

<b>Standard Terms and Conditions of Funding</b>	means the standard terms and conditions of funding contained at Part 3 of this Schedule.
<b>Works Agreements</b>	<p>means any agreement relating to the provision, installation, maintenance and (where appropriate) adoption of infrastructure works made pursuant to:</p> <p>(1) Section 38 or Section 278 of the Highways Act 1980 or similar agreement for the construction maintenance and adoption of any footways footpaths verges visibility splays junctions roundabouts bridges bus lay-bys cycle ways accommodation works traffic management schemes street lighting and street furniture and ancillary landscaping and the connection of the same to the public highway or any other works to the public highway</p> <p>(2) Section 98 or Section 104 of the Water Industry Act 1991 or similar agreement relating to the provision and adoption of any sewers drains pipes manholes culverts channels watercourses soakaways outfalls and other conduits and apparatus systems necessary for drainage (“<b>Drainage System</b>”) or for the diversion of existing Drainage Systems</p> <p>(3) any agreement with a relevant authority for the diversion or undergrounding of existing or the installation of any new service media required for the provision and supply of water gas electricity telephone telecommunications cable television closed circuit television (if appropriate) and all other appropriate services</p> <p>and/or any other similar agreement or deed of grant required for the carrying out provision maintenance cleansing and (where appropriate) adoption of works by a relevant authority and shall include any variations or modifications to any Works Agreement from time to time agreed with any relevant authority</p>

## PART 3

### STANDARD TERMS AND CONDITIONS OF FUNDING

#### 1. DEFINITIONS

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

**Availability Period** means as defined in paragraph 2.2 to this Schedule 12;

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

**Cashflow** means the cashflow for the Project setting out information including but not limited to:

(a) total costs;

(b) envisaged total Receipts;

(c) total source(s) of funding for the Project;

and approved by Homes England and provided to the Borough Council as part of the Monitoring and Progress Report;

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

**Claim** means an application for Funding pursuant to and in accordance with the GDA;

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

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

DPA) and (iii) all applicable Law relating to the processing of personal data and privacy;

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

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

**Funding** has the meaning set out under the GDA;

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

**HIF Funded Infrastructure Works** means as defined in paragraph 2.2 to Part 1 of this Schedule;

**Insolvency** means where the Owner 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 Owner 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 Owner or any of its assets and Insolvent shall be interpreted accordingly;

**Monitoring and Progress Report** means a report

(including the Cashflow) prepared by the Owner in relation to the Project and submitted to the Borough Council, the means of submission and the location of the form being as notified by the Borough Council to the Owner from time to time in writing;

**Milestones** means the key events and stages as agreed between the Owner and the Borough Council in relation to the Project as detailed in Part 4 of this Schedule and **Milestone Dates** shall be construed accordingly;

**Outputs** means the specific targets and objectives agreed between the Owner and the Borough Council as detailed in Part 4 of this Schedule;

**Permitted Disposal** means a disposal:

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

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

**Project** means as defined in paragraph 2.2 of Part 1 to this Schedule;

**Project Completion Date** means the date by which the work on the Project is to be completed as defined in paragraph 2.2 of Part 1 of this Schedule

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

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

each as may have been varied from time to time with the Borough Council's prior agreement in accordance with the terms of this Schedule;

**Project Site** means as defined in paragraph 2.2 to Part 1 of this Schedule;

**Project Start Date** means the date by which the work on the Project is to be started as defined in paragraph 2.2 to the Part 1 of this Schedule;

**Quarter Date** means each of 31 March, 30 June, 30 September and 31 December, and **Quarter** means the period between two Quarter Dates;

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

or any other affairs of Homes England or the Borough Council;

**Wider Project** means as defined in paragraph 2.2 of Part 1 of this Schedule;

## 1.2 Interpretation

1.2.1 A reference to:

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

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

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

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

1.2.5 A party means either the Borough Council or the Owner (including its successors in title).

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

1.2.7 In any case where the consent or approval of the Borough Council (or any officer of the Borough Council) is

required or a notice is to be given by or to the Borough 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 Schedule or such other person as may be specified to the other parties from time to time.

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

1.2.9 No review comment or approval by the Borough Council under the provisions of this Schedule shall operate to exclude or limit the Owner's obligations or liabilities under this Schedule save where the Borough Council have confirmed the said review comment or approval in writing.

1.2.10 The Owner shall be responsible as against the Borough Council and/or Homes England for the acts or omissions of any contractor as if they were the acts or omissions of the Owner.

1.2.11 Neither the giving of any approval, consent, examination, acknowledgement, knowledge of the terms of any agreement or document nor the review of any document or course of action by or on behalf of the Borough Council shall, unless otherwise expressly stated in this Schedule or agreed in writing by the Borough Council, relieve the Owner of any of its obligations under this Schedule or of any duty which it may have to ensure its correctness, accuracy or suitability nor does it confer impose or imply any liability or responsibility on or on behalf of the Borough Council in respect of or in connection with the matter to or in relation to which such approval, consent, examination, or acknowledgement was given or review made.

1.2.12 "disposal" includes a sale, transfer, assignment, grant, lease, licence, declaration of trust or other disposal,

whether voluntary or involuntary and "dispose" will be construed accordingly.

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

## 2. PRE-CONDITIONS OF FUNDING

2.1 The Owner is informed by the Borough Council that:

2.1.1 Homes England's obligations under the GDA are subject to having received all documents and other evidence detailed in Part 5 of this Schedule each in a form and substance to the satisfaction of the Borough Council; and

2.1.2 The Owner shall (and shall procure that any of its employees, sub-contractors, agents or advisors shall) perform its obligations under this Schedule in order that the Borough Council can comply with its obligations under the GDA.

2.2 **NOT USED;**

3. **NOT USED**

4. **WARRANTIES AND REPRESENTATIONS**

At all times, the Owner warrants and confirms to the Borough Council that at all times:

4.1 it:

4.1.1 has the full capacity and authority and all necessary consents to enter into and perform the obligations under this Schedule; and

4.1.2 acknowledges that it constitutes valid, legal and binding

obligations of and on the Owner which are enforceable against it;

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

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

4.4 **NOT USED;**

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

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

4.7 **NOTUSED**

4.8 **NOTUSED**

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

4.10 It will comply with the Assurance Framework;

4.11 **NOT USED**

4.12 **NOT USED**

4.13 **NOT USED**

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

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

4.16 The Owner or the Owner's building contractor has appointed a Principal Designer and Principal Contractor (each

being as defined by the CDM Regulations) and has provided the Borough Council with a copy of the notification to the Health and Safety Executive of the particulars specified in schedule 1 of the CDM Regulations;

- 4.17 it will provide the Borough Council with all information that it requires (acting reasonably) in order to verify the information provided by the Owner to the Borough Council in relation to this Schedule to include but is not limited to any information required in relation to any Claim and/or the Cashflow under the GDA, the information provided by the Owner to the Borough Council pursuant to paragraph 9 (Application Notification and Reporting Obligations).

## 5. PAYMENT OF FUNDING

- 5.1 The Owner is informed that the Borough Council has obligations in paragraph 5 (Payments of Funding) of Schedule 2 of the GDA and that the Owner shall provide any information requested by the Borough Council (acting reasonably) within 5 Business Days of receiving a request about the same provided that such information relates to the Project only to enable the Borough Council to submit Claim Forms, Cashflow and any other document or information required under the GDA in accordance with timeframes and conditions contained within the GDA insofar as they relate to matters detailed in this Agreement.

- 5.2 The Owner shall ensure that any information provided accords with the Cashflow and that the Owner confirms in its response that each Milestone is to be met by the relevant Milestone Date or is accompanied by evidence satisfactory to the Borough Council (at its absolute discretion) to justify any deviation.

## 6. THE OWNER'S DELIVERY OBLIGATIONS

- 6.1 The Owner will procure that:

6.1.1 the Project commences by the Project Start Date and is carried out in accordance with the Milestone Dates and the Cashflow; and

6.1.2 the Milestones are achieved.

## 7. DEFAULT

7.1 In the event that the Borough Council in its sole and absolute discretion determines that an event of default has occurred in respect of the events listed at Paragraph 7.2 (**Event of Default**) the Borough Council has the right to call an Event of Default by issue of a notice to the Owner in respect of the same.

7.1A It is noted that the Owner does not have full control over the delivery of the Outputs, and it is therefore agreed that obligations in this Schedule to deliver the Outputs shall be deemed to have been complied with if the Owner has used its reasonable endeavours to deliver the Outputs, or procure that they are delivered.

7.2 An Event of Default occurs where:

7.2.1 any representation or warranty made by the Owner pursuant to Paragraph 4 is materially incorrect at any point;

7.2.2 The Owner fails to achieve any Output or Milestone;

7.2.3 The Owner becomes Insolvent or any steps are taken by any person toward such Insolvency;

7.2.4 The Owner commits a material breach of any of the terms and conditions of this Schedule (and fails to remedy such breach within 10 days of the Borough Council asking the Owner to do so);

7.2.5 The Owner does not comply with Paragraph 9 (Applicant Notification and Reporting Obligations);

7.2.6 NOT USED

7.2.7 NOT USED



7.2.8 The Owner does not comply with paragraph 17.1 (Transfer).

### 7.3 The Borough Council's rights

Where an Event of Default has occurred the Borough Council at its absolute discretion may by notice to the Owner:

7.3.1 pursuant to Paragraph 7.2.2 only, consider and agree a revised Milestone Date with the Owner in which case any relevant condition of this Schedule shall apply mutatis mutandis to the revised Milestone Date; and

7.3.2 pursuant to Paragraph 7.2.3 only, require the Owner to prepare a plan to remedy and/or mitigate the effects of the Event of Default and submit the plan to the Borough Council within 3 Business Days of such request for approval. The Borough Council (at its absolute discretion);

(a) may approve the terms of the plan to remedy in writing in which case any relevant condition of this Schedule shall apply mutatis mutandis to the terms of the plan to remedy albeit the Event of Default shall continue until such time as it is remedied to the Borough Council's satisfaction; or

(b) decline to approve the terms of the plan to remedy with the Event of Default continuing.

7.4 NOTUSED

8. NOTUSED

## 9. APPLICANT NOTIFICATION AND REPORTING OBLIGATIONS

### 9.1 Reporting

The Owner will:

9.1.1 from the date of this Deed until the end of the Availability Period, and no later than seven (7) Business Days following each Quarter Date, provide the Monitoring and Progress Report to the

Borough Council save that the first Monitoring and Progress Report shall be for the period commencing on 2nd October 2019 and ending on the next Quarter Date;

9.1.2 once the Availability Period has expired, except where the Borough Council has confirmed to the Owner in writing (within three calendar months and two weeks following the expiration of the Availability Period) that the provisions of Paragraph 9.1.1 are to remain effective (at its discretion), provide the Monitoring and Progress Reports to the Borough Council twice a year, such reports to be provided no later than five (5) Business Days following the end of March and September of the relevant Financial Year until the Actual Project Completion Date (as such term is defined in this Agreement) or such other date that the Borough Council notifies the Owner of in writing;

9.1.3 notwithstanding Paragraphs 9.1.1 and 9.1.2, provide the Borough Council with more frequent Monitoring and Progress Reports should it be requested to do so by the Borough Council (at its absolute discretion) where the Borough Council has itself been required to provide Homes England with more frequent Monitoring and Progress Reports under the GDA;

9.1.4 provide the Borough Council with such other information as the Borough Council may reasonably require in connection with the Project and Project Outputs and Milestones in order to comply with the Borough Council's obligations under the GDA only; and

9.1.5 procure that the Owner's Representative and/or any other officers appointed by the Owner to deal with the Project will attend such meetings as the Borough Council may reasonably request to review progress in relation to the Project.

### 9.2 Inspection and Audit Facilities

The Owner will:

9.2.1 **NOT USED.**

9.2.2 provide the Borough Council and/or Homes England, in writing, with any such information about the Project and/or the Programme as it requires for the conduct of its statutory functions or which may be required by any Regulatory Body in respect of its regulatory and/ or compliance functions;

9.2.3 allow the Borough Council and/or 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 Project provided that the Borough Council and/or Homes England does not impede or obstruct the progress of the Project; and

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

10. **NOTUSED**

11. **DISPOSALS**

11.1 The Owner will procure that the whole and any part or parts of the Project Site are disposed of by way of a Permitted Disposal only and will not make any other Disposal of the Project Site or any part thereof without the consent of the Borough Council and where such consent is required the Borough Council shall promptly request instructions from Homes England if requested to do so by the Owner.

12. **CONDUCT**

12.1 The Owner must comply with and assist and co-operate with the Borough Council in order that the Owner and the Borough Council can comply with (and require third parties who benefit from this Funding and any appointed contractors do the same) all applicable legal obligations and statutory requirements in relation to the Project, including, but not limited to:

12.1.1 EU and UK Planning and Environmental legislation

12.1.2 EU State Aid Law, including but not limited to N7471A/99 and N747/8/99 Partnership Support for Regeneration(1) Support for Speculative Developments and (2) Support for Bespoke Developments

12.1.3 Any relevant health and safety legislation

12.1.4 Modern slavery

12.1.5 Employment legislation

12.1.6 CDM Regulations

12.1.7 Equal opportunities (in relation to race, sex, disability, faith and sexuality)

12.1.8 Financial regulations and legislation

12.1.9 Copyright and Data Protection legislation

12.2 **NOT USED**

12.3 In carrying out the Project the Owner must not act directly or indirectly in any way that will bring the Borough Council and/or Homes England into disrepute.

12.4 The Owner must inform the Borough Council immediately if any of its directors, officers or partners are a) disqualified, or b) subject to investigation or challenge which may have a detrimental effect upon the Borough Council and/or Homes England and/or the Project.



12.5 The Owner must advise the Borough Council immediately of any threat of or any notice or any resolution in respect of any Insolvency.

12.6 The Owner will act in good faith to achieve the Milestones and Outputs and will provide evidence of this to the Borough Council as required by the Borough Council.

12.7 **NOT USED**

12.8 The Borough Council agrees, and the Owner accepts that the Owner:

12.8.1 is a "client" as defined by the CDM Regulations and warrants that it will make suitable arrangements for the managing the Project and maintaining and reviewing these arrangements throughout, so the Project is carried out in a way that manages health and safety risks in accordance with applicable Legislation including but not limited to the CDM Regulations;

12.8.2 will act as the only client in respect of the Project and the Owner hereby agrees to be the only client under the CDM Regulations for the Project;

12.8.3 shall comply fully with all the duties of the client under the CDM Regulations.

12.9 The Owner will procure that all contractors comply at all times with the Health and Safety Legislation and the CDM Regulations and the requirements of the Health and Safety Executive;

13. **INSURANCE**

13.1 The Owner must take out and maintain with a reputable insurance company adequate insurance of the type and level of cover which it is reasonable to expect from a business such as that operated by the Owner.

13.2 The Owner must produce a schedule of all appropriate insurance cover and copies of all relevant cover notes and insurance policies to the Borough

Council within seven (7) days of any such request being made by the Borough Council.

14. **CONFIDENTIALITY, FREEDOM OF INFORMATION, DATA PROTECTION, PUBLIC RELATIONS AND PUBLICITY**

14.1 **Definitions**

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

**Confidential Information** means any and all information whether disclosed or otherwise made available by one Party to another (or otherwise obtained or received by a Party) whether before or after the date of this Deed 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); and

(b) 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 the Borough Council and/or 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 the Borough Council and/or Homes England at the time of receipt of an RFI;

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

**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 CBRE Project, any Agreement or any activities or business of the Borough Council and/or Homes England.

## 14.2 Confidentiality and freedom of information

### 14.2.1 Confidentiality

- (a) Each party recognises that under this Schedule it may receive Confidential Information belonging to the other.
- (b) Each party agrees to treat all Confidential Information belonging to the other as confidential and not to disclose such Confidential Information or any other confidential information relating to the Borough Council and/or Homes England and/or the

Owner and/or any Other Developers arising or coming to its attention during the currency of this Deed 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 Schedule. Subject always to Paragraph 13.2.2 and the Borough Council's obligations in relation to FOIA and/or EIR, where under the GDA the consent of the Borough Council is required for the disclosure of Confidential Information, then in so far as such Confidential Information relates to the Owner, the Borough Council will not consent to its disclosure by Homes England without the prior written consent of the Owner.

(c) The obligations of confidence referred to in Paragraph 14.2.1(a) above will not apply to any Confidential Information which:

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

- (d) Each party will be permitted to disclose Confidential Information to the extent that it is required to do so:
- i to enable the disclosing party to perform its obligations under the Schedule; or
  - ii by any applicable law or by a court, arbitral or administrative tribunal in the course of proceedings before it including without limitation any requirement for disclosure under the FOIA and the EIR and the Owner acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and the Borough Council and/or Homes England may nevertheless be obliged to disclose such Confidential Information; or
  - iii by any regulatory body (including any investment exchange) acting in the course of proceedings before it or acting in the course of its duties; or
  - iv in order to give proper instructions to any professional adviser of that party who also has an obligation to keep any such Confidential Information confidential.
- (e) The Owner will ensure that all Confidential Information obtained from the Borough Council under or in connection with the Schedule and the Borough Council will ensure that all Confidential Information obtained from the Owner under or in connection with this Schedule:
- i is given only to such of its employees, professional advisers, Contractors or consultants engaged to advise it in connection with this Schedule as is strictly necessary for the performance of this Schedule and only to the extent necessary for the performance of this Schedule;
  - ii is treated as confidential and not disclosed (without the other's prior written approval) or used by any such staff or professional advisers, contractors or consultants otherwise than for the purposes of this Schedule;
  - iii where it is considered necessary in the opinion of the Borough Council the Owner will ensure that such staff, professional advisers, contractors or consultants sign a confidentiality undertaking before commencing work in connection with this Schedule.
- (f) Nothing in this paragraph 14.2.1 shall prevent the Borough Council and/or Homes England:
- i disclosing any Confidential Information for the purpose of:
    - A the examination and certification of the Borough Council's and/or Homes England's accounts; or
    - B any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Borough Council and/or Homes England has used its resources; or
  - ii disclosing any Confidential Information obtained from the Owner:
    - A to any other department, office or agency of the Crown; or

- B to any person engaged in providing any services to the Borough Council and/or Homes England for any purpose relating to or ancillary to this Schedule or any person conducting an Office of Government Commerce gateway review; or
  - iii provided that in disclosing information under Paragraphs 14.2.1(f)(ii)(A) or 14.2.1(f)(ii)(B) above the Borough Council and/or Homes England discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.
- (g) Nothing in this Paragraph 14.2.1 shall prevent a party from using any techniques, ideas or know-how gained during the performance of this Schedule in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

**14.2.2 Freedom of information**

- (a) The Owner acknowledges that the Borough Council and/or Homes England is subject to legal duties which may require the release of information under the FOIA and/or the EIR and that the Borough Council and/or Homes England may be under an obligation to provide Information subject to a Request for Information.
- (b) The Borough Council shall be responsible for determining at its absolute discretion whether:
  - i any Information is Exempted Information or remains Exempted Information; or
  - ii any Information is to be disclosed in response to a Request for Information.
- (c) Subject to Paragraph 14.2.2(d) below, the Owner acknowledges that the Borough Council and/or Homes England may be obliged under the FOIA or the EIR to disclose Information:
  - i without consulting the Owner ; or
  - ii following consultation with the Owner and having taken (or not taken, as the case may be) its views into account.
- (d) Without in any way limiting Paragraphs 14.2.2(b) and 14.2.2(c) above, in the event that the Borough Council receives a Request for Information or Homes England informs the Borough Council of Request for Information, the Borough Council will, where appropriate, as soon as reasonably practicable notify the Owner.
- (e) The Owner will assist and co-operate with the Borough Council as requested by the Borough Council to enable the Borough Council and/or Homes England (as applicable) to comply with its disclosure obligations under the FOIA and the EIR within the prescribed periods for compliance and in particular without limitation will (and shall procure that its agents, contractors and sub-contractors will), at their own cost:
  - i provide all such assistance as may be required from time to time by the Borough Council and/or Homes England (as applicable) and supply such data

or information as may be requested by the Borough Council; and

- (f) Nothing in this Schedule will prevent the Borough Council or Homes England from complying with any valid order, decision, enforcement or practice recommendation notice issued to it by the Information Commissioner under the FOIA and/ or the EIR in relation to any Exempted Information.
- (g) **NOT USED.**
- (h) The obligations in this Paragraph 14.2.2 will survive the expiry or termination of the GDA 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 Schedule or of any other duty of confidentiality relating to that information.

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

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

#### **14.3 Data Protection**

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

##### **14.3.1 Cooperation**

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

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

The Owner 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 Schedule. The Owner undertakes at all times during the term of this Schedule to comply with the DPL (and the data protection principles contained therein) in processing all Personal Data in connection with this Schedule and shall not perform its obligations under this Schedule in such a way as to cause the Borough Council and/or Homes England to breach any of its applicable obligations under the DPL.

#### **14.4 NOT USED**

#### **15. INDEMNITY**

The Owner will be liable for and will indemnify the Borough Council 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 the Borough Council and/or Homes England or otherwise) or any claim by Homes England pursuant to the GDA provided that the claim relates only to matters which are the subject of this Schedule or 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 Owner of its obligations under this Schedule except that the Owner's liability under this Clause shall be reduced to the extent that the same is due to an act or neglect on the part of Homes England or the Borough Council or any of their employees, sub-contractors, agents or advisers.

#### **16. ACCESS TO INFORMATION**

##### **16.1 NOT USED**

16.2 The Owner is required to record for the Borough Council any such information as may be required to monitor and evaluate the performance of this Schedule. The Owner is required to retain this information for access by the Borough Council or any Regulatory

Body for a minimum period of 10 years from the End Date.

- 16.3 The Owner is required to promptly provide to the Borough Council, at its reasonable request, access to all and any information which is requested by Homes England from the Borough Council under the GDA about the Project including the location(s) at which the Project will be/has delivered and/or the Outputs from the Project Start Date up to and including the Project End Date.

#### 17. TRANSFER

- 17.1 Save as otherwise specifically agreed in writing by the Borough Council or in accordance with paragraph 1.7B of Part 1 of this Schedule 12 in relation to sub-contracting only and paragraphs 1.8 and 1.9 of Part 1 of this Schedule 12 the Owner may not assign, novate, transfer, sub-contract or dispose of in any other way either the benefit of this Schedule or any of its obligations under this Schedule.

- 17.2 The Borough Council may assign, novate, transfer, sub-contract or dispose of in any other way the benefit of the Funding or any of its obligations under this Schedule to any party the identity of whom is approved in writing by Homes England pursuant to Clause 17 (Transfer of the GDA).

#### 18. NOT USED

#### 19. CHANGES

The Owner must advise the Borough Council immediately if the Owner wants or requires to make any changes to the Project including, but not limited to, changes to any of the Project Outputs, Milestones, Project Start Date, Project End Date and/or Project Completion Date and/or funding for the Project. Any changes must be agreed, in writing, with the Borough Council before taking effect.

#### 20. PUBLICITY

- 20.1 The Owner will ensure that, where appropriate, publicity is given to the Project and the Wider Project by drawing attention to the benefits and opportunities afforded by it. In acknowledging the contribution and investment made by Homes England and consequently by the Borough Council the Owner must comply with any guidance on publicity provided by or on behalf of the Borough Council from time to time.

- 20.2 The Owner must not publicise or promote the Funding without the Borough Council's prior written agreement.

- 20.3 The Owner shall not refer to the Borough Council or Homes England or the Funding in any publicity and/or promotional material relating to the Project and/or the Wider Project without first receiving the Borough Council's written approval to such references save that it shall be deemed to be approved by the Borough Council to refer to the Borough Council only in any publicity and/or promotional material if such references are referring to or associated with the grant of planning permission for the Project and/or Wider Project; or to refer to the Borough Council only in relation to already publicly available policies and procedures; or to refer to the Borough Council being the responsible for the administrative area within which the Project and/or Wider Project are located.

- 20.4 The Borough Council reserves the right to use and/or provide to Homes England all data provided by the Owner in relation to the Funding for publicity or promotional purposes.

#### 21. FEES AND EXPENSES

**The Owner shall within two (2) Business Days of demand on demand, pay to the Borough Council the amount of all costs and expenses (including legal fees and irrecoverable Value Added Tax (VAT) relating thereto) incurred by it:**



21.1 in connection with the variation or amendment of under this Schedule to the extent caused by or contributed to by the Owner, or enforcement or preservation of any rights under, this Schedule; or

21.2 in investigating any Event of Default which has occurred.

## 22. ENTIRE AGREEMENT

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

## 23. FURTHER ASSURANCE

On the written request of the Borough Council, the Owner will promptly execute and deliver or procure the execution and delivery of any further documents necessary to obtain for the Borough Council the full benefit of this Schedule.

## 24. APPLICABLE LAW

This Schedule is governed and interpreted in accordance with English Law and subject to the jurisdiction of the courts of England and Wales. If any provision of this Schedule 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 Schedule shall otherwise remain in full force and effect.

**PART 4**

**1. MILESTONES**

**Project**

<b>MILESTONE</b>	<b>MILESTONE DATE</b>
Project Start Date (being the date on which costs began to be incurred or begin to be incurred in relation to the Project, which shall for the avoidance of doubt include pre-construction works)	1 <sup>st</sup> November 2026
Project Completion Date	31 December 2038
Project End Date	the earlier of the following dates: <ul style="list-style-type: none"><li>• 23 September 2040;</li><li>• three years from the Actual Project Completion Date (as such term is defined under the GDA); and</li><li>• such other earlier date that the Borough Council notifies to the Owner in writing in compliance with paragraph 2.4 of Part 1 of this Schedule.</li></ul>

**2. OUTPUTS**

**Project**

<b>OUTPUT</b>	<b>Measure</b>
Number of residential units practically completed	28

**PART 5**

**1 PRE CONDITIONS IN RELATION TO ALL ADVANCES OF FUNDING**

The Borough Council informs the Owner and the Owner agrees that the Owner's responsibilities are that:

- 1.1 The Owner will not constitute or cause breach by the Borough Council of its obligations under the GDA by breaching any of the Owner's obligations within all parts of this Schedule 12.
- 1.2 The Owner will provide satisfactory evidence to the Borough Council (within five (5) Business Days of receipt of such notice from the Borough Council in relation to the same) that the Owner has complied with the Owner's representations and warranties set out in paragraph 4 of Part 3 of this Schedule 12.
- 1.3 **NOTUSED**
- 1.4 The Owner will provide satisfactory evidence to the Borough Council (within five (5) Business Days of receipt of such notice from the Borough Council in relation to the same) that all contractors have been or will be appointed with sufficient capability, experience and funding to deliver the Project by the Project Completion Date
- 1.5 **NOT USED**
- 1.6 The Owner will provide all information requested by the Borough Council in relation to the Project only to the Borough Council (within five Business Days of receipt of such notice from the Borough Council in relation to the same).
- 1.7 **NOT USED**
- 1.8 **NOT USED**

**2 NOT USED**

**PART 6**  
**NOT USED**



**APPENDIX 1**

**PLAN SHOWING THE WIDER PROJECT SITE AND THE SITE**









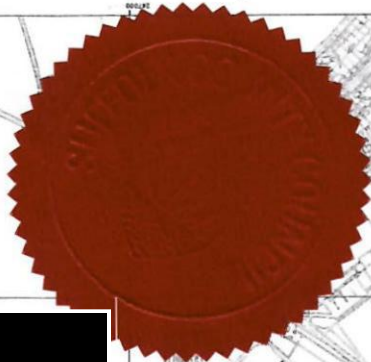
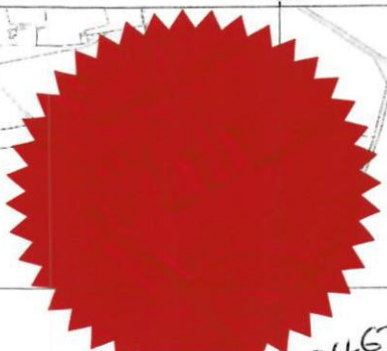
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66070

Sites of HIF Infrastructure

AUTHORISED OFFICER



Scale 1:4,000 at A1

	Country Park
	Bridge



**APPENDIX 2**

**NOT USED**





**APPENDIX 3**

**NOT USED**



**APPENDIX 4**

**ASSURANCE FRAMEWORK**





Homes  
England

## Assurance Framework for the Housing Infrastructure Fund – Marginal Viability Funding

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