
CONSORTIUM AGREEMENT

relating to the

Affordable Homes Programme 2016 - 2021

The Swaythling Housing Society Limited (1)

And

Drum Housing Association Limited (2)

And

Windsor and District Housing Association Limited (3)

And

Oriel Housing Limited (4)

And

VIVID Housing Limited (5)

And

Raven Housing Trust Limited (6)

And

PHA Homes Limited (7)

And

Rosemary Simmons Memorial Housing Associated Limited (8)

And

Two Saints Limited (9)

And

Bracknell Forest Homes Limited (10)

And

Society of St James (11)

And

Platinum Skies Living Limited (12)

And

Southampton City Council (13)

And

Fareham Borough Council (14)
And
Winchester City Council (15)
And
New Forest District Council (16)
And
St Arthur Homes Limited (17)
And
Havant Housing Association Limited (18)
And
Chichester Greyfriars Housing Association Limited (19)
And
Tamar Housing Society Limited (20)

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BETWEEN:

- (1) **The Swaythling Housing Society Limited** a registered society as defined in section 1 of the Co-operative and Community Benefit Societies Act 2014, 10237R whose registered office is at Collins House, Bishopstoke Road, Eastleigh, Hampshire, SO50 6AD, (the **Lead Partner**);
- (2) **Drum Housing Association Limited** a registered society as defined in section 1 of the Co-operative and Community Benefit Societies Act 2014, 28156R whose registered office is at Collins House, Bishopstoke Road, Eastleigh, Hampshire, SO50 6AD
- (3) **Windsor & District Housing Association Limited** a registered society as defined in section 1 of the Co-operative and Community Benefit Societies Act 2014, 27877R whose registered office is at Collins House, Bishopstoke Road, Eastleigh, Hampshire, SO50 6AD
- (4) **Oriel Housing Limited** a registered society as defined in section 1 of the Co-operative and Community Benefit Societies Act 2014, 28637R whose registered office is at Collins House, Bishopstoke Road, Eastleigh, Hampshire, SO50 6AD
- (5) **VIVID Housing Limited** a registered society as defined in section 1 of the Co-operative and Community Benefit Societies Act 2014 (7544) whose registered office is at Peninsular House, Wharf Road, Portsmouth, Hampshire, PO2 8HB
- (6) **Raven Housing Trust Limited** a registered society as defined in section 1 of the Co-operative and Community Benefit Societies Act 2014 (30070R) whose registered office is at Raven House, 29 Linkfield Lane, Redhill, Surrey, RH1 1SS
- (7) **PHA Homes Limited** is a registered society as defined in section 1 of the Registered in England under the Co-operative and Community Benefit Societies Act 2014 No. 20803R whose registered office is 32 Lavant Street, Petersfield, Hampshire, GU32 3EF
- (8) **Rosemary Simmons Memorial Housing Association Limited** (trading as Crown Simmons Housing) registered under the Co-operative & Community Benefit Act 2014 Soc. No. 15355R whose registered office is at First Floor, Aissela, 46 High Street, Esher, KT10 9QY
- (9) **Two Saints Limited** is a registered society under the Co-operative and Community Benefit Societies Act 2014, number 26511R and is an exempt charity whose registered office is at 35 Waterside Gardens, Fareham, Hampshire, PO16 8SD
- (10) **Bracknell Forest Homes Limited** a registered society as defined in section 1 of the Co-operative and Community Benefit Societies Act 2014 (30230R) and

whose office is at Berkshire Court, Western Road, Bracknell, RG12 1RE

- (11) **Society of St James** a registered charity, registration number 1043664 whose registered offices are at 125 Albert Road South, Southampton, SO14 3FR
- (12) **Platinum Skies Living Limited** a company (09901606) whose registered office is at 10 Bridge Street, Christchurch, Dorset, United Kingdom, BH23 1EF
- (13) **Southampton City Council** of Civic Centre, Southampton, SO14 7LY
- (14) **Fareham Borough Council**, whose registered office is Civic Offices, Civic Way, Hampshire, PO16 7AZ
- (15) **Winchester City Council**, whose registered office is City Offices, Colebrook Street, Winchester, SO23 9LJ
- (16) **New Forest District Council**, whose registered office is Appletree Court, Beaulieu Road, Lyndhurst, Hampshire SO43 7PA
- (17) **St Arthur Homes Limited**, a company (05948739) whose registered office is at 95 Handel House High Street, Edgware, Middlesex, England, HA8 7DB
- (18) **Havant Housing Association Limited**, a registered society as defined in section 1 of the Co-operative and Community Benefit Societies Act 2014 (25918R) whose registered office is at 25 East Street, Havant, Hampshire, PO9 1AA
- (19) **Chichester Greyfriars Housing Association Limited**, a registered society as defined in section 1 of the Co-operative and Community Benefit Societies Act 2014 (19118R) whose registered office is at The Forum, Stirling Road, Chichester, West Sussex, PO19 7DN
- (20) **Tamar Housing Society Limited**, a registered society as defined in section 1 of the Co-operative and Community Benefit Societies Act 2014 (17390R) whose registered office is at Floor 4, Studio 5-11, Millbay Road, Plymouth, PL1 3LF

BACKGROUND:

- (A) The Consortium Members have applied for and been allocated grant under the Programme (as defined below).
- (B) The Consortium Members have agreed to enter into this Agreement to confirm the terms upon which they will collaborate together in relation to the Programme.

OPERATIVE PROVISIONS:

1. DEFINITIONS & INTERPRETATION

1.1 In this Agreement, unless the context otherwise requires:-

“Confidential Information”	means any information relating to a Consortium Member (“the Information Owner”) or the business, prospective business, funding or other financial arrangements, technical or creative processes or finances of the Information Owner or any supplier, client or prospective client or resident of the Information Owner or compilations of two or more items of such information whether or not each individual item is in itself confidential, which comes into the possession of any other Consortium Member(s) by virtue of this Agreement or the arrangements contemplated hereunder and which the Information Owner regards, or could be reasonably expected to regard, as confidential, whether or not such information is reduced to a tangible form or marked “confidential”, and any or all information which has been or may be derived or obtained therefrom;
“Consortium”	means the Consortium Members from time to time;
“Funding Conditions”	means the conditions relating to the payment of Grant as specified in the Grant Agreement and/or the HCA’s capital funding guide as may be amended, varied and/or updated by the HCA from time to time;
“Grant”	means grant payable by the HCA in accordance with the Grant Agreement;
“Grant Agreement”	means the Grant Agreement (Private RP Consortium) in relation to the Affordable Homes Programme 2016-2021 dated the 29 th day of March 2017 and the Grant Agreement (Mixed Consortium) in relation to the Affordable Homes Programme 2016-21 dated the 22 nd day of November 2017 and made between the HCA and the Consortium Members including any

amendments thereto;

- “HCA” means the Homes and Communities Agency or any other body authorised to undertake the registration, regulation, review, inspection and/or audit of social landlords whether in conjunction with the HCA or as its successor;
- “HRA 2008” The Housing and Regeneration Act 2008;
- “Independent Auditor” means the independent auditor or consultant commissioned by the Lead RP on behalf of the Consortium Members to prepare and undertake a programme of self-regulation compliance audits in respect of the Programme and/or any Scheme (or any particular stage thereof) forming part thereof as required under the Grant Agreement;
- “Intellectual Property” means any patents, copyright, database rights, design rights, registered designs, trademarks or service marks, trade names or know-how (whether registered or not and including any applications or rights to apply for registration) and all rights or forms of protection of a similar nature subsisting anywhere in the world;
- “LA Provider” means a local authority entered on the Register pursuant to Section 114 of the HRA 2008;
- “Lead RP” means that Consortium Member which the HCA has agreed shall act as the Lead Partner under the Grant Agreement and being as at the date hereof The Swaythling Housing Society Limited;
- “Prescribed Rate” means 2% above HSBC base rate or such other similar rate as the Lead RP may from time to time reasonably specify
- “Programme” means the development programme comprising a number of Schemes included in the bid the Consortium Members have submitted and/or intend to submit to the HCA in accordance with the Grant Agreement;
- “Regulatory Code” means the code issued by the HCA detailing the HCA’s regulatory requirements and the obligations to be met

by Registered Providers as may be amended, updated and/or replaced by the HCA from time to time;

“Relevant Consortium Member” means the Landlord of the Scheme in respect of which Grant is paid;

“Scheme” means the individual development projects or schemes of each Consortium Member forming part of the Programme;

“Supplemental Agreement” means an agreement providing for the incorporation of a Registered Provider as a new Consortium Member and a party to this Agreement in substantially the same form as that set out at Schedule Three

“VAT” means Value Added Tax under the Value Added Tax Act 1994;

“Working Day” means Monday to Friday (inclusive) excluding Bank and statutory holidays in England.

1.2 The headings in this Agreement are for convenience only and shall not affect its interpretation.

1.3 Subject as expressly stated to the contrary any reference in this Agreement to any provision of statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.4 The Schedules to this Agreement constitute an integral part hereof.

1.5 In circumstances where there is any inconsistency between the content of any Schedule and the content of this Agreement, the content of the Agreement shall prevail.

1.6 This Agreement shall be binding upon the Consortium Members and their respective successors and assigns.

1.7 Where the context so admits expressions contained in this Agreement and not separately defined shall have the same meaning as ascribed to them in the Grant Agreement.

2. Duration

2.1 This Agreement shall commence on the date hereof and continue until terminated pursuant to clause 15.

3. Lead RPs' Responsibilities

3.1 Each of the Consortium Members hereby authorise the Lead RP to carry out the functions of Lead Partner as set out in the Grant Agreement and the Lead RP shall carry out such functions.

3.2 As Lead RP under the Grant Agreement the Lead RP covenants with the other Consortium Members:

3.2.1 in respect of each Scheme to obtain from the Relevant Consortium Member confirmation that the Relevant Consortium Member has completed a risk appraisal and has obtained appropriate internal approval in respect of such Scheme;

3.2.2 to monitor the financial performance and delivery of the Programme and otherwise to comply with the monitoring and reporting requirements in the Grant Agreement;

3.2.3 to submit details of projects to the HCA via IMS to seek Firm Scheme status for such Schemes as defined in the Grant Agreement;

3.2.4 to monitor the progress and delivery of the Programme by liaison with the Consortium Members;

3.2.5 to hold review/progress meetings with Consortium Members no less frequently than once every three months (or such other frequency as the Consortium may agree) and to provide a regular report to the Consortium in relation to any Grant received;

3.2.6 to liaise and negotiate with the HCA throughout the Programme and to co-ordinate all IMS functions; to attend review meetings with the HCA, the annual review meeting with the HCA and other meetings as required by the Grant Agreement and to keep Consortium Members informed as regards such liaison and negotiation;

3.2.7 to provide to the HCA an Officer's Certificate (as defined in the Grant Agreement) as required by the terms of the Grant Agreement;

3.2.8 to put in place mechanisms for ensuring that the Funding Conditions either specific to individual allocations or relating to the entire Programme, are met; and to ensure that no changes are made to the Programme unless agreed with the HCA as required by the Grant Agreement and with the relevant Consortium Members;

- 3.2.9 to keep the Consortium Members informed as to the progress of the Programme and without limitation any circumstances which might have a Material Adverse Effect of which the Lead RP becomes aware
- 3.3 In providing the services referred to in clause 3.2 above the Lead RP will exercise all reasonable skill and care.
- 3.4 The Lead RP shall not be responsible for any breach of its obligations under the terms of this Agreement where such breach is as a result of or as a consequence of a breach by another Consortium Member of their obligations contained in this Agreement.

4. Mutual Responsibilities

- 4.1 The Consortium Members (including for the avoidance of doubt the Lead RP) shall collaborate with each other for the purpose of the delivery of the Programme and observe good faith towards one another in all matters affecting their dealings under and interests in this Agreement and, in particular (without limitation), each Consortium Member shall in relation to the Programme and each of its Scheme(s) covered by the Grant Agreement:
 - 4.1.1 act in the interests of the Consortium;
 - 4.1.2 not act or omit to act (or allow their contractors or agents to act or omit to act) in any way which could bring the Consortium Members (or any of them) and/or the Programme (or part thereof) into disrepute;
 - 4.1.3 comply with its obligations under the Grant Agreement and meet its obligations set out and/or referred to therein;
 - 4.1.4 comply with the reasonable requirements of the Lead RP and/or a majority of the Consortium Members in the interests of the Consortium from time to time;
 - 4.1.5 provide such information and assistance to the Lead RP as is reasonably necessary to enable the Lead RP to meet its obligations under the Grant Agreement;
 - 4.1.6 not act or omit to act in any way which could result in a breach of the Grant Agreement;
 - 4.1.7 assist and cooperate with the Lead RP and/or the HCA as reasonably required in connection with the Programme including without limitation:-

- 4.1.7.1 cooperating with any compliance audit carried out under the Grant Agreement or clause 8.2 of this Agreement;
- 4.1.7.2 attending any meeting requested by the Lead RP and/or HCA in accordance with the Grant Agreement or otherwise called on reasonable notice;
- 4.1.7.3 cooperating with any evaluation of the Grant Agreement process commissioned by the HCA; and
- 4.1.8 use reasonable endeavours to deliver the commitments in the Procurement Efficiencies Statement, Employment and Skills Statement and Construction Innovations Statement (all as defined in the Grant Agreement);
- 4.1.9 comply with the restrictions contained in the Grant Agreement in relation to Permitted Conversions (as defined in the Grant Agreement);
- 4.1.10 fully comply with the HCA Regulatory Code, Capital Funding Guide and Funding Conditions and the Grant Agreement; and all procedures required by them or otherwise agreed by the Consortium;
- 4.1.11 to provide to the Lead RP an Officer's Certificate (as set out in Schedule 4) upon request, on/or before each Quarter Date;
- 4.1.12 maintain Construction Commitments 2012 status or alternative schemes approved by the HCA;
- 4.1.13 identify and report to the other Consortium Members suitable development opportunities for future Schemes ; and
- 4.1.14 use reasonable endeavours to avoid any action or omission which would entitle the HCA to:
 - 4.1.14.1 withhold Grant under the Grant Agreement; or
 - 4.1.14.2 recover Grant under the Grant Agreement.
- 4.2 In addition, without limitation to the foregoing each Consortium Member shall, immediately notify the other Consortium Members in writing:-
 - 4.2.1 if there is an unanticipated problem which is likely to cause a material delay and/or failure to achieve delivery of a Scheme (or any particular stage thereof) to be delivered by it as part of the Programme; or

- 4.2.2 if that Consortium Member becomes aware of any action of a third party which has a Material Adverse Effect or threatens to have a Material Adverse Effect on the progress of the delivery of the Programme and/or any Scheme (or any particular stage thereof) or the reasonable expectations of any Consortium Member(s) under this Agreement;
 - 4.2.3 if the Consortium Member becomes aware of any matter which it is obliged to give notice of to the HCA under the Grant Agreement including without limitation any breach of the warranties given in the Grant Agreement or other breach of the Grant Agreement;
 - 4.2.4 of any circumstance which may entitle the HCA to withhold or request repayment of grant;
 - 4.2.5 of any circumstance which may require a change to the Programme.
- 4.3 For the avoidance of doubt, in the event of a Consortium Member becoming aware of any unanticipated problems and/or action of a third party which that Consortium Member is not required to notify to the other Consortium Members in accordance with clause 4.2, that Consortium Member shall notify the other Consortium Members of the same at the first meeting held between the Consortium Members following it becoming so aware.
- 4.4 Each Consortium Member will comply with its obligations in relation to the Schemes for which it is responsible including without limitation those specified in Schedule One.
- 4.5 The Consortium Members shall not enter into any discussions with the HCA in relation to any schemes whether inside or outside the Programme without the consent of the Lead RP or in the case of the Lead RP without the consent of the majority of the Consortium Members. (Such consents not to be unreasonably withheld or delayed).

5. Financial Arrangements

- 5.1 The Lead RP shall drawdown Grant from the HCA in accordance with the requirement of the Grant Agreement and pay Grant received to the relevant Consortium Member within 10 Working Days;
- 5.2 Each Consortium Member agrees that it will only request the Lead RP to draw down Grant on its behalf in circumstances where this draw down is in full compliance with the Funding Conditions and any other requirements of the HCA from time to time.
- 5.3 The Lead RP shall:-

- 5.3.1 notify each Consortium Member within three Working Days of any claim the amount that will be due to the Consortium Member and the date that the payment will be made and of the Lead RP's receipt of Grant on behalf of that Consortium Member and how that Grant has been distributed;
- 5.3.2 provide a statement showing Grant received and distributed once a month throughout the term of this Agreement to the Consortium Members in writing
- 5.4 Each of the Consortium Members acknowledges that the HCA has the right to:-
 - 5.4.1 suspend, cease, withhold or reduce the Grant payment;
 - 5.4.2 recover all or part of the Grant paid by the HCA; and/or
 - 5.4.3 impose penalties including without limitation adjusting the Grant available.
- 5.5 Each of the Consortium Members agrees that the Lead RP shall be entitled to comply with any lawful requirement of the HCA in relation to the Grant.
- 5.6 Each of the Consortium Members agrees that the Lead RP shall not be in breach of this Agreement or liable for any loss suffered by a Consortium Member as a result of:-
 - 5.6.1 the HCA exercising any of its rights set out in clause 5.4;
 - 5.6.2 the Lead RP complying with any lawful requirement of the HCA in relation to the Grant; or
 - 5.6.3 any other shortfall in the payment of the Grant by the HCA

save to the extent that the loss suffered is as a direct result of a breach by the Lead RP of its obligations under this Agreement or the Grant Agreement or arises as a result of negligence, fraud or recklessness on the part of the Lead RP and its employees administering the Consortium.
- 5.7 Each Consortium Member agrees that it shall be responsible for meeting any lawful requirements imposed by the HCA in relation to its Scheme(s) and its obligations under the Grant Agreement.
- 6. Scheme Changes**
- 6.1 The Consortium Members acknowledge that the Grant Agreement permits the HCA or the Lead RP to request changes to Schemes.

- 6.2 The Lead RP shall not request any change to the Programme or a Scheme without the prior written approval of the Consortium Member or Members affected or in circumstances where all Consortium Members are affected the majority of those Consortium Members, such written approval not to be unreasonably withheld or delayed.
- 6.3 Any Consortium Member may request a change to any of its Schemes.
- 6.4 Any Consortium Member may where permitted under the Grant Agreement request a change in relation to an individual Scheme for which it is responsible to be entered on to IMS by the Lead RP and the Lead RP shall not make any such change in relation to a Scheme without the consent of the relevant Consortium Member.
- 6.5 The Lead RP shall not agree any changes to a Scheme requested by the HCA without the prior written approval of the Consortium Member or Members affected, such written approval not to be unreasonably withheld or delayed.
- 6.6 The Lead RP shall notify the Consortium Members in writing of any change to a Programme or a Scheme agreed with the HCA.
- 6.7 The Lead RP shall be entitled to withdraw a request for a change in order to prevent termination of the Grant Agreement by the HCA.

7. Consortium Costs

- 7.1 Except as expressly stated in this Agreement each Consortium Member will bear its own costs, fees and expenses incurred in performing its obligations under this Agreement and the Grant Agreement including, without limitation, such costs as relate to the Independent Auditor and, for the avoidance of doubt, each Consortium Member shall pay all costs of the Independent Auditor to the extent that such audit relates to its Firm Scheme.
- 7.2 Each Consortium Member shall in respect of its Schemes pay the Lead Partner £350 plus VAT in respect of each grant funded Dwelling and £50 plus VAT for each nil grant funded Dwelling delivered under the Grant Agreement.
- 7.3 Payment pursuant to clause 7.2 shall be made in equal instalments as follows:-
- 7.3.1 For grant funded units, £175 plus VAT per Dwelling on the Start on Site Date; and
- 7.3.2 For grant funded units, £175 plus VAT per Dwelling on Practical completion

7.3.3 For nil grant funded units, £25 plus VAT per Dwelling on the Start on Site Date; and

7.3.4 For nil grant funded units, £25 plus VAT per Dwelling on Practical completion

7.4 The amount payable for grant funded units will be reviewed annually by the Lead Partner subject to a minimum fee of £300 plus VAT per Dwelling and a maximum fee of £350 plus VAT per Dwelling and any change in the amount will be notified in writing to each Consortium Member.

8. Liaison and Audit

8.1 The Consortium Members shall meet regularly to discuss and review the arrangements between them under this Agreement and the progress of the Programme and/or any Scheme(s).

8.2 The Lead RP shall appoint an Independent Auditor on behalf of the Consortium Members to undertake a compliance audit in respect of the Programme in accordance with the requirements of the Grant Agreement.

9. Insurance

Each Consortium Member shall take out and maintain an insurance policy in respect of professional indemnity insurance, with an insurance company of good repute, upon terms which are sufficient to cover its liabilities to the Consortium Members (or any of them) in circumstances where that Consortium Member provides services to the Consortium Members (or any of them) and each Consortium Member shall on the request of any other Consortium Member(s) produce a copy of the said insurance policy to the requesting Consortium Member(s) together with a receipt for the payment of the current premium.

10. Warranties

10.1 Each Consortium Member warrants that:-

10.1.1 information provided by it to the Lead RP, the HCA and/or the Independent Auditor in relation to the Programme and/or its Scheme(s) is and will be accurate and complete as at the date provided;

10.1.2 it has the right to make such contribution to the Programme as is necessary in respect of its Schemes and/or to comply with the requirements of this Agreement from time to time;

- 10.1.3 it (as between the Consortium Members) owns and will (subject to clause 10.1.4) continue to own any Intellectual Property arising out of or in connection with its Schemes and shall not infringe any Intellectual Property of any third party or contravene any statute, statutory instrument and/or regulation;
 - 10.1.4 in the event of any Intellectual Property arising out of or in connection with the Programme which is jointly owned by the Consortium Members (or any of them), such Intellectual Property may only be used by the Consortium (as from time to time constituted) and shall not therefore be used by any Consortium Member (whether whilst a member of the Consortium or thereafter) for any other purpose without the written agreement of the then Consortium.
- 10.2 Each Consortium Member authorises the Lead RP to use any Intellectual Property of the Consortium Member in connection with the Programme and warrants to the Lead RP that such use shall not infringe any Intellectual Property of any third party or contravene any statute, statutory instrument and/or regulation.

11. Confidentiality

- 11.1 No Consortium Member shall without the prior written consent of the Information Owner during or after the termination of this Agreement disclose any Confidential Information disclosed to it by the other and shall only use such Confidential Information for the purposes of or as otherwise expressly contemplated by this Agreement.
- 11.2 The above provision shall not apply to any Confidential Information which:-
 - 11.2.1 is or becomes publicly available on a non-confidential basis through no fault of the receiving Consortium Member;
 - 11.2.2 is received in good faith by the receiving Consortium Member from any third party whose possession of such Information is not subject to any obligation of confidence;
 - 11.2.3 is authorised for release by the prior written consent of the Information Owner;
 - 11.2.4 can be shown to the Information Owner's reasonable satisfaction to have been in the possession of the receiving Consortium Member at the date of disclosure, such possession not being subject to any obligation of confidence;

- 11.2.5 is required to be disclosed by law, judicial action or any regulatory body (including, without limitation, the HCA) or government department or agency, statutory or other regulatory authority;
 - 11.2.6 the Lead RP is required to disclose to the HCA under or in connection with the Grant Agreement;
 - 11.2.7 is reasonably required to be disclosed in connection with any merger, takeover, transfer of engagements and/or transfer of assets where such disclosure is subject to an obligation of confidentiality.
- 11.3 Each Consortium Member shall comply with all legislation relating to the possession or use of information and/or data including, without limitation, the Data Protection Act 1998 (“the 1998 Act”). In circumstances where any Consortium Member acts as the data processor for any other Consortium Member within the meaning of the 1998 Act in relation to any information processed under or in connection with this Agreement, that Consortium Member shall comply with the obligations of the data controller under the Seventh Principle of the 1998 Act in relation to such information and shall only process such information or data in the manner and for the purposes contemplated by this Agreement.

12. Dispute Resolution

In the event of any dispute between the Consortium Members (or any of them) relating to any alleged breach of this Agreement the Consortium Members will, subject to any requirements of the HCA, attempt in good faith to resolve such dispute promptly in accordance with the procedures set out in the Schedule Two.

13. Admission

- 13.1 Subject to the consent of the HCA under the Grant Agreement any not-for-profit Registered Provider may become a member of the Consortium where a majority of the Consortium Members agree, whereupon the Consortium Members and not-for-profit Registered Provider shall enter into a Supplemental Agreement providing for the incorporation of such Registered Provider as a Consortium Member and a party to this Agreement with effect from the date of such Supplemental Agreement.
- 13.2 Subject to a supplemental or variation agreement to the Grant Agreement being entered into with the HCA, so as to allow a LA Provider to become a Consortium Member, any LA Provider may become a member of the Consortium where a majority of the Consortium Members agree, whereupon the Consortium Members and LA Provider shall enter into a Supplemental Agreement providing for the

incorporation of such LA Provider as a Consortium Member and a party to this Agreement with effect from the date of such Supplemental Agreement.

14. Expulsion

14.1 Where:

14.1.1 the provisions of the Grant Agreement so allow; and

14.1.2 all the other Consortium Members so agree

any Consortium Member may be expelled from the Consortium by a written notice served by all the other Consortium Members upon one or more grounds specified in clause 14.2.

14.2 The grounds for expulsion are that the Consortium Member being expelled :

14.2.1 has been guilty of a persistent or material breach of its obligations under this Agreement or of the Grant Agreement and has not remedied the breach within a reasonable period (not exceeding 20 Working Days) to the reasonable satisfaction of the other members of the Consortium; or

14.2.2 is subject to enforcement action by the HCA as Regulator, in pursuance of its supervisory powers under the Housing and Regeneration Act 2008 or the HCA confirms to the other Consortium Members that the relevant Consortium Member will no longer be eligible to apply for Grant;

14.2.3 ceases to be registered as a Registered Provider of social housing pursuant to the Housing and Regeneration Act 2008;

14.2.4 goes into liquidation or winding up, is struck off by Companies House or the Financial Services Authority (as the case may be) or has a receiver or manager appointed in respect of its assets and undertakings;

14.2.5 the Grant Agreement will become capable of termination if the relevant Consortium Member remains in the Consortium; or

14.2.6 the HCA lawfully requires the Consortium Member to be expelled; or

- 14.2.7 where the Consortium Member is an LA Provider a Section 114 Report has been made in relation to that Consortium Member which in the opinion of the HCA has or will have a Material Adverse Effect.
- 14.3 Subject to the disputes procedure detailed in Schedule Two, the relevant Consortium Member shall cease to be a Consortium Member upon
- 14.3.1 service of a notice pursuant to this clause 14; and
- 14.3.2 completion of a Deed of Release (as defined in the Grant Agreement)
- and its rights under this Agreement shall thereupon cease, but without prejudice to any right of action or remedy accruing prior thereto.
- 14.4 In the event that the HCA informs the Lead RP that in the HCA's opinion the Lead RP has failed to comply with the Grant Agreement and as a result the HCA wishes to terminate the same or will no longer make Grant available pursuant to the Grant Agreement, the other Consortium Members may by unanimity agree (subject to first obtaining the HCA's consent thereto) that one of the other Consortium Members shall take over the role of Lead RP in which case the Consortium shall agree and implement such consequential amendments as are necessary to this Agreement.
- 14.5 Where Clause 14.4 applies to the Lead RP, or where any Consortium Member is expelled:
- 14.5.1 such Consortium Member shall enter into a Deed of Release as required by the Grant Agreement; and
- 14.5.2 such Consortium Member shall do all things necessary to prevent the termination of the Grant Agreement or any further breach of the Grant Agreement including, without limitation, transferring its proprietary interest in any Scheme to one of the other Consortium Members or the Lead RP (at the direction of the Lead RP acting reasonably); and
- 14.5.3 the Consortium shall work together and use reasonable endeavours to do all such things as are required to remedy the relevant default in order to prevent termination of the Grant Agreement by the HCA.

15. Termination

- 15.1 This Agreement may only be terminated by the agreement of all Consortium Members.
- 15.2 Termination under sub-clause 15.1 shall not affect any right action or liability arising after such determination.

15.3 This Agreement shall automatically terminate upon termination or expiry of the obligations under the Grant Agreement unless all the Consortium Members agree otherwise in writing, save in respect of any obligations arising before such termination and which remain to be performed.

16. Retirement by Mutual Consent

16.1 Any Consortium Member (the "Retiring Member") may, where:

- (a) the provisions of the Grant Agreement so allow; and
- (b) with the agreement of all the other Consortium Members (the "Continuing Members") (such agreement not to be unreasonably withheld)

withdraw from the Consortium.

16.2 The Retiring Member shall save and keep the Continuing Members fully and sufficiently indemnified against any costs or expenses incurred by them as a consequence of the Retiring Member's withdrawal from the Consortium and shall comply with such reasonable conditions as the Lead RP may reasonably prescribe.

16.3 The Retiring Member shall comply with any requirements of the HCA in respect of such retirement including but not limited to the requirement to enter into a Deed of Release (as defined in the Grant Agreement).

17. Notices and Consents

17.1 Any notice, consent, invoice or other document or communication which may be given by a Consortium Member under this Agreement shall be given in writing, and shall be deemed to have been given if sent by registered post to the other Consortium Member's address (marked for the attention of the chief executive) as set out above or to any other address notified to the other Consortium Members in accordance with this clause as an address to which notices, invoices and other documents or communications may be sent.

17.2 Any such communication shall be deemed to have been made to the other Consortium Member(s) if by registered post, 2 days from the date of posting (and in proving such service or delivery, it shall be sufficient to prove that such communication was properly addressed, stamped and put in the post).

17.3 For the avoidance of doubt, in the event of one Consortium Member serving any notice under this agreement upon another Consortium Member it shall contemporaneously forward a copy of such communication to the other Consortium Members.

18. Relationship of the Consortium Members

Nothing in this Agreement shall create, or be deemed to create, a partnership or a joint venture or the relationship of employer and employee or principal and agent between the Consortium Members or any of them.

19. Mutual Indemnities

19.1 Each Consortium Member shall indemnify and keep indemnified each of the other Consortium Members against all losses, claims, payments, costs, proceedings and expenses arising or incurred as a result of:

- (a) the wrongful or negligent act or omission of the defaulting Consortium Member which relates to this Agreement or the Grant Agreement; or
- (b) any Default Event or any General Withholding Event or any Scheme Withholding Event occurring in respect of the defaulting Consortium Member; or
- (c) any breach or non-performance by the defaulting Consortium Member of its obligations in this Agreement or in the Grant Agreement

(except that the extent of such liability of the defaulting Consortium Member shall not include that element of such losses, claims, payments, costs, proceedings and expenses which arise or are incurred in part as a result of the wrongful or negligent act or omission of any of the other Consortium Members) and PROVIDED THAT (save in the cases specified in clause 19.2 below) the liability of a Consortium Member in any such case shall not extend to include:

- (i) any grant withheld (or required to be repaid) in respect of Schemes of any Consortium Member which are not Firm Schemes at the date of such default; nor
- (ii) any costs incurred or payments made or damages paid by any Consortium Member in relation to any Scheme which is not a Firm Scheme at the date of such default.

19.2 Each Consortium Member shall (severally in respect of its Schemes) indemnify and keep indemnified the Lead RP and all the other Consortium Members against any payments made by or required from or any liability on the part of the Lead RP or the other Consortium Members in relation to the recovery by the HCA of Grant attributable to that Consortium Member's Schemes.

20. Severability

If any provision of this Agreement is held by any court or other competent authority to be void or unenforceable in whole or in part, this Agreement shall

continue to be valid as to the other provisions thereof and the remainder of the affected provision.

21. Entire Agreement

21.1 This Agreement (and any documents referred to in it) constitutes the entire agreement and understanding between the Consortium Members (and each of them) and shall supersede any previous agreement between the Consortium Members relating to the subject matter of this Agreement.

21.2 The Consortium Members agree that they have entered into this Agreement in reliance only upon the representations and warranties specifically contained or incorporated in this Agreement and, except as expressly set out in this Agreement, the Consortium Members shall have no liability in respect of any other representation and/or warranty made prior to the Commencement Date to any person, unless it was made fraudulently.

22. Waiver

Any waiver by any Consortium Member of a breach of any provision of this Agreement shall not be considered as a waiver of any subsequent breach of the same or any other provision thereof.

23. Third Party Rights

A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This clause does not however affect any right or remedy of a third party which exists or is available apart from that Act.

24. Governing Law and Jurisdiction

This Agreement and its interpretation shall be governed by English law and, subject to clause 12, the parties submit to the exclusive jurisdiction of the English Courts.

25. Assignment

This Agreement is personal to the parties and is not to be assigned unless with the unanimous agreement of all the Consortium Members.

26. Anti-Bribery

Each Consortium Member shall:

- 26.1.1 comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Relevant Requirements);
- 26.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- 26.1.3 have and shall maintain in place throughout the term of this agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and will enforce them where appropriate;

promptly report to the Lead RP any request or demand for any undue financial or other advantage of any kind received by the Consortium Member in connection with the performance of this agreement.

SIGNED by each of the parties or their authorised representatives on the date set out at the head of this Agreement

EXECUTED as a **DEED** by affixing)
THE COMMON SEAL of)
THE SWAYTHLING HOUSING SOCIETY)
LIMITED)
in the presence of:)

Authorised Signatory

Authorised Signatory

EXECUTED as a **DEED** by affixing)
THE COMMON SEAL of)
DRUM HOUSING ASSOCIATION LIMITED)
in the presence of:)

Authorised Signatory

Authorised Signatory

EXECUTED as a **DEED** by affixing)
THE COMMON SEAL of)
WINDSOR & DISTRICT HOUSING ASSOCIATION)
LIMITED)
in the presence of:)

Authorised Signatory

Authorised Signatory

EXECUTED as a **DEED** by affixing)
THE COMMON SEAL of)
ORIEL HOUSING LIMITED)
in the presence of:)

Authorised Signatory

Authorised Signatory

EXECUTED as a **DEED BY**)
VIVID HOUSING LIMITED by affixing)
Its Common Seal in the presence of:)

Authorised Signatory

Authorised Signatory

EXECUTED as a **DEED** by affixing)
THE COMMON SEAL of)
RAVEN HOUSING TRUST LIMITED)
in the presence of:)

Authorised Signatory

Authorised Signatory

EXECUTED as a **DEED** by affixing)
THE COMMON SEAL of)
PHA HOMES LIMITED)
in the presence of:)

Authorised Signatory

Authorised Signatory

EXECUTED as a **DEED** by affixing)
THE COMMON SEAL of)
ROSEMARY SIMMONS MEMORIAL)
HOUSING)
ASSOCIATION LIMITED)
in the presence of:)

Authorised Signatory

Authorised Signatory

EXECUTED as a **DEED** by affixing)
THE COMMON SEAL of)
TWO SAINTS LIMITED)
in the presence of:)

Authorised Signatory

Authorised Signatory

EXECUTED as a **DEED** by affixing)
THE COMMON SEAL of)
BRACKNELL FOREST HOMES LIMITED)
was hereunder affixed in the presence of:)

Authorised Signatory

Authorised Signatory

EXECUTED as a **DEED** by **SOCIETY OF ST**)
JAMES)
by a director in)
the presence of a witness)

Witness's signature

Witness's name (capitals)

Witness's address (capitals)

EXECUTED as a **DEED** by **PLATINUM**)
SKIES LIVING LIMITED by a director in)
the presence of a witness)

Witness's signature

Witness's name (capitals)

Witness's address (capitals)

EXECUTED as a **DEED** by affixing)
THE COMMON SEAL of)
SOUTHAMPTON CITY COUNCIL)
in the presence of:)

Authorised Signatory

EXECUTED as a **DEED** by affixing)
THE COMMON SEAL of)
FAREHAM BOROUGH COUNCIL)
in the presence of:)

Authorised Signatory

Authorised Signatory

EXECUTED as a **DEED** by affixing)
THE COMMON SEAL of)
WINCHESTER CITY COUNCIL)
in the presence of:)

Authorised Signatory

Authorised Signatory

EXECUTED as a **DEED** by affixing)
THE COMMON SEAL of)
NEW FOREST DISTRICT COUNCIL)
in the presence of:)

Authorised Signatory

Authorised Signatory

EXECUTED as a **DEED** by affixing)
THE COMMON SEAL of)
ST ARTHUR HOMES)
in the presence of:)

Authorised Signatory

Authorised Signatory

EXECUTED as a **DEED** by affixing)
THE COMMON SEAL of)
HAVANT HOUSING ASSOCIATION LIMITED)
in the presence of:)

Authorised Signatory

Authorised Signatory

EXECUTED as a **DEED** by affixing)
THE COMMON SEAL of)
CHICHESTER GREYFRIARS HOUSING)
ASSOCIATION)
in the presence of:)

Authorised Signatory

Authorised Signatory

EXECUTED as a **DEED** by affixing)
THE COMMON SEAL of)
TAMAR HOUSING SOCIETY LIMITED)
in the presence of:)

Authorised Signatory

Authorised Signatory

SCHEDULE ONE

Individual Members' Responsibilities

- 1.1 Each Consortium Member undertaking an individual Scheme within the Programme shall maintain responsibility for:
 - 1.1.1 identifying opportunities for Schemes initially and liaising with local authorities, other relevant statutory stakeholders, developers and contractors (as appropriate) for any relevant support and / or Scheme approvals;
 - 1.1.2 securing ownership of the Scheme Site (including the landbanking of Scheme Sites and the securing of options);
 - 1.1.3 determining the Scheme design, mix of house / flat types and tenure and seeking funding and other support from the respective local authority / third parties;
 - 1.1.4 investigating the viability of each Scheme in accordance with the requirements of its Board and undertaking all development and management risk assessments;
 - 1.1.5 obtaining planning permission for the Scheme and dealing with all pre-start on site works;
 - 1.1.6 managing the delivery and completion of the Scheme and providing regular progress reports to the Lead RP and advising the Lead RP at an early stage if it anticipates not being able to deliver a particular Scheme so that another Scheme can if necessary be substituted as an individual Scheme;
 - 1.1.7 providing information to the Lead RP to enable funding bids and applications for grant confirmations to be made to the HCA at the relevant time;
 - 1.1.8 liaising with the Lead RP regarding claims and payments of Grant at relevant instalment dates;

- 1.1.9 adopting and implementing procedures for resident involvement in preparing Schemes to ensure integration into the community;
 - 1.1.10 procuring local housing management of completed Schemes to maintain sustainability;
- 1.2 If an individual Scheme is undertaken by a Consortium Member on behalf of another Consortium Member acting as development agent in such circumstances, the responsibilities of the Consortium Member as described in this Schedule shall be varied to the extent provided in the respective agency agreement.

SCHEDULE TWO

Dispute Resolution Procedures

Should a Consortium Member fail to comply with this Agreement (“Member in Breach”), the following procedures will apply:-

Stage 1: Attendance by the Member in Breach at the first scheduled meeting of the Consortium (or at a meeting convened for the purpose in circumstances where no meeting is scheduled to take place within 10 Working Days) where the failure to comply with the Agreement shall be an agenda item. If the breach is not remedied to the satisfaction of all Consortium Members (save the Member in Breach) then;

Stage 2: A formal letter to the chief executive of the Member in Breach requesting the breach be remedied. A response laying out plans for remedying the breach and a timetable for this action to be sent to the other Consortium Members within 10 Working Days. If there is no response or if the breach is not remedied to the satisfaction of all of the Consortium Members (save the Member in Breach) then;

Stage 3: Attendance by the Chief Executive of the Member in Breach at the first Scheduled meeting of the Chief Executives of the Consortium Members (or at a meeting convened for the purpose in circumstances where no meeting is scheduled to take place within 10 Working Days) where the failure to comply with the Agreement shall be an agenda item.

Stage 4: If the breach is not remedied to the satisfaction of all the Consortium Members (save the Member in Breach) then the parties shall be entitled to take such legal action as they feel appropriate in order to settle the dispute.

NB: In the case of suspected serious financial mismanagement on the part of a Consortium Member, the other Consortium Members shall have recourse to any authority providing funding, to request their intervention. The instigator

of the intervention shall give the Consortium Member 7 days notice of this course of action.

SCHEDULE THREE

Supplemental Agreement

THIS AGREEMENT is dated

BETWEEN:

[Here list all Existing Parties to the Consortium Agreement and the New Member.]

BACKGROUND:

- A. The Parties, (other than *[New Member]*), are as at the date of this Supplemental Agreement the current members of the Consortium known as [] (“the Existing Consortium Members”).
- B. The Existing Consortium Members entered into an agreement dated the *[insert date]* confirming the terms upon which the Consortium was formed in order to bid for funding from the HCA under the funding route known as “partnering” (“the Consortium Agreement”).
- C. *[New Member]* wishes to become a member of the Consortium and, in accordance with clause 13 of the Consortium Agreement, the Existing Consortium Members have agreed to *[New Member]* joining the Consortium.
- D. The Parties have therefore agreed to enter into this Supplemental Agreement to confirm the terms upon which *[New Member]* shall join the Consortium.
- E. In this Supplemental Agreement the words and expressions defined in the Consortium Agreement shall have the meanings given to them within the Consortium Agreement when used in this Supplemental Agreement.

OPERATIVE PROVISIONS:

- 1. With effect from the *[insert date]*:-
 - 1.1 the Parties agree that *[New Member]* shall become a member of the Consortium and, as such, shall be a “Consortium Member” under the Consortium Agreement and included within the expression “Consortium Members”;

- 1.2 [New Member] agrees to give the warranties and indemnities and to meet and abide by the obligations and duties imposed upon it as a Consortium Member under the Consortium Agreement; and
- 1.3 each of the Existing Members agrees that the warranties and indemnities given and the duties and obligations imposed upon it under the Consortium Agreement in relation to the other Consortium Members shall be extended to [New Member].
2. Save as provided above the Consortium Agreement shall remain in full force and effect.

SIGNED by each of the parties or their authorised representatives on the date set out at the head of this Supplemental Agreement

[Here insert a signature block as follows for the New Member and all Existing Consortium Members.]

SIGNED for and on behalf of
[]

.....
Signed

.....
Print Name

.....
Title

Schedule 4

Schedule 4: Member's Officer's Certificate

To: Radian (The Swaythling Housing Society Limited (the 'Lead Partner'))

In this Officer's Certificate, words and expressions shall have the same meanings as in the Agreement except where otherwise defined.

As an authorised signatory* of [] (the 'Consortium Member') I hereby certify that as at the date hereof:

- 1 All data or other information submitted to the Lead Partner to be input on IMS in respect of the Approved Bid, any Substitute Scheme, Additional Scheme, Indicative Scheme and each Firm Scheme is accurate and the Consortium Member is not aware (having made all reasonable enquires) of any circumstances which would give rise to the information becoming inaccurate;
- 2 All data or other information supplied to the Regulator in connection with, or related to the Approved Bid is accurate (including, inter alia, details of any Permitted Conversions);
- 3 The Consortium Member is not in breach of the Transparency Obligations;
- 4 Save where expressly agreed by the Agency, following notification to the Lead Partner, no Firm Scheme which is a Section 106 Scheme is being subsidised by Conversion Capacity, Firm Scheme Grant, RCGF or DPF;
- 5 Save where expressly agreed by the Agency, following notification to the Lead Partner, all AHP Dwellings have been let or disposed of (as applicable) in accordance with the terms of the Firm Scheme Details.
- 6 The Conversion Capacity will not be used nor has it been used for any purpose other than to deliver the Approved Bid under this Agreement.
- 7 All Permitted Conversions made by the Consortium Members are consistent with the information supplied to the Agency in relation to the Approved Bid (whether on IMS or otherwise);
- 8 So far as the Consortium Member is aware (having made all reasonable enquiries) each Firm Scheme (including, inter alia, all projected Start on Site Date and Practical Completion Date) is capable of being delivered without the need for a change to the Firm Scheme details; and

9 No part of the Conversion Capacity is being generated by or applied to properties within London.

This Certificate is given by virtue of my position as [] and is given on behalf of the Consortium Member. I am not giving this Certificate in a personal capacity, nor do I accept any private or personal liability for any error or omission in it and the Agency, in relying on the contents of the Certificate, duly acknowledges that if any error or omission is later to be found, such error or omission will be deemed to be a Specified Default for the purposed of providing the Agency a remedy against the Consortium Member.

Authorised Signatory*:

Print Name:

Dated:

*Signatory must be the Development Director of the Developing RP unless otherwise agreed by the Lead Partner.

Schedule to Officer's Certificate

Paragraph Number	Disclosure