

Homes England – Grant Funding Agreement in relation to:

Directorate: Markets, Partners and Places

Project: [insert name and PCS details]

Dated [2022]

Parties:

(1) **Homes and Communities Agency (trading as Homes England)** of One Friargate, Coventry CV1 2GN (**Homes England**); and

(2) [] of [address] (the **Local Authority**).

1. Recitals

1.1 Homes England agrees to make the Funding available to the Local Authority on the terms of this Agreement

1.2 The Local Authority agrees to use the Funding to [].

2. General

2.1 Homes England agrees to provide the Funding subject to the terms of this Agreement including the terms specified in the Standard Terms and Conditions of Funding.

2.2 The Parties acknowledge that the provision of Funding is considered an intra-public transfer of funds and not Subsidy.

2.3 All definitions and principles of interpretation set out in the Standard Terms and Conditions of Funding specified in **Schedule 1** shall apply to this Agreement (including the schedules to this Agreement), and the schedules and the Appendices to this Agreement are incorporated into and form part of this Agreement.

2.4 The Local Authority acknowledges and agrees that Homes England's obligation to provide the Funding is subject to Homes England receiving any approvals Homes England may require (whether internally or from central Government) and on central Government making funds available to Homes England for the Funding.

2.5 The key principles of the proposed Funding for the Project are as follows:

Total Commitment	means up to [] pounds (£[])
Availability Period	From the Start Date up to and including 31 March 2023
Project	[]
Outputs and Milestones	See Schedule 2
Start Date	[]
End Date	means [insert the date by which Homes England may exercise any Clawback provision]

Project Completion Date	[REDACTED]
Project Costs	means the consultancy fees / surveys or other "preparatory" costs incurred by the Local Authority for the purposes of the Project and which Homes England is satisfied have been reasonably and properly incurred by the Local Authority in carrying out the Project provided such costs have been verified and approved in writing by Homes England which without limitation and for the avoidance of doubt do not include any finance charges but does include any non-recoverable VAT and professional fees in connection with the design supervision and/or implementation of the Project.
Standard Terms and Conditions of Funding	means the standard terms and conditions of funding contained at Schedule 1.

3. Conditions Precedent to the initial Funding and each other Funding

3.1 Homes England's obligations under this Agreement to make available any Funding is subject to the conditions precedent more particularly specified in **Schedule 3**, each being met in a form and substance satisfactory to Homes England at the time:

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

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

3.3 Reporting

The Local Authority will provide Homes England with the Monitoring and Progress Report in accordance with paragraph 8 to the Standard Terms and Conditions.

3.4 Communications

The Local Authority contact for all enquiries at Homes England is [insert project manager name].

All notices given by the Local Authority to Homes England must be in writing and either be delivered at or sent by first class post to. Windsor House 50 Victoria Street London SW1H 0TL marked for the attention of: [REDACTED]

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

- (a) if sent by first-class post, three Business Days after posting exclusive of the day of posting; or
- (b) if delivered by hand, on the day of delivery.

And in the case of Homes England addressed as set out above and in the case of the Local Authority to [REDACTED]

Either party may change the details of service by notice in accordance with the above.

3.5 **Amendments to the Agreement**

Homes England may amend or vary the Agreement where either;

- (a) mandatory changes are required by UK laws or regulations; or
- (b) by mutual written consent between the Local Authority and Homes England.

4. TERMINATION

Homes England reserves the right to terminate this Agreement by notice in writing and / or to implement paragraphs 6 and/or 7 of the Standard Terms and Conditions of Funding with immediate effect where;

- (a) The Local Authority does not submit a Claim Form within 12 months of the Start Date or such other period agreed with Homes England in writing;
- (b) The Local Authority becomes Insolvent;
- (c) The Local Authority fails to achieve any Output or Milestone;
- (d) The Local Authority fails to remedy any breach of this Agreement which is capable of remedy within 14 Business Days of Homes England requesting the Local Authority to do so;
- (e) The Local Authority commits a breach of this Agreement which is incapable of remedy.

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

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

.....
 Name:
 Authorised Signatory

The common seal of)
[LOCAL AUTHORITY])
 is hereunto affixed in the presence of:)

.....
 Name:
 Authorised Signatory

SCHEDULE 1

STANDARD TERMS AND CONDITIONS OF FUNDING

1. DEFINITIONS

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

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

Availability Period means as defined in paragraph 2.5 to this Agreement;

Base Interest Rates means the base rate of Barclays Bank plc or such other rate as Homes England determines (acting reasonably);

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

Claim means an application for Funding;

Claim Form means the document in the form of the template annexed as Appendix 1 to be completed and provided by the Local Authority to the nominated Homes England contact at agreed intervals to claim Funding;

Completion Date means the date by which the Project is actually completed to Homes England's reasonable satisfaction and in accordance with the terms of this Agreement.

Data Protection Legislation and DPL means (i) Data Protection Act 2018 (DPA) and the UK General Data Protection Regulation (GDPR) (created by the Data Protection, Privacy and Electronic Communications (EU Exit) Regulations) (ii) any successor legislation to the GDPR or the DPA and (iii) all applicable law relating to the processing of personal data and privacy;

Procurement Law means the Public Contracts Regulations 2015, the Concession Contracts Regulations 2016 (insofar as the same are applicable) together with any statutory modification or replacement regulations or Legislation on procurement by public bodies;

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

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

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

Local Authority Senior Officer means the employee of the Local Authority holding the title of 'Section 151 Officer' or any such other

person with equivalent seniority notified to Homes England by the Local Authority;

Milestones means the key events and stages as agreed between the Local Authority and Homes England in relation to the Project as detailed in Schedule 2.

Milestone Date means the date set out in the definition of Milestones by which the relevant Milestone must have been achieved;

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

Outputs means the specific targets and objectives agreed between the Local Authority and Homes England as detailed in Schedule 2.

Project means the project to which the Funding relates, details of which are set out in paragraph 2.5 to this Agreement;

Project Completion Date means the date by which the work on the Project is to be completed as defined in paragraph 2.5 to this Agreement;

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

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

Start Date means the date by which the work on the Project is to be started as defined in paragraph 2.5 to this Agreement;

Subsidy means any direct or indirect financial assistance which:

- (a) arises from the resources of the United Kingdom Government, devolved government, other public authority in the United Kingdom or an emanation of any of these, including:
 - (i) a direct or contingent transfer of funds such as direct grants, loans or loan guarantees;
 - (ii) the forgoing of revenue that is otherwise due;
 - (iii) the provision of goods or services, or the purchase of goods or services; or
 - (iv) a measure analogous to these,
- (b) confers an economic advantage on one or more enterprises;
- (c) is specific insofar as it benefits, as a matter of law or fact, certain enterprises over others in relation to the production of certain goods or services; and
- (d) has, or could have, an effect on (i) competition or investment within the UK, (ii) trade between the United Kingdom and a country or territory outside the United Kingdom, or (iii) investment as between the United Kingdom and a country or territory outside the United Kingdom.

Total Commitment means as defined in paragraph 2.5 to this Agreement;

United Kingdom Competition Requirement means the provisions of Chapter 3 (Subsidy Control) of Title XI (Level Playing Field for Open and Fair Competition and Sustainable Development) of the EU-UK Trade and Cooperation Agreement (as incorporated into the laws of

England and Wales, Scotland and Northern Ireland by Section 29 of the European Union (Future Relationship) Act 2020) and/or such other legislation and/or regulations and/or guidance issued by the Secretary of State and/or approved by Parliament which is in force and/or applies in England which regulates Subsidy;

2. PROVISION OF FUNDING

Homes England (in exercise of its powers under s19 of the Housing and Regeneration Act 2008) agrees to make available to the Local Authority during the Availability Period the Funding in an aggregate principal amount equal to the Total Commitment.

3. PRE-CONDITIONS OF FUNDING

Homes England's obligations under this Agreement are subject to it having received all documents and other evidence detailed in **Schedule 3** each in form and substance to the satisfaction of Homes England.

4. WARRANTIES AND REPRESENTATIONS

4.1 By entering into this Agreement (and every time the Local Authority submits a claim form) the Local Authority warrants and confirms to Homes England that;

- 4.1.1 it is a legally constituted body and has the full capacity and authority and all necessary consents (except planning consents) to enter into and perform the obligations under this Agreement; and
- 4.1.2 it acknowledges that it constitutes valid, legal and binding obligations of and on the Local Authority which are enforceable against it;
- 4.1.3 all information, documents and accounts provided by the Local Authority or on its behalf, from time to time are and will be true, valid and correct; (minor errors and omissions as determined by Homes England in its absolute discretion excepted)
- 4.1.4 it is not in breach of any law or regulation agreement or obligation which affects or may affect its ability to commit to this Agreement;
- 4.1.5 it is not under any statutory obligation to carry out the Project or any part of it;
- 4.1.6 it is not to the best of its knowledge aware of any fact or circumstance that may affect the successful completion of the Project;
- 4.1.7 it will ensure that all the necessary consents and licences are in place and maintained for the duration of the Project without limitation.
- 4.1.8 it will comply with Procurement Law (to the extent that the same apply).
- 4.1.9 it will procure that all contractors comply with Procurement Law (to the extent that the same apply);
- 4.1.10 it will procure that the Project commences by the Start Date and will be completed in accordance with the terms of this Agreement

5. PAYMENT OF FUNDING

5.1 Mechanics and payment of Funding

- 5.1.1 A Claim will not be regarded as having been validly made by the Local Authority unless:
 - (a) it is submitted on a Claim Form which must be signed by the Local Authority Senior Officer and it is:
 - i received by Homes England no later than twenty (20) Business Days prior to the proposed date the Funding will be made available to the Local Authority;
 - ii delivered during the Availability Period; and
 - (b) it relates to Project Costs relating to the Project and for which the Local Authority has not submitted any other Claim or received any other funding and it is accompanied by written evidence satisfactory to Homes England that the Project Costs have been incurred together with confirmation from the Local Authority Senior Officer that it has verified and approved the Claim;

- (c) it accords with the Project Costs and each Milestone is met by the relevant Milestone Date or is accompanied by evidence satisfactory to Homes England (in its absolute discretion) to justify any deviation; and
- (d) it is for an amount which (if paid) would not cause the Total Commitment to be exceeded.

5.1.2 Subject to the terms of this Agreement, Homes England will pay Funding to the Local Authority within twelve (12) Business Days of receipt of a valid Claim.

5.1.3 Any amount not drawn by the Local Authority under this Agreement during the Availability Period will be automatically cancelled.

5.1.4 The Local Authority may not make more than one Claim per calendar month.

5.2 Use of Funding

5.2.1 The Funding will be the sole property of the Local Authority and will be used by the Local Authority for Project Costs only in line with the Milestones and the Project Costs profile detailed in Schedule 2.

5.2.2 Without affecting the obligations of the Local Authority in any way, Homes England is not bound to monitor or verify the application of any amount provided pursuant to this Agreement.

6. DEFAULT

6.1 In the event that Homes England in its sole and absolute discretion determines that an event of default has occurred in respect of the events listed at paragraph 6.2 (**Event of Default**) Homes England has the right to serve notice of the Event of Default on the Local Authority.

6.2 An Event of Default arises where any of the following occurs :-

- 6.2.1 any representation or warranty made by the Local Authority pursuant to paragraph 4 is materially incorrect when made or repeated;
- 6.2.2 the Local Authority fails to achieve any Output or Milestone
- 6.2.3 the Local Authority commits a breach of any of the terms and conditions of this Agreement and/or any other agreement the Local Authority has with Homes England (and fails to remedy such breach within 14 Business Days of Homes England asking it to do so);
- 6.2.4 the Local Authority does not comply with paragraph 8.1.1;
- 6.2.5 any of the pre-conditions detailed in Schedule 3 (if applicable for the purposes of this Agreement) are not satisfied (unless waived by Homes England) within the required period;
- 6.2.6 assets resulting from the Funding and/or the Project are put to a use not authorised by this Agreement.

6.3 Homes England's rights

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

- 6.3.1 consider and agree a revised Output or Milestone Date with the Local Authority in which case any relevant condition of this Agreement shall apply mutatis mutandis to the revised Output or Milestone Date; or
- 6.3.2 Where the Event of Default is capable of remedy require the Local Authority to prepare a plan to remedy and/or mitigate the effects of the Event of Default and submit the remediation plan to Homes England within fifteen (15) Business Days of such request for approval. If the remediation plan is not so prepared or complied with or if the remediation plan is not acceptable to Homes England then and in any such case Homes England may exercise its rights set out in paragraphs 6.3.3 or 6.3.4 below; or
- 6.3.3 Withhold the provision of further Funding and/ or
- 6.3.4 Require the Local Authority to repay to Homes England the Funding or such proportion of the Funding as Homes

England in its absolute discretion determines should be repaid.

- 6.3.5 In the event that the Local Authority certifies to Homes England in writing (with such supporting evidence as requested by Homes England) that (a) having used its best endeavours and efforts to do so, it is unable to meet the Outputs or Milestones and (b) such inability to meet the Outputs or Milestones results wholly and exclusively from a downturn in the housing market for the area in question and is therefore i) not specific to the area in relation to the Project and ii) beyond the control of the Local Authority, then

Homes England may (but shall not be obliged to) take this into account when exercising its discretion and considering what action to take in respect of an Event of Default, including any decision about whether to agree revised proposals for Outputs or Milestones as set out in paragraph 6.3.1 above.

6.4 Suspension

On and at any time after the occurrence of an Event of Default which is continuing Homes England may by notice to the Local Authority suspend or withhold payment of Funding. .

7. WITHHOLDING PAYMENTS AND REPAYMENT

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

- 7.1 repayment or recovery is required under or by virtue of any subsidy laws shall, unless the context requires otherwise, be construed as having the meaning given to them by the United Kingdom Competition Requirement("Subsidy Law"); and/or
- 7.2 Homes England is otherwise required to repay or recover such Funding in whole or in part by
- 7.2.1 such persons officeholders and bodies (however constituted) that are specified under any United Kingdom Competition Requirement as having responsibility for monitoring compliance with and/or legally enforcing Subsidy Law or the United Kingdom Competition Requirement; or
- 7.2.2 the courts of England and Wales;
- 7.3 Any Funding required to be repaid in accordance with this Clause 7 will bear interest at such rate as required under or by virtue of Subsidy Law from the date of Homes England's notice requiring repayment to the date of repayment (both before and after judgement) or such other period as may be required under or by virtue of Subsidy Law.

8. LOCAL AUTHORITY NOTIFICATION AND REPORTING OBLIGATIONS

8.1 Reporting

The Local Authority will:-

- 8.1.1 From the Start Date until the End Date, and no later than ten (10) Business Days following each Quarter Date provide Homes England with such information within the Monitoring and Progress Report as Homes England may reasonably require in connection with the Project (including without limitation evidence that a Claim relates to Project Costs) and the Outputs and Milestones, save that the first Monitoring and Progress Report shall be the period commencing on the Start Date and ending on the next Quarter Date;
- 8.1.2 Notwithstanding paragraph 8.1.1, provide Homes England with more frequent Monitoring and Progress Reports should it be requested to do so by Homes England (at its absolute discretion); and
- 8.1.3 procure that the Local Authority's representative and/or any other officers appointed by the Local Authority to deal with the Project will attend such meetings as Homes England may reasonably request to review progress in relation to the Project;

8.2 Inspection and Audit Facilities

The Local Authority will:

- 8.2.1 allow or procure access to its premises for Homes England, its internal auditors or its other duly authorised staff or agents or any Regulatory Body and will allow such persons to inspect and take copies of documents relating to the Project. Homes England will be entitled to interview the Local Authority's employees to obtain oral and/or written explanations of documents.
- 8.2.2 provide Homes England, in writing, with any such information about the Funding and/or the Project and/or the Programme as it requires for the conduct of its statutory functions or which may be required by any Regulatory Body in respect of its regulatory and / or compliance functions.
- 8.2.3 allow Homes England or persons authorised by it to inspect, audit and take copies of all reports, books, accounting records and vouchers which relate to the Funding and the Project provided that Homes England does not impede or obstruct the progress of the Project.
- 8.2.4 at all times retain documentary evidence to support each Claim and will maintain full and accurate accounts for the Project in accordance with all applicable law and accounting standards and (to the extent that no accounting standard is applicable) use generally accepted accounting principles and practices of the United Kingdom then in force. For the purpose of this paragraph "Accounting Standards" means the statements of standard accounting practice referred to in section 464 of the Companies Act 2006 issued by the Accounting Standards Board.

9. CONDUCT

- 9.1 The Local Authority must comply with and assist and co-operate with Homes England in order that it can comply with (and require third parties who benefit from this Funding and any appointed contractors do the same) all applicable legal obligations and statutory requirements in relation to the Project, including, but not limited to:-
- 9.1.1 UK Planning and Environmental legislation
- 9.1.2 Subsidy Law, including but not limited to N7471A/99 and N747/8/99 Partnership Support for Regeneration (1) Support for Speculative Developments and (2) Support for Bespoke Developments
- 9.1.3 Health and Safety Legislation
- 9.1.4 Employment legislation
- 9.1.5 CDM Regulations
- 9.1.6 Equal opportunities (in relation to race, sex, disability, faith and sexuality)
- 9.1.7 Financial regulations and legislation
- 9.1.8 Copyright and Data Protection legislation
- 9.2 In carrying out the Project the Local Authority must not act directly or indirectly in any way that will bring Homes England into disrepute.
- 9.3 The Local Authority must inform Homes England immediately if any of its officers involved with the Project are subject to investigation or challenge which may have a detrimental effect upon Homes England and/or the Project.
- 9.4 The Local Authority must advise Homes England immediately of any threat of or any notice or any resolution in respect of any Insolvency.
- 9.5 The Local Authority will act in good faith to achieve the Outputs and will provide evidence of this to Homes England as required by Homes England.
- 9.6 The Local Authority will provide Homes England with such evidence that it requires that Project Costs has been incurred.

10. INSURANCE

- 10.1 The Local Authority must take out and maintain with a reputable insurance company adequate insurance of the type and level of cover which it is reasonable to expect for the Project.
- 10.2 The Local Authority must produce a schedule of all appropriate insurance cover and copies of all relevant cover notes and insurance policies to Homes England within 10 Business Days of any such request being made by Homes England.

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

11.1 Definitions

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

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

- (a) know-how, confidential, commercial and financial information and all other information which should reasonably be treated as confidential (whether marked confidential or otherwise);
- (b) the existence or terms of this Agreement or other information relating to the Project; and
- (c) information relating to a party's business and affairs, its customers, employees and suppliers;

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

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

EIR Exception means any applicable exemption to EIR;

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

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

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

FOIA Exemption means any applicable exemption to the FOIA;

Information means in relation to:

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

Information Commissioner has the meaning set out in the Data Protection Legislation.

Intellectual Property includes, without limit, all copyright (and future copyright), patents, trademarks and service marks (whether registered or not) design rights, registered designs, database rights, moral rights and know-how together with the

right to register, protect, enforce and exploit the above anywhere in the world.

Request for Information/RFI shall have the meaning set out in the FOIA or any request for information under EIR which may relate to the Project, any agreement or any activities or business of Homes England.

11.2 Confidentiality

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

11.2.2 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 Homes England arising or coming to its attention during the currency of this Agreement to any third party without the prior written consent of the other party and agrees not to use such Confidential Information for any purpose other than that for which it is supplied under this Agreement.

11.2.3 The obligations of confidence referred to in paragraph 11.2.2 above 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.

11.2.4 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 each obligor acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and Homes England may nevertheless be obliged to disclose such Confidential Information; or
- (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.

11.2.5 The Local Authority will ensure that all Confidential Information obtained from Homes England under or in connection with this Agreement:

- (a) is given only to such of its 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 and only to the extent necessary for the performance of this Agreement;
- (b) is treated as confidential and not disclosed (without Homes England's prior written approval) or used by any such staff or professional advisors, Contractors or consultants otherwise than for the purposes of this Agreement;

- (c) where it is considered necessary in the opinion of Homes England the Local Authority will ensure that such staff, professional advisors, contractors or consultants sign a confidentiality undertaking before commencing work in connection with this Agreement.
- 11.2.6 Nothing in this paragraph 11.2 shall prevent Homes England:
- (a) disclosing any Confidential Information for the purpose of:
 - i the examination and certification of Homes England's accounts; or
 - ii any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which Homes England has used its resources; or
 - (b) disclosing any Confidential Information obtained from an Obligor:
 - i to any other department, office or agency of the Crown; or
 - ii to any person engaged in providing any services to Homes England for any purpose relating to or ancillary to this Agreement or any person conducting an Office of Government Commerce gateway review;
 - (c) provided that in disclosing information under paragraphs 11.2.6(b) above Homes England discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.
- 11.2.7 Nothing in this paragraph 11.2 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.
- 11.3 Freedom of information**
- 11.3.1 The Local Authority acknowledges that Homes England is subject to legal duties which may require the release of information under the FOIA and/or the EIR and that Homes England may be under an obligation to provide Information subject to a Request for Information.
- 11.3.2 Homes England shall be responsible for determining in its absolute discretion whether:
- (a) any Information is Exempted Information or remains Exempted Information; or
 - (b) any Information is to be disclosed in response to a Request for Information.
- 11.3.3 Subject to paragraph 11.3.4 below, the Local Authority acknowledges that Homes England may be obliged under the FOIA or the EIR to disclose Information:
- (a) without consulting the Local Authority; or
 - (b) following consultation with the Local Authority and having taken (or not taken, as the case may be) its views into account.
- 11.3.4 Without in any way limiting paragraphs 11.3.2 above, in the event that Homes England receives a Request for Information, Homes England will, where appropriate, as soon as reasonably practicable notify the Local Authority.
- 11.3.5 The Local Authority will assist and co-operate with Homes England as requested by Homes England to enable Homes England to comply with its disclosure obligations under the FOIA and the EIR within the prescribed periods for compliance and in particular without limitation will (and shall procure that its agents, contractors and sub-contractors will), at their own cost: provide all such assistance as may be required from time to time by Homes England and supply such data or information as may be requested by Homes England; and
- 11.3.6 Nothing in this Agreement will prevent Homes England from complying with any valid order, decision, enforcement or practice recommendation notice issued to it by the Information Commissioner under the FOIA and / or the EIR in relation to any Exempted Information.
- 11.3.7 To the extent that the Local Authority becomes a FOIA Authority subject to the FOIA and the EIR during the course of this Agreement this paragraph will apply mutatis mutandis to both parties.
- 11.3.8 The obligations in this paragraph 11.3 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.
- 11.3.9 **Publication of information before Parliament**
The Local Authority acknowledges that the National Audit Office has the right to publish details of this Agreement in its relevant reports to Parliament.
- 11.4 Data Protection**
For the purposes of this paragraph, "Personal Data" and "Process" shall have the meanings ascribed to them in Data Protection Legislation (DPL).
- 11.4.1 **Cooperation**
The parties will co-operate with one another in order to enable each party to fulfil its statutory obligations under the DPL.
- 11.4.2 **Registrations, notifications and consents**
The Local Authority warrants and represents that it has obtained all and any necessary registrations, notifications and consents required by the DPL to process personal data for the purposes of performing its obligations under this Agreement. The Local Authority undertakes at all times during the term of this Agreement to comply with the DPL (and the data protection principles contained therein) in processing all Personal Data in connection with this Agreement and shall not perform its obligations under this Agreement in such a way as to cause Homes England to breach any of its applicable obligations under the DPL.
- 11.5 Intellectual Property Rights**
- 11.5.1 Homes England is entitled to make publicly available best practice arising from the Project ("Project Know-how") and (subject to Clause 11.5.2) the Local Authority hereby grants to Homes England a licence to use such Project Know-how in accordance with this Clause. Homes England will have the right to amend the Project Know-how or to combine with any other know how as it thinks fit when compiling and publishing what it regards as best practice.
- 11.5.2 If the Intellectual Property rights in Project Know-how are owned by a third party, the Local Authority will use its reasonable endeavours to obtain a licence for Homes England to use such Project Know-how in accordance with this Clause. The Local Authority will notify Homes England where the Local Authority are unable to obtain such licence and will identify which parts of the Project Know-how Homes England is not licensed to use.
- 11.5.3 Subject to Clause 11.5.2 the Local Authority will provide Homes England with complete copies of and access to all information and know-how relating to or derived from the Project (including the methods by which the Project was conducted). The Local Authority will provide all assistance and explanation requested by Homes England to enable it to disseminate best practice.
- 12. INDEMNITY**
The Local Authority will be liable for and will indemnify Homes England in full for any expense, liability, loss, claim or proceedings arising under statute, tort (including negligence), contract and/or at common law in respect of personal injury to or death of any person or loss of or

damage to property (whether belonging to Homes England or otherwise) or any claim by any third party arising directly or indirectly out of or caused or contributed to by the Project and/or the performance or non-performance or delay in performance by the Local Authority of its obligations under this Agreement except to the extent that the same is due to any act or neglect of Homes England.

13. ACCESS TO INFORMATION

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

14. TRANSFER

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

15. VAT

The Local Authority and Homes England both understand and agree that the Funding by Homes England under this Agreement is not consideration for any supply for Value Added Tax ("VAT") purposes whether by the Local Authority or otherwise. If, notwithstanding this agreement and understanding of the Local Authority and Homes England, it is determined that the Funding is consideration for a supply for VAT purposes, the Funding shall be treated as inclusive of any VAT.

16. CHANGES

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

17. PUBLICITY

- 17.1 The Local Authority will ensure that, where appropriate, publicity is given to the Project by drawing attention to the benefits and opportunities afforded by it. In acknowledging the contribution and investment made by Homes England the Local Authority must comply with any guidance on publicity provided by or on behalf of Homes England from time to time.
- 17.2 The Local Authority must not publicise or promote the Funding without Homes England's prior written agreement.
- 17.3 Any reference to Homes England or the Funding in any publicity and / or promotional material relating to the Project must be approved, in advance and in writing, by Homes England.
- 17.4 Homes England reserves the right to use all data provided by the Local Authority in relation to the Funding for publicity or promotional purposes.

18. FEES AND EXPENSES- VARIATIONS AND ENFORCEMENT COSTS

- 18.1 The Local Authority shall within three (3) Business Days of demand on demand, pay to Homes England the amount of all costs and expenses (including legal fees and irrecoverable VAT relating thereto) incurred by it:
- 18.1.1 in connection with the variation or amendment of, or enforcement or preservation of any rights under, this Agreement; or
- 18.1.2 in investigating any Event of Default which has occurred.

19. ENTIRE AGREEMENT

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

20. FURTHER ASSURANCE

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

21. APPLICABLE LAW

This Agreement is governed by and interpreted in accordance with English law and subject to the jurisdiction of the courts of England and Wales. If any provision of this Agreement is found to be invalid, illegal or unenforceable by a court of competent jurisdiction such provision shall be severed from it and the remainder of the provisions of this Agreement shall otherwise remain in full force and effect.

SCHEDULE 2

PERFORMANCE DATA AND FINANCIAL PROFILING

1. MILESTONES

MILESTONE	MILESTONE DATE
Start Date	As defined in clause 2.5 to this Agreement
Project Completion Date	As defined in clause 2.5 to this Agreement.

2. OUTPUTS

OUTPUT	Measure

3. ESTIMATED PROFILE OF FUNDING EXPENDITURE

Expenditure type	Estimated Costs (£)	Estimated expenditure date

SCHEDULE 3
PRE-CONDITIONS¹

1. Homes England will not advance any Funding under this Agreement (even where a Claim Form has been submitted) unless:-
 - 1.1 Homes England is satisfied that the Local Authority are not in breach of this Agreement; and
 - 1.2 The Local Authority has provided satisfactory evidence to Homes England where requested that the Local Authority will comply with the Local Authority representations and warranties set out in Clause 4 of the Standard Terms and Conditions of Funding; and
 - 1.3 Homes England is satisfied (acting reasonably) that contractors have or will be appointed with sufficient capability, experience and funding to deliver the Project by the Project Completion Date;
 - 1.4 [insert any other conditions precedent].
 - 1.5 The Local Authority has complied with Milestones numbered [] in Schedule 2 hereto.
2. Homes England may agree to pay Funding to the Local Authority before the above pre-conditions have been met without prejudice to its rights to refuse to pay any further Funding until those conditions are met.

¹ Set out here any pre-conditions to be fulfilled by the Applicant prior to Home England advancing any Funding. Further pre-conditions will be more likely on larger projects / projects where HCA funding is one of a number of elements. Consider the funding applicant's obligations under other agreements e.g. land transfer arrangements and Section 106 agreements (property projects), licences and consents needed in place and Project finance required.

APPENDIX 1

Claim Form

Markets, Partners and Places Grant

To: Homes England

From: *[insert full name and address of Local Authority before Agreement is executed]*

Date: []

Funding Agreement dated *[insert date]* relating to *[insert description of the project]* (the Funding Agreement)

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

2 I wish to claim the following amount of Funding:

3.1 Funding amount for Project Costs: []

3.2 Period of Claim: From *[insert start date]* to *[insert end date]*

3.3 Date of claim: []

3.

3.1 Bank name: *[Complete before Agreement is executed]*

3.2 Bank branch/address: *[Complete before Agreement is executed]*

3.3 Bank sort code: *[Complete before Agreement is executed]*

3.4 Bank account number: *[Complete before Agreement is executed]*

3.5 Bank account name: *[Complete before Agreement is executed]*

4. Additional Information

4.1 Total Commitment *[Complete before Agreement is executed]*

4.2 Total Project Costs claimed and approved to date (excluding this claim): []

4.3 Total Project Costs claimed and approved to date (including this claim): []

5. The Claim is made in accordance with the Funding Agreement.

6. I confirm that each condition specified in Schedule 3 of the Funding Agreement and paragraph 5.1 of the Standard Terms and Conditions of Funding required to be satisfied on the date of this Claim Form is so satisfied and I know of no reason why any condition specified in Schedule 3 of the Funding Agreement and paragraph 5.1 of the Standard Terms and Conditions of Funding to be satisfied on or before the date of drawdown will not be so satisfied.

7. I confirm compliance with each representation, warranty and covenant specified in the Funding Agreement.

8. I confirm that no Event of Default has occurred and is continuing or will occur as a result of the proposed draw down.
9. I confirm that the Funding to be provided pursuant to this Claim Form is in respect of Project Costs and will be used to meet the Project Costs and that no other Claim has been made in respect of such costs [and that supporting invoices submitted with this Claim provide evidence of the relevant expenditure incurred to date].
10. I confirm that:
- 10.1 The Project Costs have been incurred and constitute capital expenditure in accordance with Regulations made under Section 11 of the Local Government Act 2003.
- 10.2 We have not received and will not receive any specific grants, other support or contributions towards the expenditure for which payment is now being sought.
- 10.3 The information in this form is true and correct.

By:

Section 151 Officer
for and on behalf of
[insert full name of Local Authority]

Name (Printed):

Position:

Dated:

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

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

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