

**DATED  
GRANT RECIPIENT**

**20XX**

**LONDON BOROUGH OF HARROW  
AND  
[GRANT RECIPIENT]**

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**GRANT FUNDING AND DELIVERY AGREEMENT  
IN RELATION TO THE PROVISION OF AFFORDABLE HOMES**

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DRAFT

Dated

## **PARTIES**

1. The Mayor and Burgesses of the London Borough of Harrow of the Civic Centre, Station Road, Harrow, HA1 2XY (the **Council**); and
2. [XXX] whose registered office is at [XXX] (the **Grant Recipient**).

## **INTRODUCTION**

- (A) The Grant Recipient wishes to (construct XX housing units on the land known as [XXX]) (purchase homes on the open market) to be let as affordable housing.
- (B) The Council has agreed to provide the Grant Recipient with financial assistance for the purchase and/or construction of the affordable housing units in accordance with the terms as set out in this Agreement. The Grant Recipient is responsible for obtaining all additional funding required to complete the purchase, construction and fit out of the affordable housing units.
- (C) The Council is empowered under Section 25(1) of the Local Government Act 1988 and pursuant to the Secretary of State's general consent to, inter alia, make grants available to provide financial assistance in connection with the construction of privately let housing for housing accommodation.
- (D) The Grant Recipient agrees to deliver the affordable housing units in accordance with the terms of this Agreement.

## **PART 1 – INTRODUCTION AND GENERAL**

### **1. DEFINITIONS AND INTERPRETATIONS**

#### **1.1. General**

In this Agreement except where the context otherwise requires:

- 1.1.1. the masculine includes the feminine and vice-versa;
- 1.1.2. the singular includes the plural and vice versa;
- 1.1.3. a reference to any clause, sub-clause, paragraph, schedule, recital or annex is, except where expressly stated to the contrary, a reference to such clause, sub-clause, paragraph, schedule, recital or annex of and to this Agreement;
- 1.1.4. save where stated to the contrary, any reference to this Agreement or to any other document shall include any permitted variation, amendment or supplement to such document;
- 1.1.5. any reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended, replaced, consolidated or re-enacted;
- 1.1.6. a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees;
- 1.1.7. words and phrases with a first capital letter or any derivation thereof shall (as the context so requires) have the meanings set out in Schedule 1;
- 1.1.8. headings are for convenience of reference only;
- 1.1.9. words preceding "include", "includes", "including" and "included" shall be construed without limitation by the words which follow those words;
- 1.1.10. a document in the agreed form is to be the form of the relevant document agreed between the parties and for the purpose of identification initialled by each of them or on their behalf (in each case with such amendments as may be agreed by or on behalf of the parties) or in the form set out in a Schedule or an Appendix to this Agreement;
- 1.1.11. an obligation to do anything includes an obligation to procure its being done; and
- 1.1.12. The Grant Recipient shall in relation to the delivery of its obligations under this Agreement be responsible as against the Council for the acts or omissions of any Sub-Contractor as if they were the acts or omissions of The Grant Recipient.

#### **1.2. Schedules**

The Schedules to this Agreement form part of this Agreement.

#### **1.3. Precedence of Documentation**

In the event of any inconsistency between the provisions of the body of this Agreement and the Schedules, or between the Schedules, the inconsistency shall be resolved according to the following descending order of priority;

- 1.3.1. this Agreement and Schedule 1 (Definitions);
- 1.3.2. the Schedules to the Agreement (other than Schedule 1)

#### **1.4. Approval**

1.4.1. 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, nor the failure of the same, shall unless otherwise expressly stated in this Agreement, relieve the Grant Recipient of any of its obligations under this Agreement or of any duty which it may have hereunder to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, examination, acknowledgement or knowledge nor confer impose or imply any liability or responsibility on or on behalf of the 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.

1.4.2. In any case where the consent or approval of the Council (or any officer of the Council) is required or a notice is to be given by 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 by the Council by notice in writing to the Grant Recipient

#### **1.5. Succession**

References to a public organisation (other than the Council) shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over either or both the functions and responsibilities of such public organisation. References to other persons (other than the Council) shall include their successors and assignees.

#### **1.6. Third Party Rights**

No term of this Agreement is enforceable under the Agreements (Rights of Third Parties) Act 1999 by a person who is not a Party to this Agreement.

### **2. CONDITIONS PRECEDENT**

2.1. This Agreement shall not come into full force and effect unless and until the Grant Recipient fulfils the Conditions Precedent to the satisfaction of the Council, (acting reasonably). If the Conditions Precedent are not fulfilled to the satisfaction of the Council by no later than [DD/MMM/YYYY] (or such other date as agreed between the Parties) this Agreement shall lapse and the Grant Recipient shall not be entitled to any proportion of the Grant. For the avoidance of doubt any Works carried out before the Condition Precedents are satisfied in accordance with this Clause shall be at the Grant Recipient's risk.

2.2. The conditions specified in Schedule 2 are inserted solely for the Council's benefit. The Council may, in its absolute discretion waive them, in whole or in part and with or without conditions.

### **3. THE AFFORDABLE HOUSING PROJECT**

3.1. The Grant Recipient shall procure the carrying out and completion of the Works

3.1.1. in a proper and workmanlike manner;

3.1.2. in compliance with this Agreement, which includes without limitation, the Specification, any Statutory Requirement and Consents and shall give all notices required by the Statutory Requirements;

- 3.1.3. diligently and in a timely fashion, using reasonable endeavours to achieve Practical Completion on or before the Longstop Date.
- 3.2. The Grant Recipient agrees to enter into a Nominations Agreement in substantially the form set out in Schedule 6 attached hereto before Practical Completion.
- 3.3. The Grant Recipient shall be responsible for and be liable for the design of the units funded. Through this agreement such liability shall not, for the avoidance of doubt, be reduced, obviated, diminished or avoided by the fact that any part of the design was carried out by the Council or otherwise.
- 3.4. The Grant Recipient shall develop and finalise the design and specification of the Affordable Housing units. In relation to the design of the units the Grant Recipient warrants that:
- 3.4.1. it has used, and will continue to use, the degree of skill and care in the design of the affordable housing units that would reasonably be expected of a competent professional designer experienced in carrying out design activities of a similar nature, scope and complexity to those comprised in the Works;
- 3.4.2. the Grant Recipient's design complies with the Consents and Statutory Requirements (as applicable); and
- 3.4.3. the Grant Recipient's design complies with, and wherever possible exceeds, the minimum requirements set out in local, regional and national guidance on the standards and quality for Affordable Housing Units.
- 3.5. The Council expressly acknowledges that
- 3.5.1. the Grant Recipient's maximum liability under this Agreement (whether pursuant to Clause 8 or otherwise) shall not, in any circumstance, exceed the sum paid to it by the Council under this Agreement.

## PART 2: THE GRANT

### 4. THE GRANT AND ADDITIONAL FUNDING

- 4.1. The Council has agreed to make the Grant available to the Grant Recipient to procure the delivery of the Affordable Housing Units subject to and in accordance with the terms and conditions of this Agreement.
- 4.2. The Grant Recipient acknowledges and agrees that:
  - 4.2.1. the Grant is being made available by the Council on the express understanding that it is applied solely for the purposes of funding the Development Costs of the Affordable Housing Units;
  - 4.2.2. the Grant will not exceed an amount equal to a specified proportion of the aggregated Actual Development Costs incurred by the Grant Recipient in respect of the delivery of the Affordable Housing Units;
  - 4.2.3. the Grant Recipient shall provide all reasonable evidence and certification of Actual Development Costs to ensure the Grant does not exceed the specified proportion of the Actual Development Costs;
  - 4.2.4. the Grant Recipient shall use all reasonable endeavours to seek and obtain Additional Funding from alternative sources to finance the rest of the Development Costs;
  - 4.2.5. the Council shall not be responsible for any failure of the Grant Recipient to obtain Additional Funding and the Council is not able to make up a short fall in Additional Funding with additional Grant over and above the specified proportion of the aggregated Actual Development Costs;
  - 4.2.6. the Grant Recipient shall provide all reasonable evidence and certification that the Additional Funding does not include any other public subsidy (other than discounted land); and
  - 4.2.7. the Grant Recipient shall comply with the Open Book Obligations.
- 4.3. The Grant Recipient has submitted a bid for grant funding to the Council which has been accepted and approved by the Council and is attached as Schedule 8.

### 5. FINANCIAL REPORTING AND PROJECT CERTIFICATIONS

- 5.1. The Grant Recipient shall use reasonable endeavours to deliver the Affordable Housing Units in accordance with the proposals submitted to and approved by the Council and set out in Schedule 5 attached hereto.
- 5.2. The Grant Recipient shall provide on demand all reasonable evidence to support every and all grant claims to include purchase completion certificate construction certificates invoices and records of payment of the same.

#### First Report

- 5.3. Prior to the application for payment of the First Instalment of the Grant in accordance with clause 6.1, the Grant Recipient shall provide to the Council a First Report setting out:
  - 5.3.1. the anticipated Total Development Costs for the completion of the Affordable Housing Units; which shall include without limitation the land purchase costs, professional costs, the construction costs, fit out costs, irrecoverable VAT and any other related costs; and

- 5.3.2. the funding obtained or agreed including the Grant and any Additional Funding and the funding provided by the Grant Recipient to facilitate the purchase and construction of the Affordable Housing Units.
- 5.4. The Council shall assess and analyse the report submitted by the Grant Recipient and apply the methodology and assumptions set out in Schedule 4 and seek such additional information as required from the Grant Recipient or such other parties as required.
- 5.5. The Council shall confirm to the Grant Recipient :
- 5.5.1. whether the total of the Grant and the Additional Funds are greater than or equal to the whole anticipated Development Costs and if they are then the Project shall be considered financially viable (“Financially Viable”); and
- 5.5.2. whether all or only part of the Instalments of Grant is required for the purchase and construction of the Affordable Housing Units; and
- 5.5.3. where, pursuant to clause 5.5.2, any proportion of the Instalment is not required for the purchase and construction of the Affordable Housing Units, to calculate the sum which the Council considers is required in accordance with clause 4.2.2. and this shall be the qualifying grant amount.
- 5.6. In the event that the First Report confirms that:
- 5.6.1. the Project is Financially Viable and the whole of the Grant is required for the construction of the Affordable Rented Units then Condition Precedent 2 shall be satisfied; or
- 5.6.2. the Project is Financially Viable and only part of the Grant is required for the construction of the Affordable Rented Units then Condition Precedent 2 shall be satisfied but, provided that all the Condition Precedents are satisfied, the Grant Recipient shall only be entitled to the qualifying grant amount as calculated in accordance with clause 5.5.3.; or
- 5.6.3. the Project is Financially Viable and none of the Grant is required for the construction of the Affordable Rented Units then Condition Precedent 2 shall be satisfied notwithstanding the qualifying grant amount as calculated in accordance with clause 5.5.3.; or
- 5.6.4. the Project is not Financially Viable then Condition Precedent 2 shall not be satisfied and the parties shall meet to discuss how the parties wish to proceed.

#### **Grant Instalment Reports**

- 5.7. The Grant shall be paid to the Grant Recipient in instalments as a proportion of incurred Actual Development Costs.
- 5.8. Prior to the submission of an application for payment of any Instalment of the Grant pursuant to clause 6.2 below, the Grant Recipient shall provide to the Council a report setting out:
- 5.8.1. the Actual Development Costs incurred in the purchase of the land and the construction of the Affordable Rented Units including, for the avoidance of doubt, the Building Contract and any fees payable in addition to the Building Contract;
- 5.8.2. any deviation from the anticipated Total Development Costs provided in the First Report in accordance with clause 5.3.1 and an explanation for the change; and

- 5.8.3. how the Total Development Costs are to be funded, clearly showing what funds are to be used for the Project and where the funds originate from.
- 5.9. The Council shall assess and analyse the report submitted by the Grant Recipient and apply the methodology and assumptions set out in Schedule 4 and seek such additional information as required from the Grant Recipient or such other parties as required.
- 5.10. The Council shall confirm to the Grant Recipient :
  - 5.10.1. whether the total of the grant and the additional funds are greater than or equal to the whole anticipated development costs and if they are then the project shall be considered financially viable (“financially viable”); and
  - 5.10.2. whether all or only part of the Instalments of Grant is required for the purchase and construction of the Affordable Housing Units; and
  - 5.10.3. where, pursuant to clause 5.5.2, any proportion of the Instalment is not required for the purchase and construction of the Affordable Housing Units, to calculate the sum which the Council considers is required in accordance with clause 4.2.2. and this shall be the qualifying grant amount.

#### **Final Report**

- 5.11. Prior to the submission of an application for payment of the Final Instalment of the Grant pursuant to clause 6.3 below, the Grant Recipient shall provide to the Council a report setting out:
  - 5.11.1. the actual Total Development Costs incurred in the construction of the Affordable Housing Units including, for the avoidance of doubt, any retentions payable at the end of any defects liability period in accordance with the provisions of the Building Contract; and
  - 5.11.2. how the Total Development Costs have been funded, clearly showing what funds were used for the Project and where the funds originated from.
- 5.12. The Council shall assess, interrogate and analyse the report submitted by the Grant Recipient in accordance with clause 5.11 and apply the methodology and assumptions set out in Schedule 4 and seek such additional information as is reasonably required from the Grant Recipient or such other parties (as required). The Grant Recipient shall provide as much assistance, at its own cost, as the Council shall reasonably require.
- 5.13. The Council shall confirm whether in its opinion:
  - 5.13.1. the total of the funds including the Grant and the Additional Funds are greater than or equal to the Total Development Costs; and
  - 5.13.2. any element of the Grant was not required for the purchase and construction of the Affordable Housing Units.
- 5.14. The Parties may jointly appoint an independent financial assessor (the “Financial Expert”) to carry out an assessment of the financial viability of the Project. The Grant Recipient shall pay for the appointment of the Financial Expert. The appointment shall make clear that in determining the viability of the Project and the Grant necessary to make the Project financially viable (and in the production of any reports required of the Financial Expert hereunder), the Financial Expert shall apply the methodology and assumptions set out in Schedule 4.

- 5.15. The decision of the Financial Expert shall be binding on both Parties who shall forthwith give effect to the decision, unless and until either Party refers the dispute to the Dispute Resolution procedure in accordance with clause 16, in which event, the decision of the Financial Expert may be opened up and reviewed.

## **6. PAYMENT OF THE GRANT**

### **6.1. First Instalment**

6.1.1. At any time which is no earlier than 5 Business Days after satisfaction of the Condition Precedents, the Grant Recipient shall be entitled to apply for the payment of the First Instalment of the Grant. In submitting an application pursuant to this Clause 6.1.1 the Grant Recipient is deemed to represent and warrant to the Council that:

- i. The Grant Recipient has delivered the First Report;
- ii. The Conditions Precedents have been achieved and signed off (or waived by the Council); and
- iii. The Grant Recipient has completed the purchase of the site for the construction of the Affordable Housing Units or has completed the purchase of existing dwellings for use as Affordable Housing Units.

### **6.2. Further Instalments**

6.2.1. At any time after the date which is no earlier than three months after Start on Site of the Affordable Housing Units is reached, and every three months thereafter up to Practical Completion, the Grant Recipient may apply to the Council for payment of Instalments of the Grant. In submitting an application pursuant to this Clause 6.2 the Grant Recipient is deemed to represent and warrant to the Council that:

- i. The building contractor has been appointed and has commenced works on site;
- ii. All certifications and confirmations made by the Grant Recipient under this Agreement in relation to the Affordable Housing Project are correct in all material respects; and
- iii. The Grant Recipient has obtained all Consents necessary for the lawful development of the Affordable Housing Units;

### **6.3. Final Instalment**

6.3.1. At any time after the date which is no earlier than 5 Business Days after the Affordable Housing Units are ready for occupation, the Grant Recipient may apply to the Council for payment of the Final Instalment of the Grant. In submitting an application pursuant to this Clause 6.2 the Grant Recipient is deemed to represent and warrant to the Council that:

- i. the Affordable Housing Units have been procured and completed in accordance with the requirements of this Agreement and meets the Agreed Purposes and is fully Fitted Out and ready for use;

- ii. all certifications and confirmations made by the Grant Recipient under this Agreement in relation to the Affordable Housing Units are correct in all material respects;
- iii. the Grant Recipient has delivered an executed Nominations Agreement and provided the Council with its irrevocable authority to complete the same following execution by the Council; and
- iv. the Grant Recipient has obtained all Consents necessary for the lawful occupation of the Affordable Housing Units.

#### **6.4. Payment of Grant Instalment**

6.4.1. Subject to:

- i. the Council (acting reasonably) being satisfied with the Grant Recipient's application for payment in accordance with 6.1, 6.2 or 6.3 above; and
- ii. in respect of Clause 6.1 only, the matters set out at Clauses 6.1.1.i to 6.1.1.iii having been satisfied;
- iii. in respect of Clause 6.2 only, the matters set out at 6.3.1.i to 6.3.1.iv having been satisfied; and
- iv. in respect of Clause 6.3 only, the matters set out at 6.3.1.i to 6.3.1.iv having been satisfied

the Council shall pay the relevant proportion of the Grant to the Grant Recipient calculated in accordance with Clause 6.5.1 within thirty (30) Business Days of receipt of the satisfactory application.

#### **6.5. Calculation of the Grant Instalment**

6.5.1. The Council shall only be required to pay a proportion of the total grant to the Grant Recipient in instalments and such proportion shall be no more than 30% of actual Total Development Costs incurred at the date of the Grant Claim less any Grant previously paid to the Grant Recipient.

#### **6.6. Suspension of Funding**

6.6.1. In the event the Council becomes aware of any matter or matters, whether relating to the Grant or the Works or otherwise that it considers may amount to a breach on the part of the Grant Recipient of its obligations under this agreement, the Council may postpone or suspend the payment of any part of the Grant so as to enable the Council and the Grant Recipient to investigate and resolve such matters.

6.6.2. The suspension of payments under Clause 6.6.1 shall be without prejudice to the right of the Grant Recipient under this agreement to receive the full amount of the Grant.

#### **6.7. Disputes**

6.7.1. If the Council is not satisfied with the Grant Recipient's application for payment, it must notify the Grant Recipient in writing as soon as reasonably practicable and in any event within ten (10) Business Days of receipt of the application for

payment identifying the reason for its dissatisfaction. The Council must allow the Grant Recipient a period of up to ten (10) Business Days to address the issues identified in the notification and to resubmit or amend its application accordingly. The Parties shall meet as soon as reasonably practicable after the receipt of the Grant Recipient's response and shall attempt to resolve the dispute amicably between them. If the Parties are unable to reach agreement the Council shall be entitled to continue withholding payment and the matter shall be referred to the dispute resolution procedure under Clause 16. If the Parties are in agreement the Grant Recipient shall resubmit its application for payment or an amended application for payment in accordance with clauses 6.1 and 6.2 and 6.3 above (as applicable).

#### **6.8. Longstop Date**

6.8.1. For the avoidance of doubt the Council shall not be obliged to pay the Final Instalment or any proportion of the same unless the Practical Completion is reached prior to the Longstop Date and the Council shall be entitled to recover any monies paid in accordance with this Clause 6 in accordance with the conditions of Clause 8.

#### **7. VAT**

7.1. Except where expressly stated to the contrary in this Agreement:

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

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

7.2. The payment of the Grant or any part thereof hereunder by the Council to the Grant Recipient shall be regarded as inclusive of any VAT chargeable thereon

#### **8. REPAYMENT OF GRANT**

8.1. Without prejudice to any other term of this Agreement, the Council reserves the right to recover from the Grant Recipient the Grant or such part thereof as is determined in accordance with clause 8.2 (the "Recoverable Amount") in circumstances where:

8.1.1. the Agreement is terminated in accordance with the provisions of Clause 15 (Termination);

8.1.2. the Grant has been paid to the Grant Recipient on the basis of a misrepresentation made by or on behalf of the Grant Recipient;

8.1.3. the Grant has been paid to the Grant Recipient but the Council becomes aware that the Affordable Housing Units are not fit for the Agreed Purposes and cannot reasonably be used for its Agreed Purposes;

8.1.4. disposal of the Affordable Housing Units in whole or in part by the Grant Recipient to another party for any use other than the Agreed Purposes and/or where the other party does not enter into a nominations agreement with the Council on substantially the same terms as the Nominations Agreement or otherwise on terms satisfactory to the Council;

8.1.5. the Affordable Housing Units are not completed by the Longstop Date;

- 8.1.6. the Grant paid by the Council is greater than the total qualifying grant proportion of the actual Total Development Costs; or
  - 8.1.7. the Council has made an overpayment or has made a payment in error to the Grant Recipient;
  - 8.1.8. The affordable housing unit tenant exercises any statutory right to buy or equivalent right to acquire ownership of the affordable housing unit.
- 8.2. In the circumstances set out in:
- 8.2.1. Clauses 8.1.1 to 8.1.5 the Recoverable Amount shall be a sum equivalent to the proportion of Grant paid to the Grant Recipient;
  - 8.2.2. Clauses 8.1.6 or 8.1.7, the Recoverable Amount shall be a sum equal to the amount of the overpayment, the sum paid in error or the difference between the amount of the Grant actually paid (together with any grant funding provided by other public bodies) and the Development Costs;
  - 8.2.3. Clauses 8.1.8, the Recoverable Amount shall be a sum calculated using the formula  $A/B \times C$  where A is the number of habitable rooms in the affordable housing unit sold, B is the total number of habitable rooms in the Project delivered with the Grant and C is the total amount of Grant paid to the Grant Recipient for the Project.
- 8.3. The Grant Recipient shall pay the Recoverable Amount to the Council within twenty one (21) Business Days of demand together with interest at two per centum (2%) above the base rate from time to time of the Barclays Bank Plc such interest to run from the date upon which the Grant (or relevant part thereof) overpayment or payment in error was paid to the Grant Recipient until the date upon which the Council receives the repayment required from the Grant Recipient under this Clause 8.
- 8.4. Where the Late Payment of Commercial Debts (Interest) Act 1998 applies the Parties agree that the rate of interest referred to in Clause 8.3 above shall be a substantial remedy within the meaning of the Late Payment of Commercial Debts (Interest) Act 1998.
- 8.5. Notwithstanding any other term of this Clause 8, where a payment has been made following an administrative error by the Council or overpayment, the Grant Recipient shall not be liable for interest on the amount repayable.
- 8.6. Where any part of the Grant becomes repayable by the Grant Recipient the Council may, at its sole discretion, agree to waive repayment in part or in whole and/or waive payment of any interest payable under Clause 8.3. The Council shall give due consideration to that part of the works (if any) that has been successfully completed and may impose such reasonable conditions on any waiver as it may see fit.

## **9. STATE AID**

- 9.1. If the Council is required pursuant to the Decision of the Commission of the European Communities published on 15 July 2005 in relation to public sector compensation granted to certain undertakings entrusted with the operation of services of general economic interest to recover any amount of overcompensation (as described in the Decision) the Council will be entitled to recover any such amount from the Grant Recipient

## PART 3 – CHANGES

### 10. PROJECT CHANGES

- 10.1. The Council acknowledges that the Grant Recipient may seek a change to the Specification (and the terms of this Agreement) during the Term to ensure that inter alia:
- 10.1.1. The design of the Affordable Rented Units and the Fit Out Works are fit for the Agreed Purposes;
  - 10.1.2. The Facility is completed before the Longstop Date;
  - 10.1.3. the Project Aims are being delivered; and/or
  - 10.1.4. The Grant Recipient remains capable of delivering the Project from time to time and the Council shall be entitled to propose changes in accordance with Clause 10.2.
- 10.2. The Council shall be entitled to request changes to the Affordable Rented Units which are minor in nature and which it regards (acting reasonably) as necessary to ensure that the Affordable Rented Units meet the Agreed Purposes.
- 10.3. A change to the Project may take the form of one or more (or a combination of) the following:
- 10.3.1. a change to the Longstop Date;
  - 10.3.2. the anticipated date for Practical Completion; and/or
  - 10.3.3. the Specification.
- 10.4. Either Party shall notify the other in writing when it becomes aware of circumstances which give rise (in that Party's opinion (acting reasonably)) to entitle it to request a change to the Project. Any Project Change Notice shall specify the reasons for the proposed change to the Project and describe the proposed nature of the change being sought.
- 10.5. Save where the parties agree that a meeting is unnecessary a meeting of the Project Group shall be convened as soon as is practicable (but in any event no later than the next scheduled Project Group Meeting) to discuss a Project Change Notice and shall be attended by the same persons as those required (or permitted) to attend Project Group Meetings.
- 10.6. In determining whether to implement a change to the Project and the substance of that change, the parties shall act in good faith, reasonably and shall take account of:
- 10.6.1. the Project Aims;
  - 10.6.2. the performance, to date, of the Grant Recipient under the Agreement;
  - 10.6.3. If the progress of the Works is delayed:
    - i. The relevant circumstances of the delay;
    - ii. Details of the part of the Works which are delayed;
    - iii. The length of the expected delay;
    - iv. Any impact on the anticipated Practical Completion Date or the Longstop Date;
    - v. Any measures that the Grant Recipient has taken or is taking to minimise the delay and its effects upon the cost and progress of the Works.
  - 10.6.4. the time and costs associated with implementing the proposals set out in the Project Change Notice (having particular regard to (i) the final date upon which

the Affordable Rented Units must reach Practical Completion in order to claim any grant funding from other sources and (ii) the Development Costs submitted to the Financial Expert pursuant to clause 5.2 of this Agreement.)

- 10.7. Where the Parties are unable to agree whether or not to implement a change or proposal contained in a Project Charge Notice within twenty (20) Business Days of the said notice being submitted, the matter shall be referred for dispute resolution in accordance with clause 17.

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## **PART 4 – MONITORING**

### **11. PROJECT MEETINGS, MONITORING AND REPORTING**

11.1. The Grant Recipient shall identify as soon as reasonably practicable one of its employees to act as Project Manager, to:

11.1.1. ensure the effective operation of and implementation of the Project in line with the Project programme; and

11.1.2. report on progress on the Project at regular intervals.

11.2. Within 30 days of the date of this Agreement, the Parties shall form a Project Group to review and monitor the progress of the Project throughout the Term. The Project Group shall comprise at least the following members:

11.2.1. Council's Representative from the Council or their deputy

11.2.2. Project Manager from The Grant Recipient or their deputy

11.2.3. A representative of the Building Contractor;

11.2.4. The Employer's Agent;

And the parties agree that any other persons may be invited to attend the meetings as the Project Group may deem appropriate.

11.3. The Project Group shall meet not less than every six weeks from the date of this Agreement and throughout the Term to review The Grant Recipient's delivery of the Project. Such meetings shall coincide with scheduled progress meetings at the Site between THE GRANT RECIPIENT and the Building Contractor.

11.4. The Grant Recipient acknowledges the high importance to the Council of it being advised when any circumstance occurs which may:

11.4.1. impact on THE GRANT RECIPIENT's ability to deliver the Project;

11.4.2. result in The Grant Recipient not receiving any or all of the Additional Funding;

11.4.3. indicates that the Council is making available more grant than is required to deliver the Project; or

11.4.4. jeopardise the completion or otherwise of the Project by the anticipated Practical Completion Date.

11.5. The Grant Recipient shall comply fully with the contract management and reporting obligations set out in this Clause 11.

11.6. The Council or the Grant Recipient may also call a Project Group Meeting at any time outside of the six-week cycle provided that the party requesting the meeting:

11.6.1. gives reasonable prior written notice to the other of such meeting; and

11.6.2. includes with the notice an agenda for such meeting.

11.7. Save as otherwise agreed between the parties, any meeting under this Clause 11 shall be minuted by The Grant Recipient and such minutes shall be distributed within ten (10) Business Days following the meeting to the Council and any other attendee.

### **12. OPEN BOOK OBLIGATIONS**

12.1. The Grant Recipient shall on an Open Book basis:

- 12.1.1. at all times maintain a full record of particulars of all the income (including the Grant and any Additional Funds) received and Development Costs incurred by the Grant Recipient in respect of the Project;
  - 12.1.2. at all times when reasonably required to do so by the Council, provide a summary of any of the income and Development Costs referred to in Clause 12.1.1 as the Council may reasonably require to enable it to monitor the performance by the Grant Recipient of its obligations under this Agreement; and
  - 12.1.3. at all times provide such access or facilities as the Council may reasonably require for its representatives to visit any place where the records are held and examine the records maintained under this Clause 12.
- 12.2. Compliance with the above shall require the Grant Recipient to keep (and where appropriate to procure that any Sub-Contractor shall keep) separate books of account (from those relating to any business, activity or operation carried on by the Grant Recipient or Sub-Contractor and which do not directly relate to the Project) in accordance with good accountancy practice with respect to all the Project showing in detail:
- 12.2.1. all income (including the Grant and any Additional Funds);
  - 12.2.2. administrative overheads where directly attributed or where apportioned on a pro rata basis;
  - 12.2.3. payments made to Sub-Contractors;
  - 12.2.4. capital and revenue expenditure;
  - 12.2.5. VAT incurred on all items of expenditure where The Grant Recipient has received grant under this Agreement in respect of such VAT, including the rate of such VAT and full details of the recovery (or not) by the Grant Recipient of such VAT as input tax from HM Revenue & Customs or other competent authority; and
  - 12.2.6. such other item as the Council may reasonably require to conduct (itself or through a third party) cost audits for verification of income, cost expenditure or estimated expenditure, for the purpose of any of the provisions of this Agreement;
- and the Grant Recipient shall have (and shall use its reasonable endeavours to procure that the Sub-Contractors shall have) the books of account evidencing the items listed in this Clause available for inspection by the Council (and any person appointed pursuant to the dispute resolution provisions at Clause 16 to determine a dispute or otherwise authorised by the Council) upon reasonable notice, and shall submit a report of these to the Council as and when requested.

### **13. MANAGEMENT INFORMATION**

- 13.1. The Grant Recipient shall comply with the monitoring arrangements set out in this Agreement, and shall provide such Management Information as the Council may reasonably request from time to time in order that the Council may assess THE GRANT RECIPIENT's compliance with its obligations under this Agreement and the application of the Grant.
- 13.2. Subject to clause 13.3, the Grant Recipient hereby consents to the Council:
  - 13.2.1. publishing on its website (or in any alternative media) information which it provides pursuant to Clause 14.1;
  - 13.2.2. storing and analysing such information and producing statistics; and

- 13.2.3. sharing such information or any statistics produced using such information, with any other Contracting Authority
- 13.3. Subject always to the Council's statutory obligations under FOIA and/or EIR and clause 19 of this Agreement, where the Grant Recipient determines (acting reasonably) that the publication of information provided pursuant to clause 13.1 would prejudice the Grant Recipient's commercial interests, the Grant Recipient shall notify the Council to that effect and the Council shall take into account the Grant Recipient's views before determining whether to publish such information. Without prejudice to the foregoing, the Council acknowledges that the information comprised in Schedule 4 is information which the Grant Recipient regards as information which, if published, would prejudice the Grant Recipient's commercial interests and the Council hereby agrees to, if reasonably practicable in the circumstances, notify the Grant Recipient in writing before it publishes such information.

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## PART 5 - TERMINATION

### 14. TERMINATION

- 14.1. If any one or more of the matters in Clause 14.2 ("Termination Rights") occurs the Council shall be entitled to forthwith terminate the Agreement in whole or in part by issuing a written notice to the Grant Recipient to that effect in accordance with Clause 14.3. For the avoidance of doubt the occurrence of any one of the matters listed in Clause 14.2 shall be deemed a repudiatory breach of contract by The Grant Recipient. The right of the Council to terminate shall be a contractual right pursuant to this clause and/or a common law right accepting THE GRANT RECIPIENT's repudiatory breach as the circumstances dictate.
- 14.2. The matters referred to in Clause 14.1 above are:-
- 14.2.1. a Prohibited Act has been committed by or on behalf of The Grant Recipient and the Waiver Condition has not been satisfied; or
  - 14.2.2. the Grant Recipient uses the Grant other than for the Development Costs;
  - 14.2.3. the Grant Recipient does not receive the first instalment of any Additional Funding and/or its agreements for the Additional Funding are terminated;
  - 14.2.4. the Grant Recipient commits an act of fraud or bankruptcy; or
  - 14.2.5. the Grant Recipient suffers an Insolvency Event; and/or
  - 14.2.6. the Affordable Rented Units are not completed by the Longstop Date.
- 14.3. Termination Notice
- 14.3.1. The Termination Notice issued pursuant to Clause 14.1 shall:
- i. set out the matter or matters giving rise to such Termination Notice, giving reasonable details;
  - ii. state on its face that it is a Termination Notice;
  - iii. state the date on which the termination is to take effect; and
  - iv. be signed by the Council's Borough Solicitor.
- 14.4. The rights of the Council under this clause are in addition and without prejudice to any right that either Party may have against the other for prior breach and to any right the Council may have against the Grant Recipient for the breach, default, negligence or event leading to the Termination Date.

### 15. CONSEQUENCES OF TERMINATION

- 15.1. On the Practical Completion Date or earlier termination pursuant to this Agreement clauses which expressly or by implication have effect after termination shall continue in full force and effect, including the following clauses: Clause 15 (Consequences of Termination), 8.1.2, 8.1.4, 8.1.6 and 8.1.8 (Repayment of Grant) 16 (Dispute Resolution), 18 (Freedom of Information and Confidentiality) 12 (open Book Obligations) and 9 (State Aid) and the Agreement shall determine and cease to have effect and the Parties shall (save as aforesaid) be released from any further liability under this Agreement.
- 15.2. On the earlier termination of this Agreement, no further instalment of the Grant shall be payable and the provisions of Clause 8 (Repayment of the Grant) shall apply.
- 15.3. The termination of this Agreement howsoever arising is without prejudice to the rights, duties and liabilities of either Party accrued prior to termination. The Clauses of this

Agreement which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

- 15.4. Notwithstanding any breach of this Agreement by either Party, and without prejudice to any other rights which the other Party may have in relation to it, the other Party may elect to continue to treat this Agreement as being in full force and effect and to enforce its rights under this Agreement. The failure of either Party to exercise any right under this Agreement, including any right to terminate this Agreement and any right to claim damages, shall not be deemed a waiver of such right for any continuing or subsequent breach.

## **16. DISPUTE RESOLUTION**

- 16.1. 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 16.
- 16.2. In the event that the Grant 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 16.
- 16.3. 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.
- 16.4. Where either no representatives of both parties are available to meet within the period set out in Clause 16.3 or the representatives fail to agree a unanimous resolution of the Dispute at such meeting, the Dispute shall be referred to the chief executives (or nominated deputies) of the Grant Recipient and the Council (the **Chief Executives**).
- 16.5. The Chief 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 Chief Executives shall be recorded in writing and signed by them and shall be final and binding unless the parties agree otherwise.
- 16.6. If the Dispute remains unresolved after ten (10) Business Days following referral to the Chief Executives, such Dispute must be dealt with in accordance with Clause 16.7.
- 16.7. In the circumstances contemplated in Condition 16.6, 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:
  - 16.7.1. 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.
  - 16.7.2. the mediation shall start not later than twenty eight (28) days after the date of the ADR notice; and
  - 16.7.3. 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.

## **PART 6 – GENERAL PROVISIONS**

### **17. REPRESENTATIONS AND WARRANTIES**

- 17.1. Without prejudice to any other term of this Agreement, the Grant Recipient:
- 17.1.1. represents and warrants to the Council on the date hereof and on each day until and including the date upon which the Grant Recipient receives the last payment of Grant payable under this Agreement in the terms set out in Schedule 3 inclusive; and
  - 17.1.2. acknowledges and agrees that the Council is relying on such representations and warranties and that each of such warranties and representations shall be separate and independent and, save as expressly provided to the contrary, shall not be limited by reference to any of them or by any other provisions of this Agreement.

### **18. DATA PROTECTION AND FREEDOM OF INFORMATION**

- 18.1. THE GRANT RECIPIENT shall comply with its obligations under the Data Protection Act 1998 and all amendments and all new statutory provisions, regulations, orders, directives and requirements that may come into force or being and ensure the protection of all data and archive material from unauthorised access, tampering and system failures.
- 18.2. The Grant Recipient acknowledges that the Council is subject to obligations under the Freedom of Information Act 2000 (“FOIA”), the Environmental Information Regulations 2004 (“EIR”) 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 and shall assist and co-operate with the Council (at THE GRANT RECIPIENT’S expense) to enable the Council to comply with its obligations under such legislation.
- 18.3. The Grant Recipient shall and shall procure that its Sub-contractors shall provide the Council with a copy of any requested information under Clause 18.2 within 5 Business Days from the Council’s request and to provide all necessary assistance as reasonably requested by the Council to enable it to comply with its obligations under the FOIA or the EIR.
- 18.4. The Grant Recipient acknowledges that the Council may, acting in accordance with the Department for Constitutional Affairs’ Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000, the FOIA, or the EIR disclose information: (i) without consulting with The Grant Recipient; or (ii) following consultation with THE GRANT RECIPIENT and having taken its views into account.
- 18.5. The Grant Recipient shall ensure that all information relating to this Agreement is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

### **19. CONFIDENTIAL INFORMATION**

- 19.1. Subject always to any other express provision in this Agreement, The Grant Recipient shall not without the prior written consent of the Council during the Term or at any time thereafter make use of for its own purposes, or disclose to any person (except as may be required by law), this Agreement or any information contained therein that the Council provides or the Grant Recipient generates pursuant to or in connection with this Agreement, all of which information shall be treated by the Grant Recipient as confidential.
- 19.2. Nothing in this Clause 19 shall restrict the Council from complying with its FOIA and EIR obligations pursuant to Clause 18.

## **20. HEALTH AND SAFETY EQUALITY AND DIVERSITY**

- 20.1. The Grant Recipient will comply in all material respects with all relevant Legislation relating to health and safety, equality and relevant employment matters and will use reasonable endeavours to procure that all Sub-Contractors do likewise.
- 20.2. The Grant Recipient confirms that it has, and is in full compliance with, a policy covering equal opportunities designed to ensure that discrimination prohibited by the Equality Act 2010 is avoided at all times and will provide a copy of that policy and evidence of the actual implementation of that policy upon request by the Council.
- 20.3. The Grant Recipient shall have due regard to the public sector equality duty under Part 11 of the Equality Act 2010 insofar as its activities under this Agreement could reasonably be deemed to be functions of a public nature for the purposes of that Part.
- 20.4. To the extent that the Council is a 'client' for the purposes of the CDM Regulations:
- 20.4.1. where the Grant Recipient is engaging consultants and a contractor or contractors as Sub-Contractors to deliver the Project The Grant Recipient elects to be the only client in relation to the Project; or
- 20.4.2. where the Grant Recipient is contracting with a developer as a Sub-Contractor to deliver the Project the Grant Recipient shall procure that such developer shall elect to be the only client in relation to the Project
- and the Council hereby agrees to such election.
- 20.5. the Grant Recipient shall not seek to withdraw, terminate or in any manner derogate from such election pursuant to clause 20.4.1 or (if appropriate) shall procure that any developer/employer shall not withdraw, terminate or in any manner derogate from any election pursuant to clause 20.4.2 without the Council's prior written consent, which the Council may in its absolute discretion withhold.
- 20.6. The Grant Recipient shall at all times comply with all obligations, requirements and duties arising under the Health and Safety at Work etc Act 1974 and the CDM Regulations in connection with the Works.
- 20.7. The Grant Recipient shall at all times procure the compliance with all obligations, requirements and duties arising under the Health and Safety at Work etc Act 1974 by any and all parties appointed in connection with the Works or allowed on the Site.
- 20.8. The Grant Recipient shall maintain an accurate record of all health, safety and environmental incidents which occur on or in connection with the Project.

## **21. CO-OPERATION**

- 21.1. 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 Project. Without prejudice to the generality of the foregoing
- 21.1.1. the Grant Recipient shall co-operate fully and in a timely manner with any reasonable request from time to time:
- 22.1.1.1 of any auditor (whether internal or external) of the Council and/or
- 22.1.1.2 of the Council where the Council is required under any legislation to provide any document relating to the Project to any person; and

- 22.1.2 the Council shall co-operate fully and in a timely manner with any reasonable request from time to time of any auditor (whether internal or external) of The Grant Recipient (including, without limitation, any compliance audit carried out in respect of the provision of grant funding by the GLA).

## 22. NOTICES

- 22.1. All notices under this Agreement shall be in writing and all certificates, notices or written instructions to be given under the terms of this Agreement shall be served by sending the same by first class post, facsimile, electronic data transmission or by hand, or leaving the same at:

Grant Recipient	Council
[Officer]	[Authorised Officer]
[Address at front of Agreement ]	London Borough of Harrow at the Civic Centre, Station Road, Harrow, HA1 2XY
E-mail:	E-mail:
Fax:	Fax:

- 22.2. Either Party to this Agreement (and either representative) may change its nominated address or facsimile number by prior notice to the other Party.
- 22.3. Notices given by post shall be effective upon the earlier of actual receipt and five (5) Business Days after mailing. Notices delivered by hand shall be effective upon delivery. Notices given by facsimile shall be deemed to have been received where there is confirmation of uninterrupted transmission by a transmission report and where there has been no telephonic communication by the recipient to the senders (to be confirmed in writing) that the facsimile has not been received in legible form:
- 22.3.1. within two (2) hours after sending, if sent on a Business Day between the hours of 9am and 4pm; or
- 22.3.2. by 11am on the next following Business Day, if sent after 4pm on a Business Day but before 9am on that next following Business Day.

## 23. NO FETTER ON STATUTORY FUNCTIONS

- 23.1. 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.

## 24. NO AGENCY

- 24.1. 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.
- 24.2. the Grant Recipient shall at all times be independent and nothing in this Agreement shall be construed as creating the relationship of employer and employee between the Council and the Grant Recipient. Neither the Grant Recipient nor any of its employees shall at any time hold itself or themselves out to be an employee of the Council.

## 25. ASSIGNMENT AND SUB-CONTRACTING

- 25.1. The Council will be entitled to transfer or assign all or part of this Agreement to any body to whom the functions of the Council are transferred pursuant to any statutory reorganisation.

- 25.2. The Grant Recipient will not be entitled to transfer or assign all or part of this Agreement without the written consent of the Council

**26. ENTIRE AGREEMENT**

- 26.1. This Agreement and the conditions herein contained together with the Schedules and Annexes constitute the entire agreement between the parties and may only be varied or modified in writing by agreement under the seals of the parties.
- 26.2. The Grant Recipient hereby acknowledges that save as set out or referred to in the Agreement there are and have been no representations made by or on behalf of the Council of whatsoever nature on the faith of which The Grant Recipient is entering into this Agreement.

**27. SEVERABILITY**

- 27.1. 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.

**28. CUMULATIVE RIGHTS AND ENFORCEMENT**

- 28.1. Any rights and remedies provided for in this Agreement whether in favour of the Council or The Grant Recipient are cumulative and in addition to any further rights or remedies which may otherwise be available to those parties.
- 28.2. The parties acknowledge that money damages alone may not properly compensate the Council for any breach of The Grant Recipient's obligations hereunder and the parties hereby expressly agree that in the event of the breach or threatened breach of any such obligation in addition to any other rights or remedies the Council may have in law, in equity or otherwise the Council shall be entitled to seek injunctive or other equitable relief compelling specific performance of and other compliance with the terms of such obligations.

**29. WAIVER**

- 29.1. No term or provision of this Agreement shall be considered as waived by any Party unless a waiver is given in writing by that Party.
- 29.2. No waiver under Clause 29.1 shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Agreement unless (and then only to the extent) expressly stated in that waiver.

**30. GOVERNING LAW**

- 31.1 This Agreement shall be governed by and construed in accordance with the laws of England and Wales and subject to the provisions of Clause 16 the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

**32. FORCE MAJEURE**

- 32.1. Neither party will be deemed to be in breach of its obligations herein contained if prevented from carrying them out due to circumstances beyond their control, provided that:

32.1.1. if it is possible to achieve the purpose of the obligation in any other reasonable expedient manner the breaching party shall do so;

- 32.1.2 as soon as the preventing circumstances cease to apply the party that is in breach shall promptly fulfil any outstanding part of the obligation;
- 32.1.3 the parties will co-operate to minimise any adverse consequences during the period of the intervening force majeure circumstances; and
- 32.1.4 if the circumstances continue to apply for a period of more than 12 months, then either party may serve written notice upon the other to terminate this Agreement with immediate effect.
- 32.2 Any termination of this Agreement pursuant to Clause 15 shall not affect any rights that may have accrued to either party up to the date of such termination.

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**SCHEDULE 1  
DEFINITIONS AND INTERPRETATION**

**Definitions**

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

<b>Word or Phrase</b>	<b>Meaning</b>
<b>Actual Development Costs</b>	means in respect of the Project the amount of Development Costs actually incurred by the Grant Recipient in developing the Project
<b>Additional Funds</b>	means any funding (other than the Grant) which the Grant Recipient obtains in relation to the Project whether from lending institutes or otherwise or which it agrees to invest in the construction of the Affordable Rented Units;
<b>Affordable Housing Units</b>	Dwellings to be let by the Grant Recipient at rents inclusive of service charges of no more than 80% of open market rents or the Local Housing Allowance, whichever is lower, as agreed by the Council and Grant Recipient;
<b>Agreed Purposes</b>	means the purposes for which the Facility is to be used, which is to provide dwellings to be let at affordable rents to households in need of such accommodation;
<b>Agreement</b>	means this Agreement (including its Schedules, Annexures and Appendices (if any));
<b>Anticipated Date of Practical Completion</b>	means the expected dated of completion of building works being [DD/MMM/YYYY] or such other date as the Grant Recipient may notify pursuant to clause 11 of this Agreement;
<b>Authorised Officer</b>	means such person or persons as the Council may nominate to act as its representative from time to time for the purposes of this Agreement;
<b>Building Contract</b>	means the Agreement entered into between the Grant Recipient and the Building Contractor relating to the construction and development of the Project;
<b>Building Contractor</b>	means the building contractor or developer appointed or to be appointed by the Grant Recipient in respect of the Project;
<b>Business Day</b>	means any day other than a Saturday, Sunday or a statutory Bank Holiday in England;
<b>CDM Regulations</b>	means the Construction (Design and Management) Regulations 2015;
<b>CEDR</b>	means the Centre for Effective Dispute Resolution;

Word or Phrase	Meaning
<b>Condition Precedent</b>	means the conditions set out in Schedule 2 which must be fulfilled by the Grant Recipient to the satisfaction of the Council ;
<b>Consents</b>	means any necessary approval, authorisation, consent, exemption, licence, permit, permission or registration by or from any Relevant Authority and/or required under any legislation for the construction of the Works including without limitation planning consent the Grant Recipient
<b>Council's Representative</b>	means [ ] as appointed in such role by the Council or his appointed deputy;
<b>Development Costs</b>	means the costs relating to the procurement and development of the Project incurred or to be incurred in respect of the Project by the Grant Recipient in respect of the heads of expenditure set out in Schedule 4 or such other heads of expenditure as the Council may in its absolute discretion agree in respect of the Project provided always that the Grant Recipient's cost of funding referred to in Clause 5.1 shall be treated as Development Costs;
<b>EIR</b>	means the Environment Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such statutory instrument;
<b>Employer's Agent</b>	Means the agent acting on behalf of the Grant Recipient as the contract administrator lead consultant cost consultant or other such consultant role as appointed to by the Grant Recipient;
<b>First Report</b>	means a report prepared by the Grant Recipient setting out the anticipated Total Development Costs to be used to determine Grant funding;
<b>Final Report</b>	means a report prepared by the Grant Recipient setting out the actual Development Costs to be used to determine the actual amount of Grant to be paid to the Grant Recipient not exceeding 30% of qualifying actual total development costs;
<b>Fitted Out (Fitting Out)</b>	means fitted out to the Required Standard ;
<b>Fit Out Works</b>	means the Works associated with the Fitting Out of the Facility;
<b>FOIA</b>	means the Freedom of Information Act 2000, and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;
<b>Grant</b>	means xxxxx pounds (£ xxxx), being the maximum amount of grant the Council has agreed to pay to the Grant Recipient in respect of the Project;

Word or Phrase	Meaning
<b>Grant Instalment</b>	means any part payment of the agreed Grant;
<b>Information Commissioner</b>	has the meaning set out in Section 6 of the DPA 1998;
<b>Legal Charge</b>	means the fixed legal charge in favour of the Council over the Site in the form annexed to this Agreement at Schedule 7 which is to be registered against the Site as security for the First Instalment and as set out in more detail at Clause 10 of this Agreement;
<b>Legislation</b>	<p>means:</p> <ul style="list-style-type: none"> <li>(a) any Act of Parliament;</li> <li>(b) any subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978;</li> <li>(c) any exercise of the Royal Prerogative; and</li> <li>(d) any enforceable community right within the meaning of Section 2 of the European Communities Act 1972;</li> </ul> <p>in each case in the United Kingdom;</p>
<b>Local Housing Allowance</b>	means the maximum weekly rent eligible for housing benefit by property size by location as published by the Valuation Office Agency from time to time;
<b>Longstop Date</b>	means [DD/MMM/YYYY] or such other date as agreed between the Parties in accordance with the terms of this Agreement;
<b>Management Information</b>	<p>means the information that The Grant Recipient shall provide to the Council as requested from time to time by the Council (as applicable) in relation to the Project including (inter alia):</p> <ul style="list-style-type: none"> <li>• Invoice Dates</li> <li>• Contract Dates</li> <li>• VAT Rates</li> <li>• Invoice amounts</li> </ul> <p>The above list is not exhaustive and the Council may reasonably from time to time change the items in the list provided that it has given the Grant Recipient notice of such changes in accordance with Clause 13;</p>
<b>Material Adverse Effect</b>	means the effect of any event or circumstance which is reasonably likely to be materially adverse to the ability of the Grant Recipient to deliver the Project within the time limits (if any) for doing so;
<b>Nominations Agreement</b>	means the agreement in substantially the form set out in Schedule 6 to be entered into before Practical Completion;
<b>Open Book</b>	means the declaration of all price components including profit margins, central office overheads, site overheads, preliminaries, contingencies and the cost of all materials, goods, equipment, work and services with all and any books of accounts, correspondence, agreements, orders, invoices, receipts and other documents available for inspection;

Word or Phrase	Meaning
<b>Open Book Obligations</b>	mean the obligations set out in Clause 12;
<b>Practical Completion</b>	<p>means the state in which the Facility and Works are:</p> <ul style="list-style-type: none"> <li>(i) complete in all respects;</li> <li>(ii) the Site is clean and clear of rubbish and surplus material and builder's plant, tools and equipment; and</li> <li>(iii) free from apparent or known defects, save for any minor items of incomplete work or minor defects, the existence, completion or rectification of which in the opinion of the Council are capable of being made good or carried out without materially interfering with the beneficial use and enjoyment of the Facility and which would be reasonable to include in a snagging list;</li> <li>(iv) fit for beneficial occupation as a residential development in accordance with NHBC or equivalent requirements;</li> <li>(v) the Affordable Rented Units are fully Fitted Out and all testing and commission of mechanical and electrical systems are complete.</li> </ul> <p>and Practically Complete shall be construed accordingly.</p>
<b>Practical Completion Date</b>	The date set out on the Practical Completion certificate being the date the Project achieves Practical Completion;
<b>Project Aims</b>	<p>means the Council's requirements:</p> <ul style="list-style-type: none"> <li>(a) that the Affordable Rented Units meet the Agreed Purposes; and</li> <li>(b) that the Grant is properly and effectively spent;</li> </ul>
<b>Project Manager</b>	means [XXXX] appointed in such role by the Grant Recipient for the purposes of the Project pursuant to clause 12.1;
<b>Prohibited Act</b>	<ul style="list-style-type: none"> <li>(a) offering, giving or agreeing to give to any servant of the Council any gift or consideration of any kind as an inducement or reward: <ul style="list-style-type: none"> <li>a. for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Council; or</li> <li>b. for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Council;</li> </ul> </li> <li>(b) entering into this Agreement or any other contract with the Council in connection with which commission has been paid or has been agreed to be paid by the Contractor or on its</li> </ul>

Word or Phrase	Meaning
	<p>behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Council; or</p> <p>(c) committing any offence:</p> <ul style="list-style-type: none"> <li>a. under the Prevention of Corruption Acts 1889-1916 or the Bribery Act 2010;</li> <li>b. under Legislation creating offences in respect of fraudulent acts; or</li> <li>c. at common law in respect of fraudulent acts in relation to this Agreement or any other contract with the Council;</li> </ul> <p>(d) defrauding or attempting to defraud or conspiring to defraud the Council;</p>
<b>Project</b>	means the construction of the Affordable Rented Units details of which are appended at Schedule 5 (as the same may be amended from time to time in accordance with Clause 11);
<b>Project Change Notice</b>	means a notification served by one party on the other pursuant to Condition 8;
<b>Project Group</b>	means the group as referred to in clause 11.2;
<b>Project Group Meeting</b>	means a meeting held pursuant to Conditions 11;
<b>Relevant Authority</b>	means any governmental or other authority, court with relevant jurisdiction, the local planning authority, landlord, funder, adjoining landowner or any other person whose consent is required to undertake the Works necessary to the delivery of the Project or perform the Grant Recipient's obligations under this Agreement;
<b>Required Standards</b>	Planning permission, planning consent, practical completion certificate, building regulations sign off, Code for Sustainable Homes 4 and Final report, As built Building for Life Assessment, Secure by Design Certificate, NHBC cover notes, as build drawings and Lifetime Homes;
<b>RIDDOR</b>	means Reporting of Injuries, Disease and Dangerous Occurrences Regulations 1995 (as amended from time to time);
<b>Site</b>	means the site identified of the Affordable Rented Units as shown edged red on the plan attached at Schedule 5;
<b>Specification</b>	means the specification of the Affordable Rented Units (including all design and works required to build the Affordable Rented Units) as set out in Schedule 5) as may be amended from time to time in

Word or Phrase	Meaning
	accordance with Clause 11;
<b>Start on Site Works</b>	<p>means:</p> <ul style="list-style-type: none"> <li>(a) excavation for strip or trench foundations or for pad footings;</li> <li>(b) digging out and preparation of ground for raft foundations;</li> <li>(c) vibrofloatation, piling, boring for piles or pile driving; or</li> <li>(d) drainage work specific to the building forming part of the Project;</li> </ul>
<b>Statutory Requirements</b>	Any statute, statutory instrument, regulation, rule or order made under any statute or directive having the force of law which affects the Works or performance of any obligations under this Agreement and any regulation or bye-law of any local authority or statutory undertaker which has any jurisdiction with regard to the Works or with whose system the Works are, or are to be, connected;
<b>Sub-Contractor</b>	means any contractor appointed by the Grant Recipient to undertake all or part of the Works;
<b>Term</b>	means the period of time from the date hereof until the date of Practical Completion or the Longstop Date whichever is the sooner (subject to earlier termination by the Council of the entirety of this Agreement);
<b>VAT</b>	means Value Added Tax as presently charged under the Value Added Tax Act 1994 or any tax of a similar nature;
<b>Waiver Condition</b>	<p>means provision of satisfactory evidence by the Grant Recipient that the relevant Prohibited Act was committed by:-</p> <ul style="list-style-type: none"> <li>(a) an employee acting independently of The Grant Recipient; or</li> <li>(b) a Subcontractor (or any employee of a Subcontractor not acting independently of the Sub - Contractor); or</li> <li>(c) an employee of a Sub- Contractor acting independently of such Subcontractor; or</li> <li>(d) any person not specified in parts (a), (b) or (c)</li> </ul> <p>and the Council is satisfied that the Grant Recipient and/or the Sub - Contractor (as applicable) has taken such action as is appropriate taking into account the nature and the circumstances of the relevant Prohibited Act. "Acting independently" for these purposes means not acting with the authority or knowledge of any one of more of the directors of the Grant Recipient or the relevant Subcontractor.</p>

<b>Word or Phrase</b>	<b>Meaning</b>
<b>Works</b>	means all of the works (including design, infrastructure works and all other works necessary) to be undertaken in order to ensure that the Affordable Rented Units meets the Required Standards and the Specification.

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**SCHEDULE 2  
CONDITIONS PRECEDENT**

<b>This Agreement is conditional on the satisfaction of the following matters to the absolute satisfaction of the Council, whose decision will be final.</b>		<b>Documentation required as evidence</b>
Condition Precedent 1: The Grant Recipient has legal ownership of the Land	The Grant Recipient shall prove their interest in the land	Either: (a) An Official Copy of the Land Registry entry together with any supporting documentation or documentation listed on the land registry entry. or (b) If (a) is not available at the point of satisfaction of this Condition Precedent, an alternative form of evidence which satisfactorily evidences title in the Land. The form of such evidence to be agreed with the Council
Condition Precedent 2: Financial Viability	The Bid for Local Authority Grant Funding confirms that the Project is Financially Viable and the Grant is required	Cost Consultant or Employer's Agent report setting out the costs of the Project and the Grant Recipient's confirmation of the availability of the additional funding for the Project
Condition Precedent 3: Project Viability	The Grant Recipient to provide evidence that the Project is viable and that the site is suitable for the Affordable Rented Units proposed.	<ul style="list-style-type: none"> <li>• Soil surveys,</li> <li>• archaeological survey,</li> <li>• utilities survey,</li> <li>• load bearing capacity and contamination studies; and</li> <li>• rights of light survey.</li> </ul>

**SCHEDULE 3  
REPRESENTATION AND WARRANTIES**

**1. POWERS, VIRES AND CONSENTS**

- 1.1 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.
- 1.2 So far as it is aware, it is not in breach of or in default under any agreement to which it is a party or which is binding on it or any of its assets which has or could have a Material Adverse Effect.
- 1.3 To the best of its knowledge, no claim is presently being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge, pending or threatened against it or any of its assets which will or might have a Material Adverse Effect.
- 1.4 It has not committed any Prohibited Act.
- 1.5 The Grant Recipient:
- 1.5.1 is a Registered Provider;
  - 1.5.2 has not had any application to be an Investment Partner rejected;
  - 1.5.3 is incorporated under the laws of England or Wales and registered as a Registered Society;
  - 1.5.4 has power to own its assets and carry on its business as currently being conducted from time to time; and
  - 1.5.5 has power to enter into the Transaction Documents and to exercise its rights and perform its obligations there under.
- 1.6 The obligations expressed to be assumed by it in the Transaction Documents are (or when executed will be) legal and valid obligations, binding on it in accordance with the terms thereof.
- 1.7 All acts, authorisations, consents, conditions and things required to be done, fulfilled and performed in order to (a) enable it lawfully to enter into, exercise its rights under, and perform and comply with, the obligations expressed to be assumed by it in each of the Transaction Documents, (b) ensure that the obligations expressed to be assumed by it in each of the Transaction Documents are legal, valid and binding and (c) make each Transaction Document admissible in evidence in England, have been (or will be, subject to due registration within applicable registration periods) done, fulfilled and performed.

**2. SCHEME DELIVERABILITY**

- 2.1 It has obtained or will by Practical Completion of the Affordable Housing Project have obtained all Consents and to the extent that such Consents have been obtained they have not been withdrawn.

- 2.2 It is not aware, after due enquiry, of anything which materially threatens the success or successful completion of the intention or purpose of this Agreement.
- 2.3 All information supplied by or on behalf of it to the Council or its agents or employees in connection with the Grant Recipient's application to be a grant recipient and otherwise other applications for grant funding or in the course of the subsequent discussions was at the time of submission and as far as it was aware (or ought to have been aware) having made all reasonable and proper enquiries true, complete and accurate in all respects.
- 2.4 All data or other information supplied to the Council in connection with, or related to the Affordable Housing Project or its application to be a grant recipient is accurate.
- 2.5 It has informed the Council of any material change that has occurred since the date of submission of the application to be a grant recipient of which it is aware (or ought to be aware) having made all reasonable and proper enquiries which would render such information untrue, incomplete or inaccurate in any material respect including without limitation the provision or offer of any additional Public Sector Subsidy.
- 2.6 It is not aware of any material fact or circumstance that has not been disclosed to the Council and which might, if disclosed materially, adversely affect the decision of anyone considering whether or not to contract with it.
- 2.8 Save where expressly agreed by the Council, all Affordable Housing Units will be let in accordance with the terms of the Affordable Housing Project.
- 2.10 So far as the Grant Recipient is aware (having made all reasonable enquiries) the Affordable Housing Project details (including, inter alia, projected Start on Site and Practical Completion dates) are capable of being delivered without the need for a change to the Affordable Housing Project details.
- 2.11 The Grant Recipient possesses or will possess a Secure Legal Interest in the Site.

### **3. Authority of Grant Recipient's Representative**

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

**SCHEDULE 4  
DEVELOPMENT COSTS HEADS OF EXPENDITURE AND SCHEME METHODOLOGY**

Financial viability of schemes is assessed based on the total scheme costs associated with the land purchase, planning, build and fit out of a scheme to ensure successful delivery and 'fit for purpose' dwellings.

These costs would include the following:

- Land acquisition price
  - Gross build contract sum
  - Surveys required to be submitted with planning application
  - Pre planning fees
  - Planning fees
  - Planning architect fees
  - Employer's agent fees relating to building contract management only
  - CDM Co-ordinator fees
  - Clerk of Works fees
  - Legal fees associated with land purchase, Unilateral Undertaking (including Council fees covered by The Grant Recipient) negotiation & agreement, build contract and disbursements.
  - Valuation fees (land purchase plus unit valuations confirming OMV and market rent of individual units as required by the GLA)
  - Party Wall fees (including adjoining owners fees)
  - Grant financial advisor
  - Costs associated with fit out and furnishings to required standard
  - VAT – while the majority of the works will be zero rated, the cost associated with certain items such as white goods and furnishings are standard rated. VAT is also chargeable at standard rate on professional fees (EA, CDMC, Valuer, legals etc)
  - Development Allowance in relation to building contract (i.e. developers profit)
  - Capitalised interest
  - Contingency (3% of works price) in relation to building contract
- Any other surveys/advice/services that may be required to ensure successful delivery and specific to the scheme.

**Revenue Details**

The scheme is to be appraised assuming the starting rents as detailed in the table below to comply with IMS input details. Income to be based on net rent not gross rent.

No. of units	Type of Units	Gross Rents (per week)	HB Service Charge (per week)	Eligible Charge	Net Rents (per week)

**Assessment of Grant Instalment Payments**

At Acquisition the assessment and calculation of the First Grant Instalment is based on actual land cost and actual fees incurred to purchase completion and planning permission.

During construction the assessment and calculation of Further Grant Instalments is based on actual incurred build costs as certified by the Grant Recipient's Employer's Agent or equivalent consultant or project manager and any additional fees incurred since the First Grant Instalment.

At practical completion the assessment and calculation of the final grant instalment is based on *actual* total incurred scheme costs. At this stage the estimated final account for the build contract is available. As there is a 12 months defects period some contingency is retained.

### **Documents Provided for Assessment and Audit**

In terms of carrying out the initial assessment upon which the first instalment of grant is based the following details are to be provided:

- Estimated total scheme costs upon which the scheme budget has been set
- Land purchase completion statement or equivalent confirming actual cost of the land
- Consultants Fee Invoices

A copy of the land valuation and Cost Consultants build cost estimate could be made available at this stage if so required, if requested by the Council.

For the second assessment upon which the second instalment of grant is based the following details are to be provided:

- A copy of the build contract
- Employer's Agent or equivalent certifications for payment

For the final assessment upon which the final instalment of grant is based a breakdown of actual costs incurred is to be provided (this will need to take into account retentions to be held for the defects liability period and could provide the following as evidence:

- Land valuation
- Financial extracts from the build contract; any contract instructions and the estimated final account related to the build contract
- Copies of appointment letters/documents/ invoices verifying payments
- Calculation of capitalised interest
- Details of outstanding payments and retentions
- Final fee estimate

### **Demonstration of 'fit for purpose'**

in order to demonstrate/ measure the scheme as being constructed to be fit for purpose the following documents are to be provided:

- Planning permission
- Discharge of planning conditions
- Practical completion certificate
- Building regulations sign off
- As built Building for Life assessment

- Secure by Design Certificate
- NHBC Cover Notes
- As built drawings

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**SCHEDULE 5  
SPECIFICATION AND SITE**

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**SCHEDULE 6  
NOMINATIONS AGREEMENT**

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**SCHEDULE 7  
BID**

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

THE COMMON SEAL of THE MAYOR AND )  
BURGESSES OF THE LONDON BOROUGH )  
OF HARROW was affixed to this )  
DEED BY ORDER )

Authorised Officer:

Seal Register No:

SIGNED as a DEED and DELIVERED )  
by [ ] )  
for and on behalf of )  
THE GRANT RECIPIENT )  
("THE GRANT RECIPIENT") in the presence of: )

Full name of Witness (print) .....

Full address of Witness (print) .....  
.....  
.....

Occupation of Witness (print) .....

Signature of Witness .....