal advice to ensure its compliance with paragraphs 4.11 and 4.12 of the Standard Terms of this Agreement;
  - 1.7 Homes England has confirmed to the Local Authority that it has approved the Cashflow at Appendix 2 to this Agreement;
  - 1.8 Homes England has provided written confirmation to the Local Authority that it is satisfied that both the procedure for appraising development and the Cashflow at Appendix 2 to this Agreement are sufficiently transparent to allow Homes England to monitor:
    - 1.8.1 the costs incurred in delivery of the Project;
    - 1.8.2 the purchase price of the Site and any other land; and
    - 1.8.3 the viability of the Project;
  - 1.9 The Local Authority is to provide or procure the provision of an updated development appraisal and Cashflow to Homes England on a quarterly basis demonstrating that:
    - 1.9.1 the Project is financially viable; or
    - 1.9.2 An open book monitoring process of the development appraisals and cashflow for Phase 3 is adopted, in order for scheme costs, land purchase price and viability to be monitored by Homes England. An updated appraisal and cashflow are to be provided to the Homes England on a quarterly basis ahead of drawdown, and should show that the scheme is viable, or if unviable, should be accompanied by a written commitment from the Local Authority that they will reduce the sum requested from Keepmoat for the Phase 3 land to enable the scheme to be viable, such sum requested never to be greater than the Market Value.
  - 1.10 Prior to or on 1 July 2019, the Local Authority has provided Homes England with satisfactory evidence that an application for Planning Permission has been submitted;
  - 1.11 Prior to or on 1 July 2019, the Local Authority has provided satisfactory evidence to Homes England that any Statutory Agreement and associated costs have been confirmed and agreed and Homes England is satisfied with the terms of the Statutory Agreement;

- 1.12 Prior to or on 1 July 2019, the Local Authority has provided satisfactory evidence to Homes England of confirmation of any statutory or agreed obligations relating to the delivery of affordable housing as part of the Project;
- 1.13 Prior to [1 February 2019], the Local Authority has provided Homes England with the Programme. The dates specified in the Programme must facilitate delivery of the HIF Funded Infrastructure Works by 31 March 2021; and
- 1.14 The Local Authority must notify Homes England immediately upon becoming aware of any changes to the Programme that may:
  - 1.14.1 delay delivery of the Project beyond the Project Completion Date; or
  - 1.14.2 accelerate delivery of the Project so that the Project is completed prior to the Project Completion Date.
2. Homes England may agree to pay Funding to the Local Authority before the above pre-conditions have been met without prejudice or waiver to its rights under this Agreement or to its right to refuse to pay any further Funding until the above pre-conditions are met.

**SCHEDULE 5**

**ADDITIONAL PROJECT SPECIFIC PROVISIONS**

**APPENDIX 1**  
**PLAN SHOWING THE SITE**

**APPENDIX 2**

**CASHFLOW**



**APPENDIX 3**

**TITLE LETTER**

**[Title Letter to be provided on Solicitors letterhead]**

Site: Land on the North and South side of Lingamoor Leys, Thurnscoe

Title Number: SYK536243

Local Authority: Barnsley Metropolitan Borough Council

The Project: Seasons Phase 3, Thurnscoe Housing Development, Barnsley

Date of Certificate: [Date]

Insurance Amount: [To be confirmed]

**TO: Homes and Communities Agency** (trading as Homes England), a body corporate under Section 1 of the Housing and Regeneration Act 2008, of Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington, WA3 7QH (including any statutory successor) (Homes England);

Except as set out in the Schedule hereto.

We certify that:

- 1 We investigated the title of the Local Authority to the Site, including the carrying out of all appropriate searches and enquiries.
- 2 The Site is:
  - 2.1 held freehold by the Local Authority; and
  - 2.2 registered with absolute title at the Land Registry.
- 3 There are no financial charges secured on the Site.
- 4 The interest of the Local Authority in the Site is sufficient to allow the Site to be included in the Project and for the development of residential units without the need to obtain any further property or rights or the consent of any third party.
- 5 The Local Authority has a good and marketable title to the Site and to any appurtenant rights free from prior mortgages or charges and from onerous encumbrances that have an adverse effect on the development or use of the Site for the Project or its intended development.
- 6 We confirm that there either is, or will be on completion, sufficient insurance in place for the Insurance Amount as set out above

- 7 The Local Authority is not subject to any other contractual obligations which will adversely affect its ability to carry out the Project or materially affect the cost of the Project.
- 8 Nothing has been revealed by our searches and enquiries which would prevent the Site being used for the Project.

## APPENDIX 4

### Claim Form

#### Housing Infrastructure Fund (Marginal Viability Fund) Programme

To: Homes England

From: Barnsley Metropolitan Borough Council of Westgate Plaza, 1 West Street, Westgate, Barnsley, S70 2DR

Date: [                            ]

**Funding Agreement dated [insert date] relating to all of the land and buildings known as land on the North and South side of Lingamoor Leys, Thurnscoe, registered at the Land Registry under Title Number SYK536243 (the Funding Agreement)**

- 1 I refer to the Funding Agreement. This is a Claim Form. Terms defined in the Funding Agreement have the same meaning in this Claim Form.
  
- 2 I wish to claim the following amount of Funding:
  - 2.1 Funding amount for Development Costs: [                            ]
  - 2.2 Period of Claim: From [insert start date] to [insert end date]
  - 2.3 Date of claim: [                            ]
  
- 3. Payment Instructions for payment to Local Authority:
  - 3.1 Bank name: *[Complete before Agreement is executed]*
  - 3.2 Bank branch/address: *[Complete before Agreement is executed]*
  - 3.3 Bank sort code: *[Complete before Agreement is executed]*
  - 3.4 Bank account number: *[Complete before Agreement is executed]*
  - 3.5 Bank account name: *[Complete before Agreement is executed]*
  
- 4. Additional Information
  - 4.1 Total Commitment Two million thirty nine thousand and eighty five pounds (£2,039,085.00)
  - 4.2 Total Development Costs claimed and approved to date to date (excluding this claim): [                            ]
  - 4.3 Total Development Costs claimed and approved to date to date (including this claim): [                            ]
  
- 5. The Claim is made in accordance with the Funding Agreement.
  
- 6. I confirm that each condition specified in Schedule 4 of the Funding Agreement and paragraph 5.1 of the Standard Terms and Conditions of Funding required to be satisfied on the date of this Claim Form is so satisfied and I know of no reason why any condition specified in Schedule 4 of the Funding Agreement and paragraph 5.1 of the Standard Terms and Conditions of Funding to be satisfied on or before the date of drawdown will not be so satisfied.

7. I confirm compliance with each representation, warranty and covenant specified in the Funding Agreement.
8. I confirm that no Event of Default has occurred and is continuing or will occur as a result of the proposed draw down.
9. I confirm that the Funding to be provided pursuant to this Claim Form is in respect of Development Costs and will be used to meet the Development Costs and that no other Claim has been made in respect of such costs and that any supporting evidence required to be submitted with this Claim (to Homes England's satisfaction) provides evidence of the relevant expenditure incurred to date.
10. I confirm that:
  - 10.1 The Development Costs have been or will be incurred and constitute or will constitute capital expenditure in accordance with Regulations made under the Local Government Act 2003.
  - 10.2 We have not received and will not receive any specific grants, other support or contributions towards the expenditure for which payment is now being sought.
  - 10.3 The information in this form is true and correct.

By: .....

Section 151 Officer  
for and on behalf of  
Barnsley Metropolitan Borough Council

Name (Printed):

Position:

Dated:

-----**For Completion by Homes England Only**-----  
----

Department/Location					
<b>Order/Contract No:</b>		<b>Supplier Ref:</b>		<b>EFIN/APTOS INV NO:</b>	
Cost Centre	Account No	Activity	Job Code	Net Amount	Vat Code
	Creditor Code	<b>Total Net</b>	<b>Total VAT</b>	<b>Invoice Total</b>	
<b>CERTIFIED BY &amp; Date</b>			<b>AUTHORISED BY &amp; Date</b>		