

Dated

2021

(1) Herefordshire Council

(2) [] [Housing Association Limited/other designation]

Grant agreement

Affordable Rent:	rent subject to rent controls that require a rent level not exceeding 80% of local market rent levels (inclusive of service charges);
Capital Funding Guide:	The Affordable Housing Capital Funding Guide published by Homes England and as may be amended from time to time;
Capital Grant:	contributions set out in Schedule 2 towards the capital costs only of the Scheme(s) defined in Schedule 1;
Confidential Information	any information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, developments, trade secrets, intellectual property rights, know-how, personnel, customers and contractors of either party, all personal data and sensitive personal data within the meaning of the General Data Protection Regulation and the Data Protection Act 2018;
Data Protection Legislation	All applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR); the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI2003/2426) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.
Disposal	<p>the transfer of the freehold or the grant of a long lease of more than seven years (other than assured or periodic tenancies) of a Dwelling or the site of a Dwelling or proposed Dwelling provided that</p> <ul style="list-style-type: none"> (i) The grant by the Recipient of a tenancy or lease in accordance with this Agreement; or (ii) The grant by the Recipient of a tenancy or lease in accordance with this Agreement or the transfer of the whole or part of the same to a Registered Provider of Social Housing who has entered into a contract with the

Council in substantially the same terms as this Agreement (save that the Grant Use Period will have been reduced commensurately)

shall not be a “Disposal”;

Dwelling: any residential unit to be constructed, refurbished or purchased as part of the Schemes to which Capital Grants are applied;

Grant Use Period: in respect of each Dwelling to which a Capital Grant is applied, a period of [] years commencing on the date that the first instalment of Capital Grant is made.

Intermediate Rent: rent above the level charged for Social Rented housing but below open market rents. In Herefordshire intermediate rent is set at a maximum of 100% of Herefordshire Local Housing Allowance;

Law: any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Recipient or the Council is bound to comply;

Permitted Disposal a sale of the whole or any part of a Dwelling or the site of a Dwelling or proposed Dwelling which takes place because of any one or more of the following reasons:

- (i) Act of Parliament
- (ii) Order of a court
- (iii) By Homes England (or statutory successor) in exercise of a statutory obligation
- (iv) By a mortgagee in possession
- (v) Pursuant to the Right to Buy or Right to Acquire;

Practical Completion: the date on which any works on site are completed;

Prohibited Act (a) offering or giving or agreeing to give to any person any gift or consideration of any kind as an inducement or reward for doing, or

forbearing to do, or for having done, or refrained from doing any action in relation the obtaining of execution of this Agreement or any other contract with the Council;

- (b) showing, or forbearing to show, favour or disfavour to any person in relation to this Agreement or any other agreement with the Council or if any like acts shall have been done by any person employed by the Recipient, or acting on the Recipient's behalf (whether with or without the knowledge of the Recipient);
- (c) in relation to any contract with the Council the Recipient, or any person employed by the Recipient, or acting on the Recipient's behalf, commits any offence under the Bribery Act 2010 or any amendment to it;
- (d) gives any fee or reward the receipt of which is an offence under section 117 (2) of the Local Government Act 1972;
- (e) payment of commission or agreement to pay any commission to any employee or representative of the Council by the Recipient or on the Recipient's behalf;
- (f) offering, giving or agreeing to give to any servant of the Council any gift or consideration of any kind as an inducement or reward:
 - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Council; or
 - (ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Council;
- (g) entering into this Agreement or any other contract with the Council in connection with which commission

has been paid or has been agreed to be paid by the Recipient or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Council;

- (h) committing any offence:
 - (i) under legislation creating offences in respect of fraudulent acts; or
 - (ii) at common law in respect of fraudulent acts in relation to this Agreement or any other contract with the Council; or
- (i) defrauding or attempting to defraud or conspiring to defraud the Council;

Right to Acquire the right of certain types of tenant to buy the dwelling house in which they live from their landlord pursuant to the statutory “right to acquire” scheme;

Right to Buy the statutory right of certain types of tenant to buy the dwelling house in which they live from their landlord pursuant to the statutory “right to buy” scheme;

Scheme(s): all or any (as the context requires) of the schemes as detailed in Schedule 1;

Social Rent: housings for which guideline target rents are determined through the national rent regime;

2.2 The Schedules and Appendix form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules and Appendix.

2.3 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

2.4 A reference to any party shall include that party's personal representatives, successors and permitted assigns.

- 2.5 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time unless otherwise specified.
- 2.6 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 2.7 References to clauses and Schedules are to the clauses and Schedules of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule unless otherwise specified.

3 Duration and purpose of this Agreement

- 3.1 This Agreement shall commence on the date it is entered into and shall continue until the date of expiry of the Grant Use Period on the last Dwelling to which Capital Grant was applied under this Agreement. The provisions of clauses 5.7.3, 5.8, 7.1-7.4, 8, 14, 15, 16, 20, 21, 22 and 24 shall continue to apply after expiry of this Agreement.
- 3.2 Following the expiry of the Grant Use period in relation to any Dwelling, the Council shall co-operate promptly with the Recipient in removing any entry to protect the Council's interest arising out of this Agreement which shall have been placed on the Recipient's registered title at the Land Registry.
- 3.3 In consideration of payment of the Capital Grant (subject to the terms of this Agreement) by the Council to the Recipient and compliance by the Recipient with its obligations in this Agreement, the Recipient shall deliver the Scheme(s) as a Service of General Economic Interest in accordance with the Commission Decision.

4 The Council's Obligations

- 4.1 The Council shall pay to the Recipient the Capital Grant in accordance with Schedule 2 upon completion of the requirements set out in Appendix 1 (Proposal for Funding Affordable Housing with LA Finance), provided the Recipient has complied with and continues to comply in all respects with this Agreement and provided that the necessary funds are available to the Council and the Council has allocated available funds when payment falls due.
- 4.2 The Council shall not be obliged to increase the amount of the Capital Grant in any circumstances, including in the event of overspend by the Recipient.

5 The Recipient's Obligations

- 5.1 All Dwellings
The Recipient shall:

- 5.1.1 procure the development and provision of the Scheme(s) in accordance with the terms and conditions of this Agreement,
 - 5.1.2 not use the Capital Grant for any purpose other than the Scheme(s) without the prior written agreement of the Council;
 - 5.1.3 not make any significant change to the Scheme(s) without the Council's prior written agreement
 - 5.1.4 develop, let and/or dispose of, and manage all Dwellings in accordance with this Agreement;
 - 5.1.5 ensure that the rent of all Dwellings with an Affordable/Intermediate/Social Rent profile (see Table 1 of Schedule 1) shall be Affordable/Intermediate/Social Rent;
 - 5.1.6 use all reasonable endeavours to keep the Dwellings in good condition and repair to such standard as is safe and necessary (in the reasonable opinion of the Council) for the purposes of the Scheme(s).
- 5.2 Nominations
- 5.2.1 The Recipient shall ensure that Dwellings provided under the Scheme(s) shall be as described in Table 1 in Schedule 1.
 - 5.2.2 The Council shall be entitled, during the Grant Use Period, to 100% nomination rights to the Dwellings provided within each Scheme, on both initial and any subsequent lettings and following the sale of any Dwelling PROVIDED THAT (a) such nominations shall accord with The Working Procedure at Schedule 3.
 - 5.2.3 The Council has no liability to reimburse the Recipient for any loss of rent or service charge or for any legal or other costs or fees or any other expenses incurred by the Recipient arising from or in any way connected with exercise of the nomination rights under this Agreement or otherwise, other than as specified in The Working Procedure at Schedule 3. The Recipient shall indemnify and hold harmless the Council, its employees, agents, officers or sub-contractors with respect to the same.
- 5.3 Housing Management
- The Recipient shall:
- 5.3.1 notify the details of the actual rents and (where applicable) service charges proposed to be charged by the Recipient on initial letting of Dwellings within each

Scheme to the Council prior to or upon presentation of the final grant claim in respect of that Scheme;

5.3.2 ensure that, following the acquisition by the Recipient of good freehold title to each part of land and each building comprising each Dwelling within each Scheme, the relevant Dwelling is managed at all times by the Recipient;

5.3.3 (with the Council) promptly after the date of this Agreement (or after acquisition, if applicable) apply to the Chief Land Registrar to enter the following restriction against the title to the land on which each Dwelling is or is to be situated at the Land Registry:

“No disposition of the registered estate by the proprietor of the registered estate is to be registered without a certificate signed on behalf of Herefordshire Council that the provisions of clauses [] inclusive of a grant funding agreement dated 2019 between Herefordshire Council (1) and [] (2) have been complied with.”

5.3.4 not make any Disposal of the whole or part of a Dwelling during the Grant Use Period except for a Permitted Disposal, unless the Council consents in writing to a Disposal; in each case, the Recipient shall apply such proportion of the proceeds as the Council directs (acting reasonably) to the provision of housing at an Affordable Rent within Herefordshire.

5.3.5 undertake management of the Dwellings from the Recipient’s offices situated within the Council’s administrative area unless alternative arrangements are approved in writing by the Council (such consent not to be unreasonably withheld or delayed).

5.4 Design and Construction

The Recipient shall:

5.4.1 ensure that the [design and construction/refurbishment] of the Dwellings shall be such as to:

- (a) meet M4(1) Category 1: Visitable dwellings set out in the Building Regulations 2010 Access to and use of buildings M;
- (b) meet M4(2) Category 2: Accessible and adaptable dwellings set out in the Building Regulations 2010 Access to and use of buildings M;
- (c) meet M4(3) Category 3: Wheelchair user dwellings set out in the Building Regulations 2010 Access to and use of buildings M;

unless the Council shall have (at its reasonable discretion) waived the requirement for compliance with such standards either generally or in relation to the Scheme (whichever is relevant if any) or part of it;

- 5.4.2 provide evidence to confirm performance against the standards and specifications referred to in clause 5.4.1 prior to or upon presentation of any claim of the Capital Grants in respect of the Scheme (whichever is relevant);
- 5.4.3 [construct/refurbish] the Dwellings strictly in accordance with the Scheme;
- 5.4.4 ensure that all work is carried out in a good and workmanlike manner;
- 5.4.5 ensure that all work will be conducted in accordance with current building regulations;
- 5.4.6 upon commencement of works, at its own expense erect a signboard at the Dwelling acknowledging the Council's financial support for the works and liaise with the Council with regard to provision and use of the Council's logo for the said signboard;
- 5.4.7 [ensure that Practical Completion will occur on or before [] and shall notify the Council of completion on or before []].

5.5 Title

The Recipient shall acquire (if it does not have it already) good freehold title to each part of land and each building comprised within each Scheme as soon as reasonably practicable and in any event prior to the date on which works are started on a site.

5.6 Planning and Other Regulatory Conditions, Compliance with Law

- 5.6.1 The Recipient shall have obtained or shall obtain before works are started on a site all and any consents required by Law or otherwise including but not limited to planning permission for the Schemes and shall obtain, maintain, comply with and discharge any planning conditions, building regulation requirements or other statutory or other consents required in relation to the Scheme(s).
- 5.6.2 The Recipient shall comply with all Law and (without limiting any specific requirements in this Agreement) all applicable codes of practice and other similar codes or recommendations.

5.7 Restrictions on Use of the Capital Grant

The Recipient shall:

- 5.7.1 not use the Capital Grant to make any payment to members of the Recipient;
- 5.7.2 not use the Capital Grant to pay for any expenditure commitments related to the Scheme(s) which the Recipient entered into before the date of this Agreement;
- 5.7.3 not use the Capital Grant to pay for and manage any other liabilities arising at the end of the Scheme(s), which shall include any redundancy liabilities in respect of staff employed by the Recipient;
- 5.7.4 not apply for duplicate funding in respect of any part of the Scheme(s) or any related administration costs that the Council is funding in full under this Agreement;
- 5.7.5 repay any part of the Capital Grant which remains unspent at the end of the completion of works.

5.8 Provision of information, monitoring, reporting and auditing

The Recipient shall:

- 5.8.1 keep separate, accurate and up-to-date accounts and records of the receipt and expenditure of the Capital Grant monies received by it;
- 5.8.2 maintain detailed records relating to the performance of its obligations under this Agreement;
- 5.8.3 monitor the Recipient's progress towards completion of the Scheme(s) and co-operate with the Council in carrying out such monitoring as the Council considers necessary;
- 5.8.4 ensure that all information that has been or will be provided by the Recipient as part of or in connection with the application for Capital Grants is accurate and complete in all material respects and that any material changes that affect the accuracy of such information shall be promptly communicated to the Council in writing;
- 5.8.5 inform the Council as soon as practicable of any circumstances that may, in whole or part materially delay or prevent the completion of any Scheme, or any part of it, whether in accordance with any timescale set down in this Agreement or otherwise; if any such circumstances arise, the Recipient shall provide details of remedial measures that it proposes to take to mitigate any such delay or risk to completion;
- 5.8.6 provide or procure the provision of such information, explanations, documents and access as the Council may reasonably require during the Grant Use Period and for a period of 10 years thereafter to audit and satisfy itself that the Capital Grants have been applied in accordance

with the terms and conditions of this Agreement, including inter-alia:

- (a) access to financial records and contract documents concerning or in connection with any Scheme and/or its subsequent management;
- (b) access to any records concerning the transfer, disposal or assignment of any Scheme or any part thereof;
- (c) access to any records or other documentary evidence required by the Council to verify entitlement to payment following presentation of a grant claim in respect of any Scheme;
- (d) access to Dwellings on prior written notice, but only to the extent that the Recipient itself has rights of access; and

5.8.7 provide the Council with such financial, and operational reports, risk registers and insurance reviews at such times and in such formats as the Council may reasonably require.

5.9 Insurance

5.9.1 The Recipient shall effect and maintain with a reputable insurance company a policy or policies in respect of all risks which may be incurred by the Recipient, arising out of the Recipient's acts, omissions or negligence in the performance of this Agreement, including death or personal injury, loss of or damage to property or any other loss ("**the Recipient's Required Insurances**").

5.9.2 The Recipient's Required Insurances referred to above include (but are not limited to):

- (a) public liability insurance with a limit of indemnity of not less than ten million pounds (£10,000,000) in relation to any one claim or series of connected claims arising; and
- (b) employer's liability insurance with a limit of indemnity of not less than five million pounds (£5,000,000) in relation to any one claim or series of connected claims.

5.10 No Voluntary right to buy offer

The Recipient shall not, during the Grant Use Period, make any voluntary offer to the tenant of any Dwelling of the opportunity to buy such Dwelling from the Recipient.

[5.14 Appointment of development agent

The Recipient shall comply with the provisions of Schedule 4 in relation to the appointment of a development agent.]

6 Status

The Recipient shall remain registered as a Registered Provider of Social Housing with the Regulator of Social Housing] for the duration of this Agreement.

7 Withholding or Repayment of Grant

7.1 Without limiting the Council's other rights and remedies and without being limited by any other provisions in this Agreement, during the Grant Use Period the Council may at its absolute discretion in relation to the Recipient:

7.1.1 withdraw the offer of Capital Grant funding under this Agreement; or

7.1.2 withhold, suspend or make pro rata adjustment to payment of any Capital Grant; or

7.1.3 require repayment (in whole or part) on demand from the Recipient of any Capital Grant already paid or of an amount equivalent to any Capital Grant already paid;

if:

- (a) any part of the Capital Grant funding is used in any manner not in accordance with this Agreement;
- (b) the Recipient uses the Capital Grant for purposes other than those for which they have been awarded;
- (c) the [acquisition of sites/Dwellings/construction/refurbishment] does not start within six months after the date of this Agreement and the Recipient has failed to provide the Council with a reasonable explanation for the delay;
- (d) the Council (acting reasonably) considers that the Recipient has not made satisfactory progress with the delivery of the Scheme(s);
- (e) the Recipient obtains duplicate funding from a third party for the Scheme(s);
- (f) the Recipient, in the reasonable opinion of the Council, undertakes or has undertaken activities that are likely to bring the reputation of the Scheme(s) or the Council into disrepute;

- (g) the Recipient commits or has committed a Prohibited Act;
- (h) the Recipient is, in the reasonable opinion of the Council, delivering any Capital Grant funded Scheme(s) in a negligent manner;
- (i) the Recipient provides the Council with any materially misleading or inaccurate information including but not limited to information supporting any invoice;
- (j) the Council reasonably believes that, in relation to the administration of the Capital Grant or the operation of this Agreement generally, there has been or is likely to be a breach of any relevant Law including (but not limited to) State Aid Rules;
- (k) the Recipient ceases to operate for any reason, or passes a resolution (or any court of competent jurisdiction makes an order) that it be wound up or dissolved (other than for the purpose of a bona fide and solvent reconstruction or amalgamation);
- (l) the Recipient becomes insolvent, or it is declared bankrupt, or it is placed into receivership, administration or liquidation, or a petition has been presented for its winding up, or it enters into any arrangement or composition for the benefit of its creditors, or it is unable to pay its debts as they fall due; or
- (m) the Recipient materially fails to comply with any of the terms and conditions set out in this Agreement.

7.2 The Recipient shall repay to the Council any money incorrectly paid to it by the Council for any reason, including (without limitation) situations where either an incorrect sum of money has been paid or where Capital Grant monies have been paid in error before all conditions attaching to the Capital Grant have been complied with by the Recipient. Any such repayment shall be made by the Recipient within 10 working days of its becoming aware of the incorrect payment.

7.3 Wherever under this Agreement any sum of money is recoverable from or payable by the Recipient (including any sum that the Recipient is liable to pay to the Council in respect of any breach of this Agreement), the Council may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Recipient under this Agreement or under any other agreement or contract with the Recipient.

- 7.4 The Recipient shall make any payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.
- 7.5 Should the Recipient be subject to financial or other difficulties which are capable of having a material impact on the effective delivery of the Scheme(s) or compliance with this Agreement the Recipient shall notify the Council as soon as possible so that, if possible, and without creating any legal obligation, the Council will have an opportunity to provide assistance in resolving the problem or to take action to protect the Council, the Dwellings and/or the Capital Grants.

8 Limitation of liability

- 8.1 The Council accepts no liability for any consequences, whether direct or indirect, that may come about from the Recipient procuring the development and provision of the Scheme(s), the use of the Capital Grants, or from the withholding or withdrawal of or the requirement to repay the Capital Grants. The Recipient shall indemnify and hold harmless the Council, its employees, agents, officers or sub-contractors with respect to the same and all claims, demands, actions, costs, expenses, losses, damages and all other liabilities arising from or incurred by reason of the actions and/or omissions of the Recipient in relation to the development and provision of the Scheme(s), the non-fulfilment of obligations of the Recipient under this Agreement or its obligations to third parties.
- 8.2 Subject to clause 9.3, the Council's total liability under this Agreement is limited to the payment of the Capital Grants.
- 8.3 Neither party excludes or limits liability to the other party for:
- 8.3.1 death or personal injury;
 - 8.3.2 fraud; or
 - 8.3.3 fraudulent misrepresentation;
 - 8.3.4 any other liability that as a matter of law cannot be limited.

9 Recipient Warranties and Undertakings

- 9.1 The Recipient warrants and represents to the Council that on the date of this Agreement:
- 9.1.1 it is properly constituted and incorporated under the laws of England and Wales and has the corporate power to own its assets and to carry on its business as it is now being conducted;
 - 9.1.2 it has the corporate power to enter into and to exercise its rights and perform its obligations under this Agreement, it is not subject to any other restriction to do

so and compliance with its obligations is legal, valid, binding and enforceable;

- 9.1.3 following receipt of the Capital Grant it will have in place all necessary consents, licences, permits, resources and expertise to carry out the Scheme(s);
- 9.1.4 it is not aware of anything in its own affairs, which it has not disclosed to the Council or any of the Council's advisers, which might reasonably have influenced the decision of the Council to make the Capital Grant on the terms contained in this Agreement; and
- 9.1.5 it has and shall keep in place systems to deal with the prevention of fraud and/or administrative malfunction;
- 9.1.6 all relevant financial and other information concerning the Recipient has been disclosed to the Council, including any change in its financial position since its last accounts, and is to the best of the Recipient's knowledge and belief true and accurate;
- 9.1.7 all action necessary on the part of the Recipient to authorise the execution of and the performance of its obligations under this Agreement has been taken;
- 9.1.8 the obligations expressed to be assumed by the Recipient under this Agreement are legal, valid, binding and enforceable to the extent permitted by Law; and
- 9.1.9 no proceedings nor other steps have been taken and not discharged (nor, to the best of the knowledge of the Recipient, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues; and the Council relies upon such warranties and representations.

10 Assignment

The Recipient shall not, without the prior written consent of the Council, assign, transfer, sub-contract, or in any other way make over to any third party the benefit and/or the burden of this Agreement or transfer or pay to any other person any part of the Capital Grants.

The Council may assign, novate or transfer, the benefit of this Agreement to any other public body or private entity which substantially performs all of the functions previously performed by the Council (a "Successor Body").

11 No Partnership or Agency

This Agreement shall not create any partnership or joint venture between the Council and the Recipient, nor any relationship of principal and agent, nor authorise any party to make or enter into any commitments for or on behalf of the other party.

12 Contracts (Rights of Third Parties) Act 1999

This Agreement does not and is not intended to confer any contractual benefit on any person not a party to this Agreement, pursuant to the terms of the Contracts (Rights of Third Parties) Act 1999.

13 The Council as local authority

Nothing contained or implied in this Agreement shall prejudice or affect the Council's rights, powers, duties and obligations in the exercise of its functions as a local authority and the same may be as fully and effectually exercised in relation to the Scheme(s) as if this Agreement had not been entered into by it.

14 Freedom of Information and confidentiality

14.1 Subject to clause 14.2, each party shall keep secret and confidential all Confidential Information disclosed to it by the other party as a result of this Agreement and shall not disclose the same to any person save to the extent necessary to perform its obligations in accordance with the terms of this Agreement or save as expressly authorised in writing.

14.2 Nothing in this clause 14.2 shall prevent either party from disclosing Confidential Information where:

14.2.1 it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable law or, to its professional advisers or insurers;

14.2.2 at the time of disclosure the information which is disclosed is already in the public domain or which subsequently enters the public domain other than by breach of the terms of this Agreement by the receiving party;

14.2.3 the information is already known to the receiving party at the time (as evidenced by the written records of the receiving party) of its disclosure by the disclosing party and was not otherwise acquired by the receiving party from the disclosing party under any obligations of confidence; or

14.2.4 at any time after the date of this Agreement the information is acquired by the receiving party from a third party having the right to disclose at the same time to the receiving party without breach of the obligations owed by that party to the disclosing party.

14.3 The Recipient acknowledges that the Council is subject to the Freedom of Information Act 2000 ("FOIA") and The Environmental Information Regulations 2004 ("EIR") and the Recipient notes and acknowledges the FOIA, the EIR and the Local Government Transparency Code ("Codes of Practice") under section 45 and 46 of

the FOIA. The Recipient shall act in accordance with the FOIA, the EIR and these Codes of Practice (and any other applicable codes of practice or guidance notified to the Recipient from time to time) to the extent that they apply to the Recipient's obligations under this Agreement.

14.4 The Recipient agrees that:

14.4.1 without limiting clause 14.3, the provisions of this clause 14.4 are subject to the obligations and commitments of the Council under the FOIA and the Codes of Practice issued under section 45 and 46 of the FOIA.

14.4.2 where it considers that any information should not be available for disclosure, it will:

(a) identify it specifically; and

(b) explain the grounds for exemption from disclosure and the time period applicable to that sensitivity.

14.5 All decisions regarding disclosure of information following a Request for Information will be made at the sole discretion of the Council. The Recipient acknowledges that, even where the Recipient has indicated that information is commercially sensitive, the Council may be required to disclose it under the FOIA or EIA, with or without consulting the Recipient and although the Council will use reasonable endeavours to consult the Recipient prior to any disclosure, the Council shall not be under any further obligation to consult the Recipient prior to disclosure.

14.6 The Recipient shall transfer to the Council any Request for Information it should receive, as soon as practicable after receipt and in any event within five (5) working days of receiving a Request for Information.

14.7 Where the Council is managing a Request for Information, the Recipient shall co-operate with the Council (at no charge) and shall respond together with copies of any documentation so requested within five (5) working days of any request by the Council for assistance.

15 Data Protection Act 2018

15.1 The Recipient shall (and shall procure that the Recipient Personnel shall) comply with any notification requirements under the Data Protection Legislation and each party shall comply with the Data Protection Legislation in connection with this Agreement.

15.2 Each party shall co-operate with the other party to ensure that any dealings under this Agreement comply with the DPA and GDPR including, if required, entering into an appropriate data sharing agreement.

16 Bribery and Fraud

- 16.1 The Recipient represents and warrants that neither it, nor to the best of its knowledge any of its staff, have at any time prior to the date of this Agreement committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act.
- 16.2 The Recipient shall not:
- 16.2.1 commit a Prohibited Act; and/or
 - 16.2.2 do or suffer anything to be done which would cause the Council or any of the Council's employees, consultants, contractors, sub-contractors or agents to contravene any Law.
- 16.3 The Recipient shall:
- 16.3.1 establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Law relating to Prohibited Acts and prevent the occurrence of a Prohibited Act; and
 - 16.3.2 keep appropriate records of its compliance with its obligations under clause 16.3.1 and make such records available to the Council on reasonable request.
- 16.4 The Recipient shall immediately notify the Council in writing if it becomes aware of any breach of clause 16.1 and/or 16.2, or has reason to believe that it has or any of its staff have:
- 16.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - 16.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
 - 16.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.
- 16.5 If the Recipient makes a notification to the Council pursuant to clause 16.4, the Recipient shall respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to review any documents, records and/or any other relevant documentation.

16.6 If the Recipient is in breach of clauses 16.3.1 and/or 16.2, the Council may by notice:

16.6.1 require the Recipient to remove from performance of this Agreement any staff whose acts or omissions have caused the breach; or

16.6.2 immediately terminate this Agreement.

17 Discrimination

17.1 The Recipient acknowledges the Council's obligations under equality Law and agrees to perform its obligations under this Agreement, and agrees to procure that any staff shall perform their obligations in relation to the Schemes in compliance with all applicable equality Law, the Council's equality and diversity policy as updated from time to time, any relevant statutory code of practice and any other reasonable requirements and instructions which the Council imposes.

17.2 If the Recipient or any of its staff does or omits to do, or permits or allows anything to be done which is incompatible with equality Law which causes or may cause the Council to be in breach of its obligations under equality Law, the Recipient shall immediately notify the Council in writing and the Council may terminate this Agreement immediately upon notice.

18 Human rights

18.1 The Recipient shall, and shall procure that its staff shall, at all times comply with the provisions of the Human Rights Act 1998 (the "HRA 1998") in the delivery of the Schemes and shall comply with the Council's reasonable requirements to enable the Council to comply with its obligations under the HRA 1998.

18.2 If the Recipient breaches this clause 19 it shall immediately notify the Council in writing and the Council may terminate this Agreement immediately upon notice.

19 Notices

19.1 A notice (or any other communication) from one party to the other under or in connection with this Agreement shall be in writing, signed on behalf of the party giving it, marked for the attention of the Council's/the Recipient's nominated representative and sent by a delivery method listed in clause 19.2.

19.2 The table below sets out the delivery methods by which a notice (or any other communication) in connection with this Agreement may be sent as well as the corresponding dates and times of deemed delivery that shall apply:

Delivery Method	Deemed Delivery
By hand	On signature of a delivery receipt.
By pre-paid first class post, recorded delivery or other next Working Day delivery service	At 09:00 on the second Working Day after posting.
By electronic mail	Save when returned as undelivered, either at the time of sending or, if transmitted after 17.00 hours on a Working Day, at 09:00 on the next Working Day.

19.3 This clause shall not apply to the service of proceedings or any other document in connection with any legal action.

20 Severability

20.1 If any term, condition or provision of this Agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality and enforceability of the other provisions of or any other documents referred to in this Agreement.

21 Waiver

21.1 A waiver of any right or remedy either by Law or under this Agreement shall only be effective if it is notified to the other party in accordance with clause 19 and is expressly stated to be a waiver.

21.2 No waiver of any right or remedy arising from a breach of this Agreement shall be deemed to be a waiver of any right or remedy relating to any subsequent breach of this Agreement.

21.3 Any failure or delay by a party to exercise any right or remedy either by law or under this Agreement shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy either by law or under this Agreement shall prevent or restrict the further exercise of that or any other right or remedy.

22 Entire Agreement

22.1 This Agreement, together with the documents referred to in it, constitutes the entire agreement and understanding between the parties in respect of the matters dealt with in it and supersedes, cancels and nullifies any previous agreement between the parties in relation to such matters.

22.2 The Recipient acknowledges and agrees that in entering into this Agreement it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Agreement.

22.3 Nothing in this clause 23 shall operate to exclude any liability for fraud.

23 Counterparts

This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

24 Governing law and dispute resolution

24.1 This Agreement shall be governed by and construed in accordance with the law of England and the parties irrevocably submit to the exclusive jurisdiction of the English courts.

24.2 Without limiting either party's right to terminate this Agreement or to seek injunctive relief, the parties shall attempt in good faith to negotiate a settlement to any dispute (a "Dispute") between them arising out of or in connection with this Agreement within 10 working days of either party notifying the other of the dispute.

24.3 If the Dispute cannot be resolved within 10 working days in accordance with clause 25.2 the parties shall refer the dispute to senior management of each party and each party shall use its reasonable endeavours to resolve the Dispute.

24.4 If the parties are unable to resolve the Dispute in accordance with clause 25.3 above the parties agree to refer the Dispute to the Centre For Dispute Resolution ("CEDR") for determination under its Model Mediation Procedure ("MMP") before either party refers the Dispute to the courts.

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

Schedule 1 The Scheme(s)

- 2.2 Under the Capital Grant Agreement the Recipient shall provide a minimum of [] new Dwellings across the locations and as set out in Table 1 below.

Table 1: Schedule of Scheme(s)

Location	Profile	Any special conditions

Substitute Scheme(s)

- 2.3 Where they consider it expedient to do so, the Recipient may propose and the Council may (at its absolute discretion) approve the substitution of any one or more of the Schemes listed in Table 1 above by any one or more alternative schemes (“Substitute Scheme”).
- 2.4 In the event that the Council shall approve the inclusion of any Substitute Scheme in accordance with the provisions of paragraph 2.3 above, the following provisions shall apply:
- 2.4.1 Such approval by the Council shall be in writing and shall specify the Scheme (whichever is relevant) in Table 1 above which is to be substituted as well as the Substitute Scheme.
 - 2.4.2 The provisions of this Agreement shall apply and be of full force and effect as if such Substitute Scheme were originally included in Table 1 above.
 - 2.4.3 The approval by the Council of any Substitute Scheme may be subject to such terms and conditions as the Council may (at its absolute discretion) see fit and such terms and conditions shall be deemed to be incorporated within the terms of this Agreement.

Schedule 2 Capital Grants

2.5 Total Grant Payable

2.5.1 The Council will pay to the Recipient up to an aggregate total of £[] being the Capital Grant towards the provision of the Scheme(s).

2.5.2 The Council will refer to Appendix 1 Proposal for Funding Affordable Housing for each dwelling provided in Schedule 1 for each Scheme.

2.6 Profiling of Grant Payments

2.6.1 The Capital Grants for the Scheme(s) will be paid in three tranches of 40%, 40% and 20% respectively rounded up or down to the nearest whole £1 (one pound).

2.6.2 The first payment of 40% of the relevant Capital Grant amount will become due on the date on which the relevant land or dwelling is purchased as specified in Appendix 1 attached.

2.6.3 The second payment of 40% of the relevant Capital Grant amount will become due on the Start on Site date as specified in Appendix 1 attached.

2.6.4 The final payment of 20% of the relevant Capital Grant shall become due on the Practical Completion date as specified in Appendix 1 attached.

2.6.5 For the avoidance of doubt, entitlement to payment of the Capital Grant monies in respect of each Scheme shall be determined separately as per Appendix 1 attached.

2.7 Procedure for Making Claims for Capital Grant Payments

The Recipient shall invoice the Council on or after the due date for an instalment of Capital Grant set out at clause 2.6 of this Schedule. Any agreed invoice shall be payable within 30 calendar days of the date of its receipt by the Council. Any agreed invoice which is not paid by the Council within 30 calendar days shall accrue interest at 2% above the Bank of England base rate. No invoice shall be deemed to be agreed by the Council unless the Recipient has submitted accompanying evidence to support each and every claim for payment, in such form as set out in Appendix 1 or otherwise as the Council may reasonably stipulate from time to time.

Schedule 3 Nominations - Working Procedure

- 1 The Recipient will notify the Council of a potential vacancy in any Dwelling in writing at the earliest opportunity. The Council will provide details of a nominee to The Recipient using the standard nomination form (see Appendix 2) within 3 working days of notification of a vacancy. If there is a delay in meeting this timescale the Council will advise the Recipient at the earliest opportunity and provide a timescale for identification of a nominee.
- 2 The Recipient to confirm acceptance of the nominee within 5 working days. If the nominee is not acceptable to the Recipient, the Recipient must advise the Council in writing of the reasons for refusal. The Council retains the right to appeal this decision within 2 working days of having received notification of the rejected nomination. During this period the Recipient shall not offer or let the property to another applicant.
 - If the reason for refusal is accepted the Council will submit a further nominee within 2 working days.
 - If the Recipient refuses the appeal from the Council the dispute will be referred to lead officers for discussion and resolution with a request that The Recipient reviews the decision on grounds indicated by The Council.
- 3 The Recipient will not stringently apply its standard eligibility criteria (contained in its Lettings Policy) when assessing nominations. The parties recognise that in certain circumstances there needs to be flexible approach to individual nominees to make the most appropriate use of the type of specialist accommodation provided through this Agreement.
- 4 The Recipient will have full management of The Schemes and will:
 - i. Enter into a tenancy agreement with the prospective tenant, explain the rights and responsibilities incumbent upon them and inform The Council of the letting date.
 - ii. Provide a housing management service commensurate with the tenancy agreement.
 - iii. The Recipient is responsible for taking legal action against the tenant or other occupiers, if required.
- 5 Where legal action is to be commenced (e.g. service of a Notice seeking Possession), The Recipient will liaise prior to the legal action

with The Council's and notify the Council within 2 working days when legal action is taken.

- 6 The Recipient will advise The Council as soon as possible if the Recipient becomes aware that the Tenant has left the property.
- 7 The Council will advise The Recipient as soon as possible if the Council becomes aware that the tenant has left the property.
- 8 The Recipient is responsible for the recovery of any fees or debts relating to the occupation of the property.
- 9 The Recipient and The Council will monitor and maintain data related to this service to enable a review of the service provided. This data is likely to include:
 - *Applicant response to offer*
 - *Reason for refusal*
 - *Nominee subject to charity exclusion criteria*
 - *Relevant exclusion criterion*
 - *Nomination rejected*
 - *Reason for rejection*
 - *% of nomination request received in timescales*

Schedule 4 - Appointment of a development agent

As a condition of providing the Capital Grant, the Council requires the Recipient to appoint a development agent to provide the following services to the Recipient in connection with the management of the Scheme(s):

[insert the services to be provided].

The Recipient shall procure the appointment of an appropriately qualified and experienced development agent to provide these services, with a starting date no later than [].

The Council shall provide a maximum of £[] to the Recipient as part of the Capital Grant for the sole purpose of enabling the Recipient to benefit from these services. The Council shall pay this part of the Capital Grant in accordance with Schedule 2 and subject to the provisions of this Agreement.

Without limitation, clause 9 shall apply to the provision of the Capital Grant for the purposes set out in this clause and in connection with the provision of services by the development agent to the Recipient.

HOUSING DELIVERY PROGRAMME CAPITAL FUNDING (Scheme Implementation Plan)

Approved In Principle
Milestone

<ul style="list-style-type: none"> RSL/Agent to write LA to request funding 	
<ul style="list-style-type: none"> LA to confirm in writing that the scheme is approved in principle and provide application to apply for grant 	Within 10 working days of receipt

The above information should provide the LA with initial grant levels and number of units

Grant Confirmation
Milestone

<ul style="list-style-type: none"> RSL/Agent to complete grant application and return with actual scheme costs, rents 	
<ul style="list-style-type: none"> LA to undertake assessment of application 	Within 35 working days of receipt
<ul style="list-style-type: none"> LA to confirm the fixed level of grant approval or refusal in writing, together with Grant Agreement 	

Acquisition (40%)
Milestone

<ul style="list-style-type: none"> RSL/Agent to provide copy of solicitors letter confirming land/property acquisition with covering letter 	10 working days following acquisition
<ul style="list-style-type: none"> LA will approve payment and forward to payments department 	Within 5 working days of receipt
<ul style="list-style-type: none"> Payments department to process payment 	Within 10 working days of receipt

Above should provide confirmation of purchase

Start On Site (40%)
Milestone

<ul style="list-style-type: none"> RSL/Agent to provide letter confirming start on site and contract period 	10 working days after SOS
<ul style="list-style-type: none"> LA to visit site to confirm SOS 	Within 5 working days of receipt
<ul style="list-style-type: none"> LA will approve payment and forward to payments department 	Within 5 working days of visit
<ul style="list-style-type: none"> Payments department to process payment 	Within 10 working days of receipt

Above should provide confirmation of start on site

Practical Completion (20%)
Milestone

<ul style="list-style-type: none"> RSL/Agent to provide conformation of Completion including final costs 	10 working days following completion
<ul style="list-style-type: none"> LA to visit to confirm practical completion 	5 working days of receipt of completion
<ul style="list-style-type: none"> LA will approve payment and forward to payments department 	Within 5 working days of visit
<ul style="list-style-type: none"> Payments department to process payment 	Within 10 working days of receipt

Above should provide confirmation of works undertaken

Appendix 2
Nominations Form

[insert nominations form]

EXECUTED as a DEED by affixing the
COMMON SEAL of THE COUNTY OF
HEREFORDSHIRE COUNCIL in the
presence of:

Authorised Signatory

EXECUTED as a DEED by
[**Recipient**] affixing its
Common Seal in the presence of:-

.....

Director

.....

Director/ Secretary