

MUNICIPAL YEAR 2016/2017 REPORT NO.

ACTION TO BE TAKEN UNDER DELEGATED AUTHORITY

PORTFOLIO DECISION OF:

Cabinet Member for Housing & Housing Regeneration and Cabinet Member for Finance and Efficiency and Efficiency.

REPORT OF:

Director – Regeneration & Environment and Director of Finance, Resources and Customer Services.

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Agenda – Part: 1

KD Number: 4418

Subject:

Utilising the Government's One for One Replacement Receipts to Provide Grant Funding to Registered Provider Partners to Deliver New Affordable Housing.

Wards: All

1. EXECUTIVE SUMMARY

- 1.1 Cabinet on 11th March 2015 received a report KD 3932 setting out a number of short, medium and long term proposals to ensure the Council complied with the Government's Right to Buy One for One Replacement Scheme.
- 1.2 One of the proposals was to devise a scheme to provide grant funding to registered provider partners to part fund delivery of new affordable housing, to which the Council would retain 100% nomination rights in perpetuity.
- 1.3 This report seeks approval from the Cabinet Member for Housing & Housing Regeneration and Cabinet Member for Finance and Efficiency & Resources for the use of uncommitted Right to Buy One for One Receipts to part fund the top four highest scoring bids.

2. RECOMMENDATIONS

It is recommended that the Cabinet Member for Housing & Housing Regeneration and Cabinet Member for Finance and Efficiency;

- 2.1 approve the award of grant funding from uncommitted Right to Buy One for One Receipts to the Registered Providers listed in Table 2 paragraph 3.10.
- 2.2 authorise entry into separate legal agreements with the Registered Providers listed in Table 2 detailing the terms and conditions of the proposed grant funding.
- 2.3 note the proposals in Table 3 paragraph 3.11 not to fund these schemes at the present time and to authorise officers to seek resubmission once schemes have been amended for consideration as part of a continuous market engagement exercise.

3. BACKGROUND

- 3.1 Enfield's Housing Strategy requires 790 new homes to be built in the borough each year. To assist in achieving this target and in keeping with the recommendations in Cabinet Report KD 3932, the Council can provide grant funding from uncommitted Right to Buy One for One Receipts to Registered Providers to part fund delivery of new affordable homes for rent.
- 3.2 Monitoring is carried out on a monthly basis to ensure that the Council is on target to spend its Right to Buy One for One Receipts. The Council does not want to return any receipts to Central Government when they could be used to provide new affordable housing in Enfield. Moreover, if Enfield were to return the receipts, there would be a punitive interest rate applied to the amount returned.
- 3.3 It is important to note that awarding grant funding to Registered Providers forms part of the Council's multi-faceted approach to defraying Right to Buy One for One Receipts within prescribed deadlines. As well as expenditure on the Council's own development schemes e.g. Dujardin Mews, RTB receipts are or will be spent on Council property purchases (Buy Back Programme), the to be established Council sponsored Registered Provider and other Registered Provider schemes that may come forward through a process of continuous market engagement (CME). The Council is also exploring other potential spending routes e.g. on London Living Rent products with the GLA.
- 3.4 The monitoring for September 2016 shows that, with effect from Quarter 2 in 2017/18 (June-September 2017), there will be uncommitted receipts available to make payments to Registered Providers. The HRA Business Plan assumes that £3.827m will be spent in this way in 2017/18, with a further £6.221m available in 2018/19. One of the advantages of granting the monies to Registered Providers is that they then match fund the grant with 70% of their own resources. This allows the Council to access new homes for rent which it cannot afford from within its own HRA resources.
- 3.5 On 18th July 2016, officers wrote to 38 Registered Providers who own and/or manage a portfolio of dwellings in the Borough. The aim was to raise awareness about the availability of grant funding to provide up to 30% of acquisition or eligible development costs of affordable housing for rent.
- 3.6 Providers were advised that the submissions process would be in two stages. The first would be to submit an "expression of interest" to the Council by the deadline date of 19th August. This required a brief summary of the proposals, including anticipated timescales for completion.

- 3.7 The second was that, subject to receipt of an expression of interest, providers would be required to submit fully completed bids, including grant amounts for the Council's consideration, by 23rd September.
- 3.8 Officers wrote to all providers providing detailed information, including guidance together with scores, on how bids would be evaluated. Officers also confirmed the Council would prioritise proposals that demonstrated the ability to meet the assessment criteria outlined in Table 1 below:

3.8.1 Table 1: **Assessment Criteria and Scoring System**

Criteria	Scoring System
Strategic Fit	1 – 5
Deliverable	1 – 5
Value for Money	1 – 5
Affordability for local residents	1 – 5
Accessibility	1 – 5
Maximum Score	25

(see paragraph 3.9.3 for detailed breakdown).

- 3.9 Of the 38 providers, six submitted expressions of interest by the 19th August deadline. They were;

- Christian Action
- Newlon Housing
- Notting Hill Housing Trust
- Oak Housing
- Tamil Community Housing Association
- Westway Housing Association

3.9.1 By the 23rd September 2016 deadline only Oak Housing Association, who proposed to utilise a modular build approach to provide dwellings for market/intermediate market rent, affordable rent and/or temporary accommodation, did not participate to the next stage. This meant the remaining five Registered Providers submitted six proposals.

3.9.2 Officers evaluated each bid using the criteria outlined in Table 1, paragraph 3.8.1 above. It was agreed that bids would be considered for funding based on their final overall score. The applicants' responses were reviewed against each criteria and a total score applied to each to determine the order of priority for funding.

3.9.3 To arrive at a final score officers applied a scoring system of between 1 – 5. The breakdown for each score is as follows;

- 1 = A few good points but main issues missing. No explanation/irrelevant examples given
- 2 = Some points covered, not all relevant. Some examples given

- 3 = Some points covered. Relevant information given. Some examples given
- 4 = Good answer. Relevant information. All or most points covered. Good examples
- 5 = Perfect answer. All points addressed. All points relevant. Good examples

3.9.4 Four, of the six proposals, which included two new build and two purchase and repair schemes, were assessed to meet the overall required standards and deemed suitable for funding during 2017/2018, 2018/19 and 2019/2020. The schemes including scores are summarised in Table 2, paragraph 3.10 below.

3.9.5 Two schemes submitted by Notting Hill and Christian Action had the lowest average scores and are deemed to require revision to address these issues if they are to be considered for funding. Both scored poorly, particularly in relation to “affordability” and “accessibility” criteria. As a result, officers propose they are not included in this initial tranche of funding. Officers propose to work with both organisations to review and strengthen these areas. It is hoped that after this both will resubmit their proposal as part of the continuous market engagement exercise, set to be launched in early 2017. The schemes including scores are summarised in Table 3, paragraph 3.11 below

3.9.6 Although the schemes are at different stages of development in relation to purchase and repair, a significant benefit of these proposals is that they can be delivered much more quickly than a traditional new build development. Without the need for planning consents the turn-around time for a typical purchase and repair scheme is around 6 months. Subject to the award of planning consents and if there are no delays from, “start on site” to “completion” the new builds are likely to take 16 months.

3.9.7 A benefit of this is that, up to 2019/20, the Council has a pipeline of projects for funding. This offers the Council flexibility to allocate funding to projects as and when required depending on their “deliverability”, the surplus “headroom” in the Housing Revenue Account and assessing these bids against other important funding priorities.

3.9.8 If the top 4 projects listed in Table 2 were to be funded, the 30% grant requirement would be nearly £3.9m. This equates to an average of £92,604, per dwelling. With average grants per unit varying from £75k to £128k, it is anticipated that a mix of 43 x 1, 2 and 3 bed dwellings for affordable rent will be developed between July 2017 and September 2019.

3.9.9 It is important to note that, although officers have prioritised schemes based on their individual overall scores any award of funding would be subject to the successful Registered Provider(s) entering into a legal agreement with the Council on the specific terms of the grant’s use. This agreement is attached as Appendix 1.

3.10 Table 2: Schemes Proposed for Grant Funding

Registered Provider	Project	Score	Affordable Rented dwellings	Grant Requirement	Average grant per dwelling	Percentage Affordable
Christian Action	St Matthews Church	15.0	22	1,900,000	86,364	100
Newlon	Linwood Avenue	16.0	7	530,584	75,798	100
Tamil HA	Purchase and Repair	15.3	5	642,381	128,476	100
Westway HA	Purchase and Repair	19.0	9	909,000	101,000	100
Totals			43	3,981,965	92,604	

3.11 Table 3 Schemes Requiring Further Development

Registered Provider	Project	Score	Affordable Rented dwellings	Grant Requirement	Average grant per dwelling	Percentage Affordable
Christian Action	St Marks Church	10.6	17	1,050,000	61,765	100
Notting Hill	Bowes Road	11.0	10	621,131	62,113	18
Totals			27	1,671,131	61,894	

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 If the Council chooses not to utilise this expenditure it will not only have to return the receipts to Central Government but also pay a punitive rate of interest, currently at 4% above the base rate compounded from the time the receipt was generated.

5. REASONS FOR RECOMMENDATIONS

- 5.1 The Council's Housing Strategy requires 790 new homes to be built each year.
- 5.2 If approved the funding will;
- increase the portfolio of affordable rented accommodation in the borough and available to the Council
 - assist the Council to discharge its statutory duties to households on the housing waiting list and those living in temporary accommodation
 - ensure the Council retains 100% nomination rights to a mix of 43 affordable rent dwellings

6. COMMENTS OF THE DIRECTOR OF FINANCE, RESOURCES AND CUSTOMER SERVICES, AND OTHER DEPARTMENTS

6.1 Financial Implications

- 6.1.1 The latest Right to Buy One for One Replacement Scheme monitoring (September 2016) and the current HRA Business Plan both contain assumptions that £3.826m will be granted to Registered Providers in 2017/18, with a further £6.221m granted in 2018/19. Previously, the Registered Providers to whom these grants will be made had not been identified. The proposals in Table 2 of this report mean that £2.446m will now be granted to named providers in 2017/18, with a further £1.536m earmarked for 2018/19. Work will need to continue to ensure that the remaining unallocated resources earmarked for Registered Providers are taken up and utilised to avoid any repayment to Central Government.
- 6.1.2 The granting of these sums to Registered Providers means that they are required to match fund the grant sums with a 70% contribution from their own resources. This means that the Council does not have to find the 70% match funding from within its HRA. The latest version of the HRA Business Plan demonstrates that the HRA could not afford to match fund these sums.
- 6.1.3 The grants will be made from the Council's General Fund Capital Programme (Scheme C380143), with the corresponding capital receipts transferred in order to fund them.

6.2 Legal Implications

- 6.2.1 Section 1 of the Localism Act 2011 permits the Council to do anything that individuals generally may do provided it is not prohibited by legislation and subject to Public Law principles. Creating stronger communities and addressing current housing needs are key priorities for the Council.
- 6.2.2 Provided the evaluation criteria used to award the grant allocations to the organisations have been consistently and fairly applied; and the competition process utilised is in accordance with the principles of the Council's Contract Procedure Rules (" the CPR "); and the process is transparent , then despite the grant allocations being arguably able to be deemed public contracts under the Public Contracts Regulations 2015 (" the Regulations ") (and having values above the applicable EU threshold - £164,176 - whereby an OJEU notice would be appropriate unless an exemption applies), the award of the grant allocations as set out in the report should present a low level of risk to the Council going forward, given that the awardees themselves are representative of the very organisations who could constitute possible challengers (were they not awardees in this instance).

- 6.2.3 With reference to any challenge to the awards, based on the Regulations: If challenged, as long as the Council in this instance, can point to a transparent, and fair (if limited) competition process, in accordance with the CPR, there should be a low level of risk of any successful challenge being brought under the Regulations. (Although not having gone out to OJEU in these circumstances, it must be borne in mind that there is always the possibility of any registered provider who feels they may have been unfairly excluded from the selection of registered providers who were chosen to be invited to express an interest, bringing a challenge to the awards - though that risk is low, given that the current awardees themselves represent the possible range of challengers that could be expected to come forward)
- 6.2.4 The resultant agreement implementing the grant allocation awards, must be in a form approved by the Assistant Director of Legal Services.

6.3 Property Implications

It is proposed that the Council's only interest in the properties would be contracted nomination rights in perpetuity.

7. KEY RISKS

- 7.1 If the Council does not do this there is a risk that it could fail to meet its statutory obligations to households on the housing register.
- 7.2 There is a possibility of the RTB receipts not being spent within the specified timeframe. To mitigate this risk, the Council will enter into a grant funding agreement with successful grant recipients which would include a long stop date that is up to 3 months in advance of the final RTB payment deadline date.
- 7.5 This proposal provides a great opportunity for the Council to use RTB receipts in a new, innovative way.

8. IMPACT ON COUNCIL PRIORITIES

8.1 Fairness for All

The diverse mix of dwellings and plans to bring them into use as affordable rented accommodation will maximise the supply of affordable housing in the Borough, providing more opportunities for people in Enfield to access homes they can afford.

8.2 Growth and Sustainability

Supporting the acquisition of housing will enable the Council to increase the portfolio of stock it has to discharge its statutory housing responsibility to households that live in the Borough.

8.3 Strong Communities

Developing good quality housing in areas where people desire to live will help to create and maintain strong sustainable communities.

9. EQUALITIES IMPACT IMPLICATIONS

This proposal will be subject to an Equalities Impact Assessment. However, providing good quality, affordable housing within the Borough is targeted at those most in need of a home and least able to afford property on the open market.

10. PERFORMANCE MANAGEMENT IMPLICATIONS

This proposal will increase the portfolio of stock that is available to assist the Council to discharge its statutory housing obligations i.e. supporting those in temporary accommodation seeking permanent and assisting with decanting of households directly affected by the Councils regeneration proposals.

11. HEALTH AND SAFETY IMPLICATIONS

All properties owned and rented by Enfield are subject to rigorous health and safety checks as a matter of course.

12. PUBLIC HEALTH IMPLICATIONS

The provision of safe, clean affordable housing has a clear connection to individuals' health and wellbeing. Providing renovated affordable rented housing as proposed in this report will have a positive impact on Public Health.

Background Papers

None

**ACTION TO BE TAKEN UNDER
DELEGATED AUTHORITY**

REPORT OF:

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Customer Services
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Agenda - Part: 1	Item:
Subject: Budget Planning and Consolidation (BPC) software upgrade and Enhancement Phase 2	
Wards: non-specific KD Number: 4410 .	

1. EXECUTIVE SUMMARY

In March 2016, approval was granted to proceed with the BPC Project. The project is split into 2 phases. The approval granted in March 2016 was for Phase 1. This report seeks approval for Phase 2.

Phase 1 covered the definition, analysis and documentation of the business and technical requirements to ensure the business requirements are properly recorded and the scope of the project is clearly defined. The information was captured through several workshops and documented in a Requirements Document that has been agreed and signed off.

This report seeks approval for the 2nd and final phase of the project. Phase 2, the realisation Phase covers the build, test, deploy and review of the new version of the software and the agreed enhancements. The costs of the project will be funded from within the IT Capital programme as approved by Cabinet on 12 February 16 (KD 4263/U195 - POD Ref: 7/59/15-16)

The services have been procured in accordance with the Dorset County Council ICT Technical Resourcing Framework ("Framework") via direct award which is permitted under the Framework. The successful provider is Absoft Limited and a proposal has been provided to and accepted by the Council.

2. RECOMMENDATIONS

That the Director of Finance Resources and Customer Services:

2.1 Notes the successful completion of Phase 1 of the project

2.2 Approves the direct award of contract to Absoft Limited in accordance with the Dorset County Council Framework commencement of Phase 2 of the project, i.e. the build and deployment of BPC V10 and the programme of bespoke enhancements.

2.3 Notes the capital cost of £525,000 will be funded from the ICT Capital programme

3. BACKGROUND

3.1 The Budget Planning and Consolidation ("BPC") software Version 7.5 (the "Software") was implemented in April 2012. The Software provider is SAP and the Council receives upgrades in software via a licence directly through SAP. The Software acts as a financial management reporting tool which assists budget holders to complete their monthly budget monitoring. It provides consistency across the Council as well as providing transparency and a clear audit trail.

Since its implementation the requirements of the Council have changed significantly, furthermore the principles of Enfield 2017, the Council's transformation programme, mean the current version of BPC, as a financial management tool does not fully meet the requirements of budget holders. The software is used to submit monthly budget monitoring returns; however, there are several limitations, which make it difficult for budget holders to quickly and easily discharge their financial management responsibilities.

The current programme of transformation has resulted in a 40% reduction to the Finance department, which has historically provided a high level of support to revenue budget holders in the discharge of their financial management responsibilities and an even greater level of support to Capital budget holders, as BPC has not been rolled out to them.

In accordance with the principles of Enfield 2017, budget holders are expected to take full responsibility for the financial management of their budgets, with the Finance hub, taking on the role of review and challenge only. In addition, the Finance hub will be adopting a risk based approach to revenue & capital monitoring, whereby the level of review and challenge will be directly linked to the risk assessment of each budget. This is another reason why it's important that budget holders have an IT tool that enables them to quickly and easily monitor their budgets and generate simple reports themselves, as required.

Whilst some of this functionality exists within the current version of the Software, it's limited and difficult to use. The new version of the Software and the planned customisations will enable budget holders to carry out their financial management role in a much easier and quicker way.

The Software is also used by the Council's Finance Team for other tasks including building up the annual budgets & the medium term financial plan. As is the case with the budget monitoring, the software is used to deliver these tasks, but it is quite complicated and in some cases, unreliable, which has led to staff maintaining separate spreadsheets. This is an approach that cannot be maintained under the new Finance hub, with the reduction in resources.

The Council has a support contract with Absoft, with support for BPC subcontracted to a third-party company and is looking to upgrade the software to deliver enhanced functionality to improve the effectiveness of the Council's investment in the SAP system.

- 3.2 BPC is a financial management reporting tool which assists budget holders to complete their monthly budget monitoring. It is also used by the Finance department for budget setting. It provides consistency across the Council as well as providing transparency and a clear audit trail.
- 3.3 Version 7.5 of the Software which the Council is currently running is now out of date. There have been several software patches which have not been applied. Also, taking into consideration the changing role of the Budget manager, the transformation of the Finance Team, the requirement to roll out BPC to Capital budget holders and the Enfield 2017 operating principles, the current version of the software no longer delivers what the Council requires.
- 3.4 BPC is currently used across the Council by approximately 320 users (including Finance Team staff). Whilst the current version of the software is available and used by the bulk of revenue budget holders, response times are slow and certain elements are confusing to use. The consolidation of the monthly budget monitor & the salary monitoring are 2 key processes being carried out using spreadsheets, outside BPC. The intention is to incorporate both processes into BPC as part of the upgrade project.
- 3.5 BPC is currently not available to capital budget holders. Historically the departmental finance teams carried out the Capital monitoring on behalf of the services. One of the assumptions underpinning the creation of the Finance hub and the 40% reduction in staff was that BPC would replace the current spreadsheet monitoring and it would be rolled out to budget holders. Pending the implementation and rollout to capital budget holders, a spreadsheet based system is being maintained centrally by the capital and projects team, however this is not sustainable, due to resourcing issues. Furthermore, it contradicts one of the main principles of Enfield 2017, i.e. self-serve, do it once. The intention is to incorporate the

enhancement of the capital monitoring element of BPC and deployment to capital budget holders as part of the project.

- 3.6 Another reason why the upgrade and rollout to Capital budget holders is important is because historically; those members of the Finance Team who were responsible for a specific service area, were responsible for both capital and revenue. This is not the case in the new Finance Hub, with capital monitoring being the responsibility of the Capital and Projects Team, whilst revenue monitoring is in the Budget Challenge Team. The role of the Budget Challenge Team will be to “review & challenge” budget holder returns in accordance with a new risk based approach to revenue budget monitoring. A similar approach will be applied to capital budget monitoring
- 3.7 The upgrade of the BPC software and the roll-out to capital budget holders is a key enabler for the Finance Hub and underpins its ability to provide a responsive service with 40% less staff. Furthermore, as the role of the manager changes across the Council, the Finance hub are responsible for providing them with a financial management tool which is fit for purpose and allows them to discharge their responsibilities quickly and easily, without the need for finance intervention.
- 3.8 The transformation has meant the Finance Team is no longer resourced to provide the level of financial management support that has been provided historically. But also, it would be in contradiction of the key principles of Enfield 2017 ie, “Do it once”, “automate where possible” and “self-serve”.

4. PROJECT OVERVIEW

- 4.1 The project has been split into 2 phases. Phase 1, has now been completed and included the definition, analysis and documentation of both the business and technical requirements that have to be completed. The information was captured through several workshops and documented in a Requirements Document that has been agreed and signed off.
- 4.2 Phase 2, the delivery phase covers the build, test deploy and review of the new software and the agreed enhancements. Following the completion of Phase1, the cost of delivering the upgrade and programme of enhancements is £525,000 (Phase 2).
- 4.3 The upgrade of the Software from version 7.5, to version 10.1 will deliver several useful improvements such as a new web based client, which means BPC can be accessed via the internet. The new version of the software also has some useful enhancements such as drag and drop dashboard reporting.
- 4.4 In addition several key enhancements will also be delivered as part of the upgrade project, including the ability to drill down from BPC straight into SAP and the development of a new salary monitoring “module”, which will interface directly with SAP HR, thereby replacing the current spreadsheet salary monitoring.

- 4.5 The services to be provided under Phase 2 of the project were procured in the same manner as those under Phase 1. A direct award has been made to Absoft Limited in accordance with the Framework rules. Absoft Limited has provided a proposal which has been accepted by the Council.

5. ALTERNATIVE OPTIONS CONSIDERED

- 5.1 Do Nothing – This is not a viable option. The current software no longer meets the needs of Budget managers and Finance staff, as an effective, robust budget monitoring tool.
- 5.2 Implement a different Budget planning tool – This option has been investigated with IT and 2 other products have been considered. The first was Power BI, which is a good tool for data analysis, but has limited data entry capabilities and therefore is not suitable as a financial management tool.
- 5.3 The other system that was investigated was Oracle’s planning, budgeting cloud services, which is a budget planning tool, but did not offer any significant improvements to BPC and therefore it was decided to keep BPC.
- 5.3 Only upgrade the Software, without carrying out the additional enhancements – This would deliver some benefits however it would not address the key issues of the requirement to radically reduce the reliance on spreadsheets for salary and capital monitoring, or the enhancements required to allow BPC to be rolled out to Capital budget holders or the facility to drill down into SAP from BPC. It would also not address the current labour intensive workaround that the Finance Team must undertake for the processing of virements, the consolidation of the monthly budget monitoring report, etc.

6. REASONS FOR RECOMMENDATIONS

- 6.1 To secure the advantages of upgrading to Version 10, alongside the planned enhancements.
- 6.2 To enable BPC to be deployed to Capital budget holders as well as Revenue Budget holders as well as improving the usability of the system for end users
- 6.3 Improved performance and response times, through a more effective setup
- 6.3 The successful operation and viability of the new finance hub is predicated on providing budget holders with a financial management tool that enables them to self-serve

7. COMMENTS OF THE DIRECTOR OF FINANCE, RESOURCES AND CUSTOMER SERVICES AND OTHER DEPARTMENTS

7.1 Financial Implications

The project is recognised to be strategically important to the Council's transformation programme and will be funded as part of the Council's ICT Capital programme. The table below summarises the project costs, which will be spread over 2016/17 & 2017/18.

The funding requirement for this project is £525,000 broken down as per the table below. The costs of this project can be contained from within the IT development capital budget approved by Cabinet on 12 February 16 (KD 4263/U195 - POD Ref: 7/59/15-16). Project spend will be monitored closely as part of the capital monitoring process, reported to CMB and Cabinet and any variations which cannot be contained from within the approved programme will require additional authorisation

Summary of costs	£'000
Technical Migration/upgrade & software upgrade/enhancements	432
Business Warehouse application tasks	45
Interim hosted development system	25
Report development training	5
Subtotal	507
*BPC Sandbox build	4
*SAP BPC migration and upgrade proof of concept	14
Total	525

*Recommended due to termination of SAP Maintenance contract

7.2 Legal Implications

7.2.1 Section 111 of the Local Government Act 1972 gives a local authority power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions. The services from the contractor as proposed within this Report are incidental to the functions of the Council's departments and are intended to help ensure an effective support to the Council.

7.2.2 The Council also has a general power of competence in section 1(1) of the Localism Act 2011. This states that a local authority has the power to do anything that individuals generally may do, provided it is not prohibited by legislation.

- 7.2.3 The Council proposes to directly award the contract to Absoft Limited in accordance with the Framework which permits the Council to directly call-off with the suppliers and their products, without the need for a mini competition. The Council must ensure it complies with the “direct award rules” of the Framework.
- 7.2.4 The Council’s Constitution, in particular its Contract Procedure Rules (“CPR’s”) permit the Council to call-off from an existing framework as long as the framework terms permit such.
- 7.2.5 The Council must also adhere to the Duty of Best Value and must consider this duty in the manner in which the products and services are provided, in accordance with the Local Government Act 1999.
- 7.2.6 The terms of the resultant contract must be in accordance with the Framework and call off terms must be reviewed and approved by the Assistant Director of Legal & Governance Services.
- 7.2.7 As the contract value exceeds £250,000 this is a Key Decision and the Council must comply with the Key Decision procedure.

7.3 Procurement Implications

- 7.3.1 In all cases procurement must follow the Council’s CPRs along with the Public Contract Regulations 2015.

8. KEY RISKS

- 8.1 That the project does not deliver the expected benefits. Phase 1 of the project included detailed work on confirming the Council’s requirements as well as detailed planning and design, to ensure the final product is as required. All this information was captured in a Requirements document which was agreed and signed off.
- 8.2 Inadequate Finance, IT and Project management made available for the duration of the project. A dedicated Project team is being setup with named individuals. Terms of reference will be drafted for the team and circulated to ensure clarity around roles and responsibilities.
- 8.3 Cost overrun. All the costs included in Table 1 above are based on a fixed price proposal.

Background Papers

Absoft Proposal a SAP BPC Upgrade 12.01.2016
Absoft Application Design Document version 3 – 01.08.2016
Absoft Proposal for SAP BPC upgrade V4

Dated

2016

The Mayor and Burgesses of the London Borough of Enfield

And

XXXXXX

Funding Agreement in relation to Acquisition of

Clause	Page	
1	Definitions	4
2	Provision of Agreed Funding	22
3	Representations and warranties	23
4	Payment of Agreed Funding	23
Delivery obligations		Error! Bookmark not defined.
6	Regulatory and operational obligations	28
7	Variations and Milestone Date Amendments	30
8	Notifications, reporting and audit	30
9	Change in financial circumstances	34
10	Events of Default	35
11	Public relations and publicity	38
12	Reputation of the parties	39
13	Confidentiality and freedom of information	40
14	Data protection	45
15	Intellectual property	48
16	Further assurance	49
17	Indemnity	49
18	No Council, partnership or employment	50
19	Assignment and sub contracting	50
20	Value Added Tax	50
21	No fettering of discretion/statutory powers	50
22	Fees and Expenses	51
25.	State Aid	51
26	Co-operation	52
27	Notices	53
28	Rights of third parties	53
29	Entire agreement	53
30	Counterparts	53
31	Severance	54
32	Waiver	54
33	Disclaimer	54
34	Dispute Resolution	54
35	Governing law	56
36	Amendment	56
37	No fetter on statutory functions	56
38	Survival of this agreement	56
39	Miscellaneous	56

Schedule 1	59
Agreed Development Details	59
Schedule 2	61
Claim Form	61
Schedule 3	63
Representations and Warranties	63
1 Powers, vires and consents	63
2 Deliverability	64
3 Operational issues	65
4 Information	65
5 Reports and Directions	66
6 Social Housing Assistance	66

Funding Recipient Agreement

Dated

2016

Parties

- (1) **The Mayor and Burgesses of the London of Enfield acting by the Council** of the London Borough of Enfield, Civic Centre, , PO Box 60, Silver Street, Enfield, London, EN1 3XA, **The Borough (the Council)**; and
- (2) XXXX whose registered office is situated at XXXX (the **“Recipient” / “Grant Recipient”**).

Singularly referred to as “Party” and together referred to as “Parties”

Introduction

- (A) The Council is empowered under Section 19 of the Housing and Regeneration Act 2008 inter alia, to make grants available to facilitate the development and provision of housing .
- (B) The Council has agreed to advance grant funding to the Grant Recipient pursuant to Section 11(6) of the Local Government Act 2003 to facilitate the delivery of certain affordable housing schemes subject to and in accordance with the terms of this Agreement.
- (C) The Grant Recipient has submitted a Bid to the Council for grant funding to assist the Grant Recipient in the purchase of properties to further the development of affordable housing within the London Borough of Enfield.
- (D) The Grant paid by the Council to the Grant Recipient pursuant to this Agreement is social housing assistance as defined in Section 32(13) of the Housing and Regeneration Act 2008.
- (E) The grant funding provided under this Agreement is 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).
- (F) This Agreement sets out the terms and conditions upon which specific amounts of Agreed Development Funding will be advanced to the Grant Recipient by the Council.

Agreed terms

1 Definitions

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

Affordable Housing means subsidised housing managed by a Registered Provider that will be available to persons who cannot afford to rent or buy housing generally available on the open market.

Affordable Housing Units means the as set out in Schedule 1

Agreed Development: means the purchase of the Affordable Housing Units

Agreed Budget means the budget for the Agreed Development comprised within the Agreed Expenditure Plan including a cash flow for the Agreed Development showing proposed drawdowns of Agreed Funding during each financial year of the Availability Period and the Total Costs Plan;

Agreed Default means the Recipient has failed or will fail to secure the delivery of the Agreed Development by];

Agreed Details means information provided by the Grant Recipient in relation to the Agreed Development, which shall include:

- (a) the descriptive and other details in respect of the Agreed Development as set out in schedule 1;
- (b) the Recipient Development Outputs and the projected dates for their achievement;
- (c) details of any works required to ensure the Agreed Development meets the Decent Homes Standard;
- (d) the Agreed Development Budget;
- (e) the Milestone Dates;
- (f) the period (if any) for which the Agreed Development must be used for the purposes specified in schedule 1;

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

Agreed Expenditure means the costs of delivering the Agreed Development as listed and described in the Agreed Expenditure Plan which the Council is satisfied either have been or will be reasonably and properly incurred by the Recipient in delivering the Agreed Development and Recipient Development Outputs but for the avoidance of doubt which does not include:

- (a) staff costs and other internal costs of the applicant;
- (b) finance charges;
- (c) marketing costs;
- (d) VAT;
- (e) any costs of activities of a political or exclusively religious nature;
- (f) any costs of goods or services that the Recipient has a statutory duty to provide;
- (g) payments reimbursed or to be reimbursed by other Public Sector Subsidy or private sector grants;
- (h) contributions in kind;
- (i) depreciation, amortisation or impairment of fixed assets owned by the Recipient;
- (j) interest payments (including service charge payments for finance leases);
- (k) gifts, other than promotional items with a value of no more than £10 a year to any one person;
- (l) any costs of entertaining which would be a taxable benefit to the person being entertained according to current UK tax regulations;
- (m) statutory fines, criminal fines or penalties;
- (n) liabilities incurred before the date of this Agreement unless agreed in writing by the Council; or

and where any costs relate to both construction works and professional fees (including design) then the proportion attributable to professional fees shall be included in the Agreed Expenditure (the amount of such proportion to be determined by the Council).

Agreed Expenditure Plan means the plan setting out the Agreed Funding and Agreed Expenditure which is to be agreed between the Parties in accordance with clause 2.4;

Agreed Funding means the funding made available or to be made available by the Council to the Recipient under this Agreement (which shall be the Agreed Works Sum) for the purposes of reimbursing Agreed Expenditure incurred by the Recipient in delivering or procuring the delivery of the Agreed Development ;

Agreed Milestones means the stages in the delivery of the Agreed Development set out in schedule 1;

Agreed Works Sum means the amount specified in schedule 1 as the same may be amended from time to time in accordance with this Agreement;

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

Authority's Agreement means the Council's agreement with the Secretary of State for Communities and Local government dated 27 June 2012 (as subsequently varied on 14 June 2013) pursuant to Section 11(6) of the Local Government Act 2003.

Availability Period means the period from the date of this Agreement until

31st March 2017 unless otherwise brought to an end pursuant to clause 2;

Balancing Payment means such sum as represents the difference between the quantum of the Agreed Funding paid to the Recipient and that of the Agreed Sum as adjusted in accordance with clause 11.2.6

Base Interest Rate means the base lending rate of Bank of England or such other rate as the Council determines (acting reasonably);

Best Practice has the meaning ascribed to it in clause 16.7;

Bid means the submission by the Recipient of its proposal for the acquisition of 27 dwellings including any supporting information relating to the Agreed Development and the Dwellings Total;

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;

Certificate of Title means a certificate of title in relation to the Site in the form approved by Council;

Change of Use means in relation to any asset funded pursuant to this Agreement a change in its use from that agreed in the applicable Bid Document or a reduction in the time for which it is to be used for any designated purpose as specified in the applicable Bid Document;

Claim means an application for drawdown of an instalment or one or two payments of Agreed Funding;

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

Confidential Information means in respect of the Council all information relating to Council or the existence or terms of this Agreement or any other documents in respect of which the Recipient becomes aware in its capacity as a party to this Agreement or which is received by the Recipient in relation to this Agreement from either COUNCIL or any of its advisers or from any third party if the information was obtained by that third party directly or indirectly from Council or any of its advisers in whatever form in either case (including information given orally and any document electronic file or other means of recording or representing information which includes derives or is copied from such information) and in the case of the Recipient means such specific information as the Recipient shall have identified to Council 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 Agreed Development;

Considerate Constructors Scheme means the Code of Considerate Practice promoted by the construction industry a copy of which is to be found on the Considerate Constructors Scheme website;

Contractor means each contractor or other party (however described) engaged by the Recipient (or on behalf of the Recipient) or collaborating with the Recipient in or for the delivery of the Agreed Development;

Cost Overrun means at any time the amount by which the aggregate costs and expenses incurred by the Recipient in relation to the Agreed Development exceed the Total Costs;

Council's Senior Officer means the person notified as such by Council to the Recipient

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 Controller has the meaning ascribed to it in the DPA;

Data Processor has the meaning ascribed to it in the DPA;

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

Decision Allowable Costs means those costs incurred by the Grant Recipient in providing housing as specified in Schedule 1 (*Approved Bid*) (calculated using generally acceptable accounting principles) as follows:

- a) the Development Costs
- b) all other costs of providing the housing
- c) a proper proportion of costs (including for common infrastructure) if these are shared between the housing and other construction on sites where the housing is situated; and/or
- d) other costs permitted under the SGEI Decision of operating the housing as affordable housing;

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

Decision Revenue means all income (including all Public Sector Subsidy but excluding Firm Scheme Grant) which the Grant Recipient or a Grant Recipient Affiliate receives for the purposes of or earns from the AHP Housing;

Design and Quality Standards means the standards set out in the Mayor of London's publication entitled "Mayor of London's Housing Supplementary Planning Guidance March 2016 Edition" in respect of any scheme.;

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 Site or Dwelling funded by Agreed Funding pursuant to this Agreement;

DPA means the Data Protection Act 1998 as amended or updated from time to time;

Dwelling means a house, flat, maisonette or any other form of habitable dwelling;

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;

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

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

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 Contamination means the following and the consequences thereof:

- (a) any release, emission, leakage or spillage at or from the 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 Site by any person including (without limitation) the storage, handling, labelling or disposal of Dangerous Substances;

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 Procurement Requirements 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 2014/24/EC and 2007/66/EC, United Kingdom Statutory Instruments 2015/102 (the Public Contracts Regulations);

Event of Default means any of the events set out at clause 11;

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

FA means the Finance Act 2004;

FA Legislation means Chapter 3 of Part 3 of the FA and the Income Tax (Construction Industry Scheme) Regulations 2005 (S.I. No. 2005/2045) each as amended from time to time;

First Payment Date means half of the Agreed Funding which will be given upon this Agreement being duly executed by both parties.

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;

Council's Senior Officer means the person notified as such by Council to the Recipient;

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 Agreed Development or Recipient Development Outputs (as applicable) under the same or similar circumstances;

Grant Recipient Affiliate means a third party whose relationship with the Grant Recipient falls within limb (b) of the definition of Grant Recipient Party;

Grant Recipient Party means:

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

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;

Housing Provision Default means the Recipient has failed or will fail to secure (by whatever means) the delivery of the Dwellings Total by

Housing Programme means the programme to be administered by the Council which provides grants loans or equity investments to certain parties to contribute to the regeneration or development of Housing within the London Borough of Enfield;

HMRC means Her Majesty's Revenue & Customs;

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

Information means:

- (a) in relation to the FOIA has the meaning given under section 84 of the FOIA and which is held by the Council 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 the Council at the time of receipt of an RFI;

Information Commissioner has the meaning set out in section 6 of the DPA;

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 Recipient of that amount up to and excluding the date of payment by the Recipient to the Council;

Related Documents means the Agreed Development Agreement, each Contract, each Approved Sub-Contract and all relevant construction documents to be entered into by the Recipient in relation to the Agreed Development including but not limited to planning agreements, appointments of Professionals and the Collateral Warranties ;

Land Ownership Strategy means a strategy in a form agreed by the Council setting out how the Recipient will secure ownership of the properties including but not limited to a binding contract with the owner of any legal and beneficial interest in the Site (where ownership of such interest by the Recipient is necessary to enable the Agreed Development to be fully delivered and carried out) (owning either a freehold interest or leasehold interest of at least 80 years

unexpired duration in a form agreed by Council) or such other form of agreement approved by the Council;

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

Legislation means:

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

in each case in the United Kingdom;

London Housing Design Guide means the document of that name published by Greater London Authority in its form at the date of this Agreement;

London Living Wage means the basic hourly wage of £9.15 (nine pounds and fifteen pence) (before tax, other deductions and any increase for overtime) as may be updated from time to time by the Greater London Authority and notified

Material Adverse Effect means any present or future event or circumstances which could, in the opinion of Council:

- (a) materially impair the ability of the Recipient to perform and comply with its obligations under this Agreement ;
- (b) adversely affect the business, assets or financial condition of the Recipient; or
- (c) materially impair the validity or enforceability of, or the effectiveness or ranking of this Agreement or any other security granted or purporting to be granted pursuant to this Agreement or the rights or remedies of Council under this Agreement ;

Maximum Agreed Amount means the sum identified in schedule 1 being the maximum amount of grant funding to be provided by the Council to the Recipient under this Agreement;

Milestones means the Agreed 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 revised by the Council in accordance with clause 8.3) otherwise an Event of 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 delivery of the Agreed Development by restricting the availability or use of labour which is essential to the delivery of the Agreed Development or preventing the Recipient from, or delaying in, securing such goods or materials or such fuel or energy as are essential to the delivery of the Agreed Development ;
- (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 Recipient has taken all 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 house building industry or a significant sector of it to a material extent;

- (i) any impediment, prevention or default, whether by act or omission, by the Council, except to the extent caused or contributed to by any default, whether by act or omission, of the Recipient or any Contractor;

unless any of the events arises (directly or indirectly) as a result of any wilful default or wilful act or negligent act of the Recipient or any Contractor;

Milestone Failure means a failure by the Recipient or the Recipient (as relevant) to achieve any Milestone by the relevant Milestone Date;

Monitoring Surveyor means such monitoring surveyor as is appointed as a monitoring surveyor by the Recipient (the terms of such appointment to be in a form satisfactory to the Council) at the Recipient's cost and owing a duty of care to Council;

Nominations Agreement means the form of Nominations Agreement attached at Annexure 1 Part 2 below

Notifiable Event means an event of the type described in clause 9.1;

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 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 Encumbrance means:

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

- (e) any Encumbrance granted with the prior written consent of the Council;

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

Process has the meaning ascribed to it in the DPA;

Procurement Strategy means that the Registered Provider will ensure to the Council that all contracts entered into in connection with the Agreed Development have been or will be competitively procured in accordance with EU Procurement Requirements, Public Contract Regulations and any applicable Legislation (utilising a documented decision making process);

Professional means the Architect, Civil Engineer Monitoring Surveyor and any other consultant or advisor with a design or supervisory responsibility Appointed in accordance with this Agreement;

Prohibited Act means:

- (a) offering, giving or agreeing to give to any servant of Council 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 Document; or
 - ii for showing or not showing favour or disfavour to any person in relation to a Document;
- (b) entering into a Document in connection with which commission has been paid or has been agreed to be paid by the 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 Council;
- (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 Council;

Public Sector Subsidy means all funding or subsidy in relation to a Firm Scheme in money or money's worth (including the Firm Scheme Grant) received or receivable by the Grant Recipient from public sector bodies including for this purpose funding from the European Commission, government bodies (whether national or local) or bodies in receipt of lottery funds from the National Lottery Distribution Fund pursuant to the National Lotteries Acts 1993 and 1998 and any further funding by the Council not provided under this Agreement;

Quarter means the period between a Quarter Date and the next following Quarter Date;

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

Recipient Contribution the meaning the Total Costs less the Agreed Funding

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 the Council;

Repayment Sum means an amount equal to such part of the Agreed Development Sum as has been paid by the Council to the Recipient at the point at which the Council exercises its rights under clause 11.5;

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 Agreed Development, this Agreement or any activities or business of Council;

Required Standards means the requirements of this Agreement, the Specification, Good Industry Practice, all Consents and Legislation;

Review Meeting means a meeting of the type described in clause 9.2;

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, a blocked account, set-off or similar “flawed asset” arrangement);

SGEI Decision means the European Commission’s decision on Services of General Economic and Interest dated the 20 December 2011 (2012/21/EU):

SGEI Decision Overpayment means the extent to which Public Sector Subsidy (including Agreement Funding) exceeds the Decision Net Costs;

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

SGEI Review means a review by the Council of the provision of Agreement Funding to determine whether an SGEI Decision Overpayment has arisen in relation to any Firm Scheme;

Social Housing, (as set out in section 68 of the Housing Regeneration Act 2008).

Social Housing Assistance has the meaning given to it in section 32(13) of the Housing and Regeneration Act 2008 as interpreted in relation to the Council in accordance with section 333ZE(2)(b) of the Act;

Solicitors means a firm of solicitors approved by Council (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 Conditions means the conditions set out in schedule 7;

Specification means the specification in relation to the Agreed Development to be agreed between the parties in accordance with the terms of this Agreement;

State Aid means any aid granted by a Member State of the European Union or through the resources of such Member State which distorts or threatens to distort competition by favouring a particular undertaking insofar as such aid affects trade between European Union Member States;

Statutory Deduction means the deduction referred to in section 61(1) FA or such other deduction as may be in force at the relevant time;

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;

Total Costs means, if all costs in relation to the Agreed Development:

- (a) have been incurred, the aggregate of such costs; or
- (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 Agreed Development Budget;

Total Costs Plan means a breakdown of the Total Development Costs, such breakdown to be approved by the Civil Engineer and in a form agreed by the Council;

Undrawn Amount means such part of the Agreed Funding t as has not been paid to the Recipient under this Agreement;

Unlawful State Aid means State Aid which has been granted in contravention of Article 107(1) of the Treaty of the Functioning of the European Union and which does not qualify for an exemption pursuant to any of the provisions of that Treaty or those of any of its subsidiary instruments or a decision of the Commission of the European Union;

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

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

- (a) an employee acting independently of the Recipient and such employee's employment is terminated within twenty (20) Business Days of Council serving notice on the Recipient of such Prohibited Act; or
- (b) the Recipient, the Contractor or a subcontractor (or any employee of a subcontractor not acting independently of the subcontractor) and the relevant subcontract is terminated within twenty (20) Business Days of Council serving notice on the Recipient of such Prohibited Act; or
- (c) an employee of a subcontractor acting independently of such subcontractor and such employee's employment is terminated within twenty (20) Business Days of Council serving notice on the Recipient of such Prohibited Act; or

- (d) any person not specified in paragraphs (a), (b) or (c) and the Recipient (or the Recipient, the Contractor or any subcontractor [] has severed links with such person (whether his employment, appointment or any other link) within twenty (20) Business Days of Council serving notice on the Recipient of such Prohibited Act

where acting independently means not acting with the authority or knowledge of any one or more of the directors of the Recipient or relevant subcontractor;

Bid Document means:

- (a) this Agreement;
- (b) any document submitted as part of the Bid;
- (c) any other document designated as such by the Recipient and the Council ; and
- (d) any document entered into, pursuant to, or which amends or varies any document referred to in paragraphs (a) to (b) (inclusive) above;

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, 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 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 the Council (or any officer of Council) is required or a notice is to be given by or to the Council, 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, 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 term Site includes each and every part of it and any estate or interest in it.
- 1.2.18 When there are two or more persons affected by the obligations under this Agreement such obligations are to bind each such person jointly and severally.
- 1.2.19 If there is any ambiguity or conflict between the implied terms and the express terms of this Agreement then the express terms shall prevail.

- 1.2.20 No review comment or approval by the Council under the provisions of this Agreement shall operate to exclude or limit the Recipient's obligations or liabilities under this Agreement save where the Council has confirmed the said review comment or approval in writing.
- 1.2.21 The Recipient shall be responsible as against the Council for the acts or omissions of any Contractor as if they were the acts or omissions of the Recipient.
- 1.2.22 Neither the giving of any approval, consent, examination, acknowledgement, knowledge of the terms of any agreement or document nor the review of any document or course of action by or on behalf of the Council shall, unless otherwise expressly stated in this Agreement or agreed in writing by the Council, relieve the Recipient of any of its obligations under any or of any duty which it may have hereunder to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, examination, acknowledgement or knowledge nor confer impose or imply any liability or responsibility on or on behalf of the Council 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.
- 1.2.23 Save where a contrary intention is shown or where an express discretion is given by this Agreement, the Council will act in a commercially 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 Agreed Funding

- 2.1 The Council (in exercise of its powers under the Act) agrees to make available to the Recipient during the Availability Period grant funding in an aggregate principal amount equal to the Agreed Funding on the terms set out in this Agreement.
- 2.2 The Recipient acknowledges and agrees that the Agreed Funding may be adjusted by the Council (but which shall in any event not exceed the Maximum Agreed Amount):
- 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 Specification;
- (b) variations arising out of the operation of clause 8.3;
- (c) changes to the Agreed Development agreed between the parties;
- (d) increases in income or other sources of financial assistance becoming available to the Recipient or any Contractor in relation to the delivery of the Agreed Development ; or
- (e) available Council resources; or

2.3 The Availability Period will come to an end in relation to all Undrawn Amounts on the termination of this Agreement.

2.4 The parties will work together in good faith to agree as soon as reasonably practicable after the date of this Agreement the terms of an Agreed Expenditure Plan and Specification and where such documents are agreed they shall be treated as being in an agreed form and shall be identified as such in the manner prescribed in clause 1.2.11.

3 **Representations and warranties**

As at the date of this Agreement, on the date of each Claim and the date of each Review Meeting (by reference to the facts and circumstances then existing) the Recipient makes the representations and warranties set out in schedule 5 to the Council.

4 **Payment of Agreed Funding**

4.1 **Conditions Precedent**

4.1.1 The Council'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 Agreed Development and has confirmed to the Recipient that it has received the following where required in form and substance satisfactory to the Council:

- (a) a copy of the Agreed Budget and Agreed Expenditure Plan each in the agreed form;
- (b) an expected construction timetable including Milestones and Milestone Dates;
- (c) a certificate from the Recipient's Finance Officer that all expenditure to which Agreed Funding will be applied is

classified (according to proper accounting practices) as capital expenditure and that such expenditure is not a breach of the Authority Agreement;

- (d) an opinion from the Recipient's solicitors addressed to the Council as to the State Aid treatment of the Agreed Development;
- (e) a copy of the Specification in a form agreed by the Council;
- (f) evidence satisfactory to the Council regarding commitments in relation to the delivery of the Dwellings Total ;
- (g) evidence satisfactory to the Council in relation to matters not limited to health and safety, environmental protection, procurement, data protection, equality and diversity, project deliverability and design quality;
- (h) evidence satisfactory to the Council demonstrating that the arrangements relating to the Agreed Funding and the Agreed Development accord with the Agreed Budget, including but not limited to evidence that the Recipient has sufficient funds (in addition to the Agreed Funding) whether from its own resources or otherwise to complete the Agreed Development; and
- (i) a Certificate of Title in a form acceptable to the Council in respect of the ownership of the Affordable Housing Units and the Recipient's estate or interest in them (being either the freehold estate or a lease for a term of 80 years or more on terms acceptable to the Council) issued to The Council by the Solicitors certifying among other things that the Affordable Housing Units are free from any conditions, restrictions, covenants or third party interests which do or might affect the right to deliver the Agreed Development
- (j) a letter of undertaking relating to the title and other deeds to the Affordable Housing Units and the registration of this Agreement and Restriction required under clause 7.3.2 duly signed by the Solicitors in favour of the Council;
- (k) and any other necessary documentation not captured by sub clauses (a) – (n) and the Council's decision on what is deemed necessary shall final.

4.2 **Conditions Precedent to each Claim for Agreed Funding**

- 4.2.1 The obligation of the Council to pay a Claim is subject to the further conditions precedent that, at the time of a Claim and at the time of making such Agreed Funding that it has confirmed to the Recipient that it has received all of the following in form and substance satisfactory to the Council:
- (a) a valid Claim made in accordance with clause 4.3;
 - (b) the amount of the Claim is in accordance with the Agreed Budget, as determined by the Council in its absolute discretion;
 - (c) copies of policies, certificates or cover notes relating to each contract or policy of insurance taken out by or on behalf of the Recipient have been provided;
 - (d) such evidence as it may require to be satisfied as to the level and availability of the Recipient Contribution; and
 - (e) no Event of Default has occurred and is continuing or would result from the proposed Agreed Funding;
 - (f) any amount of Agreed Funding identified in the Agreed Budget as due to be paid by the Recipient in relation to the Agreed Development prior to the date of the Claim has in fact been paid in full by the Recipient;
 - (g) The Council has received such evidence as the Council may require that all matters represented and warranted by the 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 Agreed Funding;
 - (h) prior receipt by the Council of any approvals the Council may require whether internally or as required by Legislation or by central Government; and
 - (i) resources being available to the Council to support the Agreed Funding contemplated in this Agreement.

4.3 **Mechanics and payment of Agreed Funding**

4.3.1 A Claim will not be regarded as having been validly made by the Recipient unless it:

- (a) is submitted on a London Borough of Enfield, Certificate & Invoice for Payment form, which must be signed by the Recipient Senior Officer and:
 - i is submitted to the Council within the Availability/Designated Period; and
 - ii it will be for an amount which it:
- (b) relates to an Agreed Expenditure for which the Recipient has not submitted any other Claim or received any other Agreed Funding and it is accompanied by written evidence satisfactory to Council that such Agreed Expenditure has been incurred together with confirmation from the Monitoring Surveyor that it has verified and approved the Claim;
- (c) accords with the Agreed Expenditure Plan or is accompanied by evidence satisfactory to the Council (in its absolute discretion) to justify any deviation;
- (d) is for an amount which (if paid) would not cause the Maximum Agreed Amount to be exceeded; and,
- (e) The conditions at clauses 4.1 and 4.2 have been satisfied.

4.3.2 Subject to the terms of this Agreement, and upon the Council being satisfied of the claim and evidence provided by the Recipient the Council will pay each undisputed instalment of Agreed Funding to the Recipient within (28) Business Days of receipt of a valid Claim.

4.3.3 Any amount of Agreed Funding not claimed by the Recipient during the Availability Period will be automatically cancelled.

4.3.4 The Recipient may not make more than two claims per Scheme.

4.4 **Use of Agreed Funding**

4.4.1 The Agreed Funding will be the sole property of the Recipient and must be used by the Recipient for Agreed Expenditure only.

4.4.2 Without affecting the obligations of the Recipient in any way, the Council is not bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

4.5 **Set-off**

Following receipt of a Claim, the Council shall be entitled to set-off any monies due to the Recipient under that Claim against any monies owed to the Council by the Recipient.

5 **Repayment and Overpayments**

5.1 If the Recipient is required to repay any amount of Agreed Funding to the Council, all such repayments must (unless otherwise specified) be paid within ten (10) Business Days of demand in immediately available cleared funds to the Council into such bank account as the Council shall notify to the Recipient from time to time.

5.2 If the Recipient does not pay any amount it is obliged to pay under this Agreement when it is due, the 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 5% above the Base Interest Rate.

5.3 All payments by the 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 the Recipient is required by law to make any deduction or withholding the Recipient shall:

5.4.1 ensure that the deduction or withholding does not exceed the minimum amount legally required;

5.4.2 pay to the Council such additional amount as may be determined by the Council to be necessary to ensure that after making any required deduction or withholding the Council receives and retains a net amount equal to the full amount which would have been received had no deduction or withholding been required;

5.4.3 pay to the applicable taxation or other authorities within the period for payment permitted by law the full amount of the deduction or withholding; and

5.4.4 supply to the Council, within the period for the payment permitted by law, an official receipt of the applicable taxation or other authorities for all amounts deducted or withheld.

5.5 Without prejudice to any other provisions of this Agreement, if:

- 5.5.1 The Council is required by law to make any payment on account of taxes (other than taxes on its overall net income) on or in relation to any sum received or receivable by the Council under or pursuant to this Agreement; or
- 5.5.2 any liability in respect of any such payment is imposed, levied or assessed against the Council

the Recipient shall on demand by the Council indemnify the Council against such payment or liability together with any interest, penalties and expenses payable or incurred in connection with it.

- 5.6 If the Council considers at any time that any part of the Agreed Development Sum was not expended by the Recipient on Agreed Expenditure or if at any time the Council has made any overpayment to the Recipient or has paid the Recipient any sum in excess of the Maximum Amount the Recipient must immediately on written demand repay to the Council such amount as may be stipulated by the Council together with Interest.

6 Delivery obligations

- 6.1.1 The Recipient shall meet all Cost Overruns from its own resources.
- 6.1.2 The parties agree that for the purposes of this Agreement "delivered" when used in the context of the Agreed Development shall be construed to mean legal completion of the purchase of the Affordable Housing Units.

7 Regulatory and operational obligations

7.1 Public procurement

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

7.2 Legislation (including Health & Safety and Equality & Diversity)

- 7.2.1 The Recipient shall comply in all material respects with all relevant Legislation, including but not limited to legislation relating to health and safety, welfare at work and equality and diversity, and will use reasonable endeavours to enforce the terms of the Related Documents to ensure compliance with this clause 7.2.

7.3 Disposals and usage and Nominations

7.3.1 The Recipient must not, without the prior written consent of the Council, dispose of any of the Affordable Housing Units

7.3.2 The Recipient must procure that a restriction in the following form is registered at the Land Registry against the registered title(s) to the Site:

"No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the Mayor and Burgesses of the London of Enfield acting by the Council of the London Borough of Enfield, Civic Centre, , PO Box 60, Silver Street, Enfield, London, EN1 3XA, or its conveyancer"

7.3.3 On a disposal the Recipient shall within 10 working days of the completion date of that Disposal notify the Council of the amount received for the Disposal and the amount of net receipt and the Recipient will recycle the net receipt accruing within the London Borough of Enfield in accordance with regulations and directions made by the Homes and Community Agency from time to time and provide the Council with nominations mutatis muntandis to the Nominations Agreement and if the Recipient is unable to recycle the net receipts the Recipient shall immediately pay the Council the net receipts the Recipient shall immediately pay to the Council sum equivalent to 30% of the net receipt.

7.3.4 In granting any consent under clause 7.3.1 the Council may impose such conditions as it deems to be appropriate to such consent including a requirement that any disponent registers a title restriction in favour of the Council and/or agrees to be bound by clauses similar in effect to those set out in clauses 7.3.1 to 7.3.5 (inclusive).

7.3.5 The parties shall on the date of this Agreement enter into the Nominations Agreement.

7.4 Other

7.4.1 The Recipient must:

- (a) supply to the Council a copy of any valuation of the properties the Recipient obtains, promptly upon obtaining it.
- (b) Provide the Council or any Regulatory Body with such information as may be requested to demonstrate compliance Recipients obligations under clauses 6 and 7; and

- (c) ensure the availability and application of the Recipient Contribution in the form, quantum and timescale required pursuant to this Agreement.

8 Variations and Milestone Date Amendments

- 8.1 The Recipient may not make any amendment to the Agreed Development or the Agreed Details without the prior written consent of Council other than minor amendments which have no impact upon the delivery of the Agreed Development, the Agreed Sum or the achievement of Milestones.

If and to the extent that any variation is agreed in relation to this Agreement which de facto has the effect or ought to have the effect of varying the number of Dwellings Total to be delivered the parties must vary the terms of those agreements to give effect to the variation of this Agreement;

- 8.2 If a Milestone Failure occurs or is in the opinion of the Council 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 Council shall be entitled (but not obliged) and in its absolute discretion to:

- 8.2.1 exercise the rights described under clause 11; or

- 8.2.2 agree a revised Milestone Date with the 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 opinion of the Council likely to occur (having regard to the information supplied in each pursuant to this Agreement) and the Council determines that such failure is the result of a Milestone Extension Event the Council shall extend the relevant Milestone Date by such reasonable period as it considers appropriate to take account of the delay caused or likely to be caused by the Milestone Extension Event.

9 Notifications, reporting and audit

- 9.1 The Recipient shall notify the Council:

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

- 9.1.2 immediately upon becoming aware of any event which:

- (a) has or might have a Material Adverse Effect on the Recipient;
or

- (b) has a detrimental effect on any aspect of the Agreed Development including, but not limited to, any Milestone Failure;
 - (c) prejudices or might prejudice the Recipient's ability to provide the Recipient Contribution; or
 - (d) has resulted in or might give rise to the making of a Report or Direction
- 9.1.3 as soon as reasonably practicable on becoming aware of any claim brought against the Recipient arising out of or relating to the activities of the Recipient in relation to the Agreed Funding;
- 9.1.4 immediately upon there being a proposed change to:
- (a) any Related Documents which is material;
 - (b) the use of any asset funded by means of Agreed 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 Recipient Funding made available under this Agreement
- 9.1.5 immediately upon the occurrence of an Event of Default;
- 9.1.6 immediately upon becoming aware of:
- (a) any audit or statutory or regulatory investigation in relation to any aspect of the Agreed Development ; or
- 9.1.7 immediately upon becoming aware that the Agreed Sum is greater than is necessary to deliver the Agreed Development to which it relates;
- 9.1.8 immediately, in the event of the receipt by it of any other income or funds or other Public Sector Subsidy or guarantees of them, or the offer of same, in respect of the Agreed Development beyond any amounts of the same notified by the Recipient to the Council as part of or in connection with its Bid; and/or
- 9.1.9 immediately upon becoming aware that the Total Costs are higher or lower than the Total Costs as shown in the Agreed Budget.

9.2 Review Meetings

- 9.2.1 The Council and the Recipient shall attend a Review Meeting within ten (10) Business Days of each Quarter Date (or within such longer period as the Council may at its absolute discretion agree) to discuss (but without limitation):
- (a) progress of the delivery Agreed Development;
 - (b) the occurrence (including the potential for the occurrence) of any Milestone Failure;
 - (c) the implications of any Notifiable Events;
 - (d) 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 Review Meeting.
- 9.2.2 The Council or the Recipient may also call a Review Meeting at any time outside of the quarterly cycle provided that the party requesting the meeting:
- (a) gives reasonable prior written notice to the other of such meeting; and
 - (b) includes with the notice an agenda for such meeting.
- 9.2.3 The Recipient shall provide the Council as soon as is reasonably practicable with such information or reports as the Council shall reasonably require to support or facilitate the meetings referred to in this Agreement and to monitor the performance of the Recipient's obligations under this Agreement.

Insofar as relevant, the Recipient shall promptly and fully co-operate with any request from the Council for information or evidence from time to time of:

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

the Agency, to the extent such request relates to this Agreement (or any matter associated with it), or to SGEI Information and which the Agency is required to provide to any third party pursuant to Legislation or by any Competent Authority.

- 9.2.4 The Council and the Recipient shall each use all reasonable endeavours to ensure that any representatives at any meeting held pursuant to this clause 9.2 have the necessary authority and knowledge to deal with the items on the agenda for such meeting.
- 9.2.5 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.
- 9.2.6 Save as otherwise agreed between the parties, any meeting under this clause 9.2 shall be minuted by the Recipient and such minutes shall be distributed within ten (10) Business Days following the meeting to the Council and any other attendee.
- 9.2.7 Nothing in this clause 9.2 shall prevent the Council from requesting (whether on behalf of itself or any Government office) at any other time information from the Recipient in respect of any of the items listed in this clause 9 and the Recipient shall promptly respond to any such request. Save as otherwise agreed between the parties, any meeting under this clause 9 shall be minuted by the Recipient and such minutes shall be distributed within ten (10) Business Days following the meeting to the Council and any other attendee.
- 9.2.8 Nothing in this clause 9.2 shall prevent the Council from requesting (whether on behalf of itself or any Government office) at any other time information from the Recipient in respect of any of the items listed in this clause 9.2 and the Recipient shall promptly respond to any such request.

9.3 Inspection and audit facilities

The Recipient shall and shall procure that when requested by the Council, make available on an Open Book basis and in a timely manner to the Council where required in connection with this Agreement 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 Recipient for the purposes of this Agreement ; and
- (b) all such data, materials, documents and accounts created, acquired or brought into existence by the Recipient's officers, employees, agents or consultants relating to the Agreed Development and which have been supplied to the Recipient for the purposes of this Agreement.

- 9.3.2 The Recipient shall procure:
- (a) at all times it will maintain a full record of particulars of all the income received and expenditure incurred by the Recipient in respect of the Agreed Development;
 - (b) when required to do so by the Council, provide a summary of any of the income and expenditure referred to in clause 9.3.2(a) as the Council may require to enable it to monitor the performance by the Recipient of its obligations under this Agreement; and
 - (c) provide such facilities as the Council may require for its representatives to visit any place where the records are held and examine the records maintained under this clause 9.3.
- 9.3.3 The Recipient shall ensure that it keeps an Open Book basis (in accordance with generally accepted accounting practice) separate books of account for items relating to the Agreed Development, which identify items of revenue received and expenditure incurred in relation to the same.
- 9.3.4 On the expiry of this Agreement or (if earlier) upon termination thereof, the Recipient procures that it shall, if requested to do so, deliver up to the Council all the data, materials, documents and accounts referred to in this clause 9.3 and / or has in its possession, custody or control and shall procure the handing over to the Council such data, materials, documents and accounts referred to in clause 9 or as otherwise directed by the Council.
- 9.3.5 The Recipient must procure it and each Contractor does for a period of 10 (ten) years from the date of the last payment made to the Recipient under this Agreement retain all of the data, documents, materials and accounts referred to in this clause 9.3 and the 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 the Council pursuant to this clause 9.

10 **Change in financial circumstances**

- 10.1.1 The Recipient shall notify the Council immediately where there is or has been any change in its 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 Recipient relative to the delivery of the Agreed Development or any reduction or withdrawal in relation to the Recipient Contribution.

- 10.1.2 In the event that the Council believes that any change notified to it pursuant to clause 10.1.1 or which it otherwise becomes aware of has or might have a Material Adverse Effect, the Council shall be entitled to exercise any of the rights and remedies set out in clause 11.

11 Events of Default

11.1 An Event of Default occurs where:

- 11.1.1 a Milestone Failure occurs or is in the opinion of the Council likely to occur (having regard to the information supplied pursuant to clauses 9 and 10) and such Milestone Failure is not the direct result of a Milestone Extension Event;
- 11.1.2 the Recipient fails to perform and/or observe any obligation or restriction on it under this Agreement and Agreed Development in the opinion of the Council the Agreed Development is unlikely to be achieved in accordance with the requirements of this Agreement;
- 11.1.3 any representation or warranty made by the Recipient pursuant to clause 3 is incorrect in any material respect when made or repeated;
- 11.1.4 an event or circumstance occurs in relation to the Recipient that might in the opinion of the Council have a Material Adverse Effect;
- 11.1.5 any Consent is withdrawn or revoked, where such withdrawal or revocation is likely to have a Material Adverse Effect;
- 11.1.6 the Recipient or where applicable any Contractor, subcontractor, employee, officer or agent commits any Prohibited Act (in respect of which the Waiver Condition has not been satisfied);
- 11.1.7 the Council in its absolute discretion considers (whether as a result of its due diligence or otherwise) that the Recipient or any Contractor does not have sufficient funds or resources available to them to complete the Agreed Development in accordance with the Agreed Details;
- 11.1.8 the Availability Period expires;
- 11.1.9 a Report or Direction is made;
- 11.1.10 a Change of Use or Disposal other than a Permitted Disposal has occurred without the prior consent of Council;

- 11.1.11 there has been an act/omission on the part of the Recipient or of any of its Contractors that in the Council's opinion harms or has the potential to harm the reputation of the Council or the Housing Programme or to bring them into disrepute;
- 11.1.12 clause 23.3 applies;
- 11.1.13 a Housing Provision Default or an Agreed Default has occurred;
- 11.1.14 any other material breach by the Recipient of any of its obligations under this Agreement has occurred; or
- 11.1.15 the Final Certificate issued by the Recipient is inaccurate or misleading in any respect; or
- 11.1.16 the parties have failed to agree the terms of the Agreed expenditure Plan and/or the Specification by 31 March 2017;
- 11.1.17 the Recipient fails to provide the Council with a satisfactory Certificate of Title, in accordance with the provisions of clause 4.1;

11.2 Where an Event of Default (other than one described in clause 11) has occurred the Council may (subject to clause 11.3) by notice to the Recipient:

- 11.2.1 require the Recipient to prepare a plan to remedy and/or mitigate the effects of the Event of Default and submit the plan to the Council within ten (10) Business Days of such request for approval SAVE THAT this right shall not arise in the case of an Event of Default of the type described in clause 11.1.16; and/or
- 11.2.2 suspend or alter the timing of the payment of any Agreed Funding for such period as the Council will determine in its sole discretion; and/or
- 11.2.3 reduce the Maximum Agreed Development Amount; and/or
- 11.2.4 require the Recipient to immediately repay the Agreed Funding and all other amounts due under this Agreement together with Interest; and/or
- 11.2.5 terminate this Agreement and cancel any Undrawn Amount; and/or

- 11.2.6 in the case of a failure by the Recipient to secure the delivery of Agreed Development in accordance with the requirements of this Agreement, adjust the Agreed Sum by such amount as the Council in its discretion considers appropriate to reflect such failure and in that case the Recipient must immediately repay the Balancing Payment to the Council together with Interest; and/or
- 11.3 Where an Event of Default has occurred, the rights of the Council under clause 11.2 shall be suspended pending the completion and outcome of the following steps:
- 11.3.1 the Recipient must submit a proposed remediation plan (the Remediation Plan) to the Council within five (5) Business Days of the occurrence of the Event of Default setting out the Recipient's proposals for the steps to be taken to remedy or mitigate the effects of the Event of Default and a basis for testing whether this has been achieved within an appropriate timeframe;
- 11.3.2 the Council will notify the Recipient as to whether the Remediation Plan is approved as submitted within ten (10) Business Days of its receipt;
- 11.3.3 if the Remediation Plan is not approved, senior representatives of the parties (acting in good faith with a view to securing delivery of the Agreed Development or otherwise the repayment of the Agreed Funding) must meet as soon as practicable (and in any event within ten (10) Business Days of the Council's notification under clause 11.3.2 or such later date as the Council may agree) to try to agree a revised Remediation Plan. In default of agreement, an Event of Default shall be deemed to occur and the Council shall be entitled freely to exercise its rights under clause 11.2 without any further suspension;
- 11.3.4 if the Remediation Plan is approved, the Recipient must comply with the obligations set out in the Remediation Plan and any failure to do so will be treated as an Event of Default entitling the Council to exercise its rights under clause 11.2 free of any rights of suspension which would otherwise benefit the Recipient; and
- 11.3.5 within ten (10) Business Days of the end of the timeframe specified in the Remediation Plan, senior representatives of the parties must meet to review the efficacy of the Remediation Plan in remedying or mitigating the effects of the Event of Default. If in the opinion of the Council (acting reasonably) the Remediation Plan has not been effective, the Council 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 an Event of Default shall be deemed to have occurred entitling the Council to exercise its rights under clause 11.2 free of any rights of suspension which would otherwise benefit the Recipient.

Nothing in clause 11.3 shall require the Council to agree any measure which would delay the delivery of the Agreed Development beyond 31 March [];

11.4 In relation to the exercise by Council of its rights under clause 11.2 the exercise by Council of its rights under clause 11.2 will be without prejudice to any other right of action or remedy of the Council (including any claim for damage) in respect of the Event of Default.

11.5 Where an Event of Default which is an Agreed Default has occurred, the Council may require the Recipient immediately to repay the Repayment Sum together with all other amounts due under this Agreement together with Interest.

12 **Public relations and publicity**

12.1 Save as expressly agreed by the Council in writing or as otherwise set out in this clause 12, the Recipient shall not and shall procure that no Contractor, officer, employee or agent shall communicate with any representative of any press, television, radio or other communications media on any matter concerning this Agreement without Council's prior written consent (not to be unreasonably delayed).

12.2 The Council will have the right to approve any announcement in relation to this Agreement, the Agreed Development and the Housing Programme before it is made.

12.3 The Recipient shall:

12.3.1 notify the Council's Press Office and Communications Team (from time to time) in advance of any publicity plan, event or communication which it proposes to implement, hold or issue;

12.3.2 ensure that pro-active positive press releases issued in respect of the Agreed Development acknowledge in the body of their text the fact and amount of Council's contribution to the same;

12.3.3 ensure that such wording as Council may require from time to time is included within all press releases in respect of the Agreed Development ;

12.3.4 not produce any publication touching or concerning the Agreed Development (or the performance of any party in relation to the

same) without the prior written approval of Council save where such publication is in the overwhelming public interest (and in any event without first consulting Council and allowing Council to make representations on such proposed disclosure);

12.3.5 comply with such requirements as to Site signage as Council may notify to it from time to time; and

12.3.6 ensure that any publicity material prepared in relation to the Agreed Development includes the logo of Council and/or the logo of any other organisation advised from time to time by Council..

12.4 The Recipient grants to the Council 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 Agreed Development undertaken by or for the Recipient for use in any publicity or advertising, whether published alone or in conjunction with any other person.

12.5 During the term of this Agreement, Council grants the Recipient a non-exclusive licence to use Council's logo only for the purposes of the Agreed Development. The Recipient will not grant sub licences of this licence or any part of it or use such logo for any other purposes save where approved in advance by the Council.

12.6 The Recipient acknowledges that Council's logo is owned by and will remain the property of the Council.

13 Reputation of the parties

13.1 The Recipient will not, and will use all reasonable endeavours to procure that its Contractors do not knowingly do or omit to do anything in relation to this Agreement, the Agreed Development or in the course of their other activities that may bring the standing of the Council into disrepute or attract adverse publicity for the Council.

13.2 No party will publish any statement, orally or in writing, relating to the other party which might damage that other party's reputation or that of any of its officers or employees.

13.3 The Recipient has not at any time, engaged in any activity, practice or conduct that would constitute an offence under the Bribery Act 2010.

13.4 No Associated Person of the Recipient has bribed 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 for the Recipient, and the Recipient has 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 its Associated Persons from undertaking any such conduct.

- 13.5 Neither the Recipient nor any of its Associated Persons is, or has, been the subject of any investigation, enquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence under the Bribery Act 2010, and no such investigation, enquiry or proceedings are pending or to the best of the Recipient's knowledge and belief having made all due enquiry have been threatened which, if adversely determined, might be expected to have a Material Adverse Effect and there are no circumstances likely to give rise to any such investigation, enquiry or proceedings.
- 13.6 The 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).
- 13.7 The Recipient will not engage (directly or indirectly) in any activity, practice or conduct that would constitute an offence under the Bribery Act 2010.
- 13.8 The 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 Recipient shall supply to the Council, promptly on request of the Council, copies of such documentation or other evidence as is reasonably requested by the Council to enable the Council to satisfy itself that such procedures are in place.
- 13.9 The Recipient shall supply to the Council, 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.

14 **Confidentiality and freedom of information**

14.1 **Confidentiality**

- 14.1.1 Each party recognises that it may receive Confidential Information belonging to the other.
- 14.1.2 Each party agrees to treat all Confidential Information belonging to the other as confidential and not to disclose such Confidential Information or any other confidential information relating to the Council 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.

14.1.3 The obligations of confidence referred to in clause 14.1 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 this Agreement 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.

14.1.4 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 this Agreement ; 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 Recipient acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and the Council may nevertheless be obliged to disclose such confidential information; or
- (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.

14.1.5 The Recipient will ensure that all Confidential Information obtained from the Council under or in connection with this Agreement:

- (a) is given only to such of its and the Recipient's employees, professional advisors, Contractors or consultants engaged to advise it in connection with this Agreement as is strictly necessary for the performance of this Agreement ;
- (b) is treated as confidential and not disclosed (without Council's prior written approval) or used by any such staff or professional advisors, Contractors or consultants otherwise than for the purposes of this Agreement ;
- (c) Where it is considered necessary in the opinion of the Council the Recipient will procure that such staff, professional advisors, Contractors or consultants sign a confidentiality undertaking before commencing work in connection with this Agreement.

14.1.6 Nothing in this clause 14.1 shall prevent the Council:

- (a) disclosing any Confidential Information for the purpose of:
 - i the examination and certification of Council'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 the Council has used its resources; or
- (b) disclosing any Confidential Information obtained from the Recipient:
 - i to any other department, office or Council of the Crown; or
 - ii to any person engaged in providing any services to the Council for any purpose relating to or ancillary to this Agreement or any person conducting an Office of Government Commerce gateway review;
- (c) provided that in disclosing information under clauses 14.1.6(b)i or 15.1.6(b)ii the Council 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.

14.1.7 Nothing in this clause 14.1 shall prevent a party from using any techniques, ideas or know-how gained during the performance of this 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.

14.1.8 Nothing in the clause 14.1 shall prevent the council from publishing information relating to Total I Costs, the Agreed Expenditure, the Agreed Sum or the Agreed Development.

14.2 Freedom of information

14.2.1 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.

14.2.2 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.

14.2.3 Subject to clause 14.2.4 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.

14.2.4 Without in any way limiting clauses 14.2.2 and 14.2.3, 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.

14.2.5 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 sub-contractors 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 five (5) Business Days (or such other period as the Relevant FOIA Authority may specify) 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.

14.2.6 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.

14.2.7 The Recipient acknowledges and agrees that the Council may in its absolute discretion redact all or part of the Information prior to its publication. In so doing and in its absolute discretion the Council may take account of any EIR Exemptions and FOIA Exemptions. The Council may in its absolute discretion consult with the Recipient regarding any redactions to the Information to be published pursuant to this clause 14. the Council will make the final decision regarding publication and/or redaction of the Information.

14.2.8 The obligations in this clause 14 will survive the expiry or termination of this Agreement for a period of two (2) years or, in respect of any particular item of Confidential Information, until such earlier time as that item of Confidential Information reaches the public domain otherwise than by reason of a breach of this Agreement or of any other duty of confidentiality relating to that information.

14.3 **Publication of information before Parliament**

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

15 **Data protection**

15.1 The Recipient warrants and represents that it has obtained all necessary registrations, notifications and consents required by the DPA to process Personal Data for the purposes of performing its obligations under this Agreement.

15.2 The Recipient undertakes that to the extent that the Recipient and/or any of its employees receives, has access to and/or is required to process Personal Data on behalf of the Council (Council's Personal Data) for the purpose of performing its obligations under this Agreement it will at all times comply with the provisions of the DPA for the time being in force, including without limitation the Data Protection Principles set out in Schedule 1 of the DPA. In particular, the Recipient agrees to comply with the requirements and obligations imposed on the Data Controller in the Seventh Data Protection Principle set out in the DPA namely:

15.2.1 the Recipient shall at all material times have in place and maintain appropriate technical and organisational security measures designed to safeguard against accidental or unlawful destruction, accidental loss, alteration, unauthorised or unlawful disclosure of or access to the Council's Personal Data and any person it authorises to have access to any Council's Personal Data will respect and maintain the confidentiality and security of Council's Personal Data. This includes the obligation to comply with any records management, operational and/or information security policies operated by the Council, when performing its obligations under this Agreement on Council's premises and/or accessing their manual and/or automated information systems. These measures shall be appropriate to the harm which might result from any unauthorised Processing, accidental loss, destruction or damage to the Council's Personal Data which is to be protected.

15.2.2 the Recipient shall only process Council's Personal Data for and on behalf of the Council for the purpose of performing its obligations under this Agreement in accordance with this Agreement, or as is required by Law or any Regulatory Body, and where necessary only on written instructions from Council to ensure compliance with the DPA;

- 15.2.3 the Recipient shall allow the Council to audit the Recipient's compliance with the requirements of this clause 15 on reasonable notice and/or, at the Council's request, provide the Council with evidence of the Recipient's compliance with the obligations within this clause 15.
- 15.3 The Recipient undertakes not to disclose or transfer any of the Council's Personal Data to any third party without the prior written consent of the Council save that without prejudice to clause 15.2 the Recipient shall be entitled to disclose Council's Personal Data to employees to whom such disclosure is reasonably necessary in order for the Recipient to perform its obligations under this Agreement, or to the extent required under a court order.
- 15.4 The Recipient shall:
- 15.4.1 take reasonable steps to ensure the reliability of any Contractor who has access to the Council's Personal Data;
 - 15.4.2 ensure that any Contractor required to access the Council's Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause 15;
 - 15.4.3 ensure that no Contractor shall publish, disclose or divulge any of the Council's Personal Data to any third party unless directed in writing to do so by the Council;
 - 15.4.4 provide a written description of the technical and organisational methods employed by the Recipient for processing the Council's Personal Data (within the timescales required by Council); and
 - 15.4.5 not Process Personal Data outside the European Economic Area without the prior written consent of the Council and, where the council consents to a transfer, to comply with:
 - (a) the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the DPA by providing an adequate level of protection to any of Council's Personal Data that is transferred; and
 - (b) any reasonable instructions notified to it by the Council.
- 15.5 The Recipient agrees to use all reasonable efforts to assist the Council to comply with such obligations as are imposed on the Council by the DPA. For the avoidance of doubt, this includes the obligation to:
- 15.5.1 provide to the Council such access as may be reasonably required from time to time to all Council's Personal Data stored or processed in

performing its obligations under this Agreement in order to enable the Council to meet its obligations to respond to access requests from Data Subjects under the DPA;

15.5.2 provide the Council with reasonable assistance in complying with any request for information served on the Council under Section 7 of the DPA;

15.5.3 notify the Council (within five (5) Business Days) about the receipt of any such request received by the Recipient under Section 7 of the DPA or complaint or request relating to Council's obligations under the DPA and not disclose or release any information (including Council's Personal Data) in response to such a request or complaint without first consulting with the Council where the information sought relates to the Council, its employees, agents and/or its business operations;

15.5.4 provide the Council with full co-operation and assistance in relation to any complaint of request made, including by:

(a) providing the Council with full details of the complaint on request;

(b) complying with a data access request within the relevant timescales set out in the DPA and in accordance with Council's instructions;

(c) providing the council with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Council); and

(d) providing the Council with any information requested by the Council.

15.6 The Recipient shall comply at all times with the DPA and shall not perform its obligations under this Agreement in such a way as to cause the Council to breach any of its applicable obligations under the DPA.

15.7 The Recipient shall indemnify the Council against all claims and proceedings and all liability, losses, costs and expenses incurred in connection therewith by the Council as a result of the Recipient's destruction of and/or damage to any of the Council's Personal Data processed by the Recipient, its employees, agents, or any breach of or other failure to comply with the obligations in the DPA and/or this clause 15 by the Recipient, its employees, agents or sub-contractors.

15.8 The Recipient shall appoint and identify an individual within its organisation authorised to respond to enquiries from the Council concerning the Recipient's Processing of Council's Personal Data and will deal with all enquiries from the Council relating to the Council's Personal Data promptly, including those from the Information Commissioner and will to the extent reasonably necessary co-operate with and assist in ensuring compliance with any Data Subject rights of data access, correction, blocking, suppression or deletion relating to the Council's Personal Data and in the defence or management of any enforcement action or assessment by the Information Commissioner or any other competent authority in relation thereto.

15.9 The Recipient undertakes to include obligations no less onerous than those set out in this clause 15, in all contractual arrangements with agents engaged by the Recipient in performing its obligations under this Agreement to the Council.

16 **Intellectual property**

16.1 Subject to the provisions of this clause 16 the Recipient hereby grants, to the extent it can grant, to the Council 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 the Recipient or which are or become owned by the Recipient and which relate to the Agreed Development , for any purpose either relating to this Agreement or to the dissemination by the Council of Best Practice.

16.2 To the extent that any of the data, materials and documents referred to in clause 16.1 are generated by or maintained on a computer or in any other machine readable format, the Recipient shall if requested by the Council procure for the benefit of the Council at the cost of the Recipient the grant of a licence or sub-licence for the term of this Agreement and supply any relevant software and/or database to enable the Council making such request to access and otherwise use such data for the purposes referred to in clause 16.1.

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

16.4 The Recipient shall fully indemnify the Council within five (5) Business Days of demand under this clause 16.4 against any action, claim, demand, proceeding, cost, charge or expense arising from or incurred by it by reason of any infringement or alleged infringement of any Intellectual Property Rights of any third party by the activities described in this clause 16, any breach by the Recipient of this clause 16 and against all costs and damages of any kind

which the Council may incur in connection with any actual or threatened proceedings before any court or adjudication body.

- 16.5 The Recipient shall only be entitled to revoke the licence granted to the Council under clause 16.1 on the termination of the whole of this Agreement.
- 16.6 The Recipient shall provide whatever assistance and explanation is required by the Council to enable it to disseminate Best Practice.
- 16.7 The Council's decision as to what constitutes Best Practice shall be final (and the Council acknowledges that it does not intend to use this clause 16.7 to make commercially sensitive information publicly available).
- 16.8 The Council shall be entitled to amend any of the Intellectual Property Rights or information provided under this clause 16 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 16.1.

17 **Further assurance**

At any time upon the written request of the Council the Recipient 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 the Council the full benefit of this Agreement or any other Document and of the rights and powers therein granted.

18 **Indemnity**

The Recipient shall:

- 18.1 be liable for and will indemnify the Council 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 the Council or otherwise or any claim by any third party arising out of or in the course of or caused or contributed to by the Recipient and/or the performance or non-performance or delay in performance by the Recipient of its obligations under the Agreement except to the extent that the same is due to any wilful neglect of Council; and
- 18.2 be liable for and shall indemnify the Council against any expense, liability, loss, claim or proceedings arising directly or indirectly from or in connect with any breach of the terms of this Agreement by or otherwise through the default or negligence of the Recipient.

19 No Council, partnership or employment

19.1 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.

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

19.3 The Recipient will not say or do anything which may pledge the credit of or otherwise bind the Council or that may lead any other person to believe that the Recipient is acting as the Council.

20 Assignment and sub contracting

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

21 Value Added Tax

21.1 The parties understand and agree that the Agreed Funding by the Council under this Agreement is not consideration for any supply for Value Added Tax (VAT) purposes whether by the Recipient or otherwise.

21.2 If, notwithstanding the agreement and understanding of the parties as set out in clause 21.1 above, it is determined that the Agreed Funding is consideration for a supply for VAT purposes, the Agreed Funding shall be treated as inclusive of any VAT.

21.3 All sums or other consideration payable to or provided by the Recipient to the Council 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 Recipient will pay to the Council all the VAT payable upon the receipt of a valid VAT invoice.

22

No fettering of discretion/statutory powers

Nothing contained in or carried out pursuant to this Agreement and no consents given by the Council or the Recipient will unlawfully prejudice the Council's or the 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.

23 Fees and Expenses

23.1 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.

23.2 Variations and Enforcement Costs

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

23.2.1 in connection with the variation or amendment of, or the enforcement or preservation of any rights under, this Agreement ;

23.2.2 in investigating any Event of Default which has or is believed to have occurred; or

23.2.3 in complying with its obligations under clause 1.1.1

25. State Aid

The Parties acknowledge that Agreed Funding will only be provided where such payment is compliant with State Aid requirements.

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

the Parties acting in good faith will seek to restructure the arrangements surrounding the Agreed Development and the terms of this Agreement to the extent necessary to ensure State Aid compliance; and/or

the Parties shall promptly cooperate in good faith to provide evidence that the Agreed Development (or the restructured Agreed Development) is or will be State Aid compliant.

23.3 If the Agreed Development is found to constitute Unlawful State Aid and/or is not capable of being restructured so as to be compliant then the Recipient must repay any sum of Unlawful State Aid plus such interest as is prescribed by State Aid law within [15] Business Days of the Council issuing it with a written demand for payment.

23.4 If the Agreement Funding gives rise to an SGEI Decision Overpayment or otherwise constitutes Unlawful State Aid then the Council shall be entitled to recover from the Grant Recipient the amount of such SGEI Decision Overpayment and/or Unlawful State Aid together with such interest as it is

required by law to recover and the Grant Recipient must pay such amount(s) within ten (10) Business Days of the Council requesting repayment.

23.5 The Grant Recipient shall ensure that it and any Grant Recipient Affiliate (at its or their cost) co-operates with the Council during an SGEI Review and it shall if requested promptly provide the Council with SGEI Information and such other information, evidence and/or explanation as the Council may reasonably require.

26 **Co-operation**

26.1 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 Agreed Development and in particular will (subject to clause 26.2):

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

26.1.2 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.

26.2 Nothing in clause 26.1 shall:

26.2.1 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 Agreed Development in the manner in which it considers to be the most effective and efficient; or

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

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

26.3.1 of any auditor (whether internal or external) of the Council to provide documents, or to procure the provision of documents, relating to the Agreed Development and to provide, or to procure the provision of, any oral or written explanation relating to the same; and/or

26.3.2 of the Council where the Council is required under any legislation to provide any document relating to the Agreed Development to any person.

27 Notices

27.1 Any notice to be given hereunder shall be in writing addressed to the Council Senior Officer and shall be sufficiently served if delivered by hand and receipted for by the recipient or sent by the Recorded Delivery Service addressed in the case of any party to the other party's registered office as set out at the beginning of this Agreement or to such other addresses a party may from time to time notify to the other in writing provided that such other address is within England and Wales.

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

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

27.2.2 if delivered by the Recorded Delivery Service, three (3) Business Days after delivery including the date of postage

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

28 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.

29 Entire agreement

29.1 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 36.

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

30 Counterparts

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

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

32 **Waiver**

32.1 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.

32.2 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.

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

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

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

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

33 **Disclaimer**

The Council will not be liable to the other party for any advice given by a representative of the Council. In addition, the Council gives no assurance as to the suitability or viability of the Agreed Development or the Recipient Development Outputs and no endorsement of the same.

34 **Dispute Resolution**

34.1 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 37.

34.1.1 In the event that the Recipient or the Council 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 37.

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

34.1.3 Where either no representatives of both parties are available to meet within the period set out in clause 37.1.2 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 Recipient and the Council's chief executive (or nominated deputy) (the **Senior Executives**).

34.1.4 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.

34.1.5 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 37.2.

34.2 In the circumstances contemplated in clause 37.1.5, 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:

34.2.1 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.

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

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

34.3 The Council reserves the right to invite the Recipient to attend any meeting held pursuant to clause 37.1. The parties agree that the Recipient shall be

entitled to express an opinion at such meeting, but any opinion so expressed shall not be binding upon either of the Council or the Recipient.

35 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 34 the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

36 Amendment

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

36.2 In granting any consent or waiver under this Agreement the Council may impose such conditions as it deems to be appropriate to such consent.

37 No fetter on statutory functions

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

38 Survival of this agreement

38.1 Insofar as any of the rights and powers of the Council 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 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 the Council or any person on behalf of the Council pursuant to this Agreement of any matter submitted by the Recipient for approval will not be deemed to be an acceptance by the Council 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 the Council as to any sum payable hereunder by the Recipient will be conclusive save in the case of manifest error.

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

**EXECUTED as a DEED by affixing
THE COMMON SEAL of THE MAYOR
AND BURGESSES OF THE LONDON
BOROUGH OF ENFIELD**

Authorised Signatory

EXECUTED as a DEED
/ for and on behalf of

in the presence of:

Schedule 1

Agreed Development Details

Agreed Milestones:

The completion of the acquisition of the Affordable Housing Units by 2016 and the Council acknowledges and agrees that on completion of this agreed milestone the Grant Recipient shall be entitled to submit a Claim under the provisions of Clause 4 of this Agreement for the full amount of the Agreed Works Sum

Agreed Works Sum

£XXXX being the Total Costs of the Agreed Development (i.e. the total cost of the acquisition of the Affordable Housing Units) anticipated as at the date of this Agreement

Schedule 2

Claim Form

To: THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF ENFIELD

From: XXXXX

Date:

Recipient Funding Agreement dated 2016 (the Agreement)

1 We refer to the Agreement. This is a Claim Form. Terms defined in the Agreement have the same meaning in this Claim Form.

2 We wish to drawdown an instalment of Agreed Funding as follows:

2.1 Amount: £XXX ;

2.2 Date of drawdown: 2016 .

3 Payment Instructions

3.1.1 Bank name: ;

3.1.2 Bank branch/address: ;

3.1.3 Bank sort code: ;

3.1.4 Bank account number: ; and

3.1.5 Bank account name: .

4 We confirm that each condition specified in clause 4 of the Agreement required to be satisfied on the date of this Claim Form is so satisfied and we know of no reason why any condition specified in clause 4 to be satisfied on or before the date of drawdown will not be so satisfied.

5 We confirm compliance with each representation and warranty specified in the Agreement.

6 We confirm that the Agreed t Funding to be provided pursuant to this Claim Form will be used to meet Agreed Expenditure and such costs have been certified by the Monitoring Surveyor (evidence attached).

By:

Recipient Senior Officer
for and on behalf of []

Schedule 3

Representations and Warranties

1 Powers, vires and consents

1.1 It:

1.1.1 has the power to enter into and to exercise its rights and perform its obligations under this Agreement ; and

1.1.2 has taken all necessary action to authorise the execution by it of and the performance by it of its obligations under this Agreement .

1.2 It is not subject and will not become subject to any other obligation, compliance with which will or is likely to have a Material Adverse Effect.

1.3 Its obligations under this Agreement (to which it is a party) constitute its legal, valid and binding obligations, enforceable in accordance with their terms.

1.4 The execution, delivery and performance by it of this Agreement do not:

1.4.1 insofar as it is aware contravene any applicable law or directive or any judgment, order or decree of any court having jurisdiction over it;

1.4.2 conflict with, or result in any breach of any of the terms of, or constitute a default under, any agreement or other instrument to which it is a party or any licence or other authorisation to which it is subject or by which it or any of its property is bound; or

1.4.3 contravene or conflict with its constitutional documents or arrangements.

1.5 All consents or steps, required by it in connection with the execution, delivery, issue, validity or enforceability of this Agreement have been obtained or taken and have not been withdrawn or omitted.

1.6 It is not in breach of or in default under any agreement to which it is a party or which is binding on it or any of its assets which has or could have a Material Adverse Effect.

1.7 No claim is presently being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge, pending or threatened against it or any of its assets which will or might have a Material Adverse Effect.

1.8 It has not committed any Prohibited Act.

1.9 It has not, and its Associated Persons have not, engaged in and will not engage (directly or indirectly) at any time, in any activity, practice or conduct that would constitute an offence under the Bribery Act 2010.

2 Deliverability

2.1.1 No third party has any Security over the Site or any part of it or any other assets of the Recipient which would prejudice the delivery of the Agreed Development.

2.1.2 All Consents have been obtained and have not been withdrawn.

2.1.3 It is not aware, after due enquiry, of anything which materially threatens the success or successful completion of the intention or purpose of this Agreement.

2.1.4 Save as disclosed in the Certificate of Title, the Recipient has:

(a) good title to the Site and all other assets (including, but not limited to, intellectual property rights), free from Encumbrances other than a Permitted Encumbrance or freedom to use those assets for that purpose under all applicable laws; and

(b) access to and freedom to use under all applicable laws:

i the Site;

ii any buildings or fixtures on the Site;

iii any easement, wayleaves or other rights necessary for access to and use of the Site.

2.1.5 The Recipient is in compliance with all applicable Environmental Laws.

(a) The Recipient is in compliance with the terms of all Environmental Consents necessary for the ownership and operation of the Site, facilities and businesses as presently owned and operated and as presently proposed to be owned and operated.

(b) Save as disclosed in the Certificate of Title, there is no Environmental Claim which is current, pending or threatened against it and there are no past or present acts, omissions, events or circumstances that could form the basis of any Environmental Claim against it.

- (c) Save as disclosed in the Certificate of Title, there are no circumstances that may prevent or interfere with it obtaining or being in compliance with any Environmental Consent in the future and no action is pending or threatened by any authority against it which would result in any Environmental Consent being revoked, suspended or varied.
- (d) To the best of its knowledge and belief (having made all reasonable and proper enquiries) and save as disclosed in the Certificate of Title, no Dangerous Substance has been used, disposed of, generated, stored, transported, dumped, released, deposited, buried or emitted at, on, from or under any premises owned, leased, occupied, controlled or used by the Recipient in circumstances where this results or could be expected to result in a liability on the Recipient

3 Operational issues

- 3.1.1 No Event of Default has occurred and is continuing or would result from the making of any Agreed Development Funding.
- 3.1.2 No other event or circumstance is continuing which constitutes (or with the giving of notice, the lapse of time, the determination of materiality or the fulfilment of any other applicable condition or any combination of the foregoing), would or could be expected to constitute a default by it under any other document or arrangement which is binding on it or on any of its assets in any case to an extent or in a manner which has or could be expected to have a Material Adverse Effect.
- 3.1.3 [Other than the registration of this Agreement at Companies House, the Financial Conduct Authority, the Land Registry and the Land Charges Registry (as appropriate), it is not necessary that other documents to which it is a party, or to which the Recipient is a party, be filed, recorded or enrolled with any court or other authority in England or that any stamp, registration or similar tax be paid on or in relation to this Agreement .]
- 3.1.4 Save in respect of the period being from the date of this Agreement to the date of submission of a second Claim for Agreed Funding, the Recipient has complied with its obligations under CDM Regulations.

4 Information

- 4.1.1 All information supplied by or on behalf of it to the Council or its agents or employees in connection with the Recipient's initial

application for Funding or in the course of the subsequent negotiations was at the time of submission and as far as it was aware (or ought to have been aware) having made all reasonable and proper enquiries true, complete and accurate in all respects.

- 4.1.2 It has informed the Council of any material change that has occurred since the date of submission of which it is aware (or ought to be aware) having made all reasonable and proper enquiries which would render such information untrue, incomplete or inaccurate in any material respect.
- 4.1.3 It is not aware of any material fact or circumstance that has not been disclosed to the Council and which might, if disclosed materially, adversely affect the decision of anyone considering whether or not to contract with it.
- 4.1.4 The Bid and the Agreed Budget supplied under this Agreement were arrived at after careful consideration and have been prepared in good faith on the basis of recent historical information and on the basis of assumptions which were reasonable as at the date they were prepared and supplied.
- 4.1.5 All data or other information submitted to the Council to date under this Agreement is accurate.
- 4.1.6 So far as the Recipient is aware (having made all reasonable enquiries) the Agreed Development (including, inter alia, all Milestone Dates) remain capable of being delivered in accordance with the Agreed Details without the need for change.
- 4.1.7 It is not aware of any material fact or circumstance that would adversely affect the availability and deliverability of the Recipient Contribution (in whole or in part).

5 Reports and Directions

- 5.1 No Report or Direction has been made nor is the Recipient aware of any circumstances that would give rise to the making of a Report or a Direction in relation to the Recipient's obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with its terms.

6 Social Housing Assistance

- 6.1 No other Social Housing Assistance nor any other grant monies are, have been or will be applied towards the development costs of the Agreed Development.

Annexure 1

Part 1 – Nominations Agreement

Part 3 –

Part 4 –

Part 5 –

