
DRAFT

**CO-OPERATION AGREEMENT
WITH THE AIM OF DELIVERING
IMPROVED HOUSING WITHIN BRENT**

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This agreement is dated the day of 2019

PARTIES

(1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF BRENT** of Brent Civic Centre, Engineers Way, Wembley, Middlesex, HA9 0FJ (**Council**);

and

(2) **NETWORK HOMES LIMITED** (registered as a Community Benefit Society with number 7326) whose registered office is at Olympic Office Centre, 8 Fulton Road, Wembley, HA9 0NU (**Network**).

Each a “party” and together the “parties”.

A. BACKGROUND

A1 The Council is committed to improving the housing, environmental and economic outcomes for those who live within Brent. It wishes to ensure that the overall regeneration priorities for Brent are clear and that the strategies for the local area are consistent with its Community Plan, robust in the long term and deliverable. Given the diversity and scale of its requirements, the Council wishes to promote a strong, local cross-sector co-operation with housing organisations operating within Brent to develop and deliver its strategies.

A2 Network is a social housing provider based within Brent and with significant housing stock in Brent. It possesses significant development and regeneration expertise.

A3 The parties wish to co-operate on a range of Projects to deliver improved housing within Brent as listed in Schedule 2 and such other programmes as they may identify which relate to public services that the parties must perform.

A4 This agreement sets out the basis upon which the parties have agreed to

collaborate as two public sector bodies under Regulation 12(7) of the Public Contracts Regulations 2015 to achieve a common purpose in respect of their statutory housing obligations through the delivery of improved housing within Brent.

B Objectives

B1. The objective of this agreement is to:

- Meet local housing needs;
- Enhance the built and natural environment
- Coordinate the resources needed to deliver the strategy in a coherent way;
- Develop, and/or deliver programmes, projects and activities to achieve the strategy; ensuring that these are legally compliant

AGREED TERMS

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Charges: the charges payable by a party to the other in relation to a Project (if any), as set out in each case in a Project Schedule, such charges shall be limited solely to the recovery of costs incurred by either party.

Commencement Date: has the meaning set out in [Clause 2.1](#).

Focus: To deliver the planning and construction of new homes in order to increase the supply of affordable housing within the London Borough of Brent.

Input: in relation to a party, the services, resources, workforce or other tangibles or intangibles that such party provides in accordance with this agreement in relation to a Project, as set out in a Project Schedule.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Key Objectives: comprise the various tasks and responsibilities set out in this agreement, intended to set out the parties' respective obligations in relation to the Project;

Project: a project agreed by the parties in accordance with [Clause 5](#), in relation to which the parties will collaborate in accordance with this agreement, as further described in a particular Project Schedule.

Project Period: subject to earlier termination in accordance with this agreement, the period from the start date to the end date for a Project, as set out in a Project Schedule.

Project Schedule: a document specifying particulars in relation to a particular Project, agreed by the parties in accordance with [Clause 5](#).

subsidiary: has the meaning given in [Clause 1.6](#).

1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.

1.3 The Schedule forms 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 Schedule and any Project Schedule agreed in accordance with [Clause 5](#).

1.4 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the Schedule.

1.5 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.

1.6 A reference to a **holding company** or a **subsidiary** means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee) by way of security or in connection with the taking of security, or (b) its nominee. In the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that: (a) references in sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights.

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

1.8 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

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

1.10 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.11 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.12 A reference to **writing** or **written** includes fax but not email.

1.13 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

1.14 References to a document in **agreed form** are to that document in the form agreed by the parties and initialled by them or on their behalf for identification.

1.16 Any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English legal term in that jurisdiction.

1.17 A reference to **this agreement** or to **any other agreement or document referred to in this agreement** is a reference to this agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.

1.18 Where any statement is qualified by the expression **so far as a party is aware** or **to a party's knowledge** (or any similar expression), that statement shall be deemed to include an additional statement that it has been made after due and careful enquiry.

1.19 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.20 Where there is a conflict between the terms and conditions of this agreement, and a Project Schedule, the Project Schedule shall prevail (in relation to that Project Schedule only) to the extent of the inconsistency.

1.21 Any reference to this agreement terminating shall, where the context requires, include a reference to this agreement terminating by expiry.

2. COMMENCEMENT AND DURATION

2.1 This agreement shall commence on **[COMMENCEMENT DATE TO BE CONFIRMED]**.

2.2 This agreement shall continue, unless terminated earlier in accordance with this agreement, for 54 calendar months when it shall terminate automatically without notice.

3. COLLABORATION AND CO-OPERATION

3.1 The parties shall co-operate within the Focus of this agreement in relation to the agreed **Projects**.

3.2 The parties shall collaborate in relation to Project Schedules agreed in accordance with *Clause 5*

3.3. The parties agree to adopt the following principles during the period of this agreement when working on the Project:

3.3.1 collaborate and co-operate with one another in pursuit of the Key Objectives of the Project;

3.3.2 communicate openly about major concerns, issues or opportunities relating to the Project;

3.3.3 share information, experience, materials, transfer of knowledge through sharing/inter-placement of staff and skills to learn from each other and develop effective working practices, and by working collaboratively to identify solutions, eliminate duplication of effort, mitigate risk and reduce cost in relation to the Project;

3.3.4 adhere to statutory requirements and comply with applicable laws and

standards;

3.3.5 endeavour to act in a timely manner, recognising the timescales of the Project and working proactively together to seek to achieve identified key dates and milestones;

3.3.6 act in good faith

4. EXISTING ARRANGEMENTS

4.1 Nothing in this agreement shall restrict either party's right to continue to conduct its business activities or arrangements that existed on the Commencement Date or that otherwise come into being outside the scope of this agreement.

4.2 However, as the parties will be working together in relation to Projects where each party may have access to information or Intellectual Property Rights of the other, each party acknowledges that the other party will need to protect such information and Intellectual Property Rights in accordance with [Clause 11](#) and [Clause 14](#).

5. PROPOSALS AND PROJECTS

5.1 The parties agree that the terms of this agreement shall apply when either party (**proposing party**) wishes to propose to the other party (**receiving party**) a Project falling within the scope of the Focus.

5.2 A proposing party may submit a proposal for a proposed Project falling within the scope of the Focus to the receiving party at any time. The proposal shall contain high level details of the proposed Project, including an indication of the parties' likely respective Inputs and any Charges the proposing party intends to make for its own Inputs (if applicable).

5.3 On receipt of a proposal, the receiving party shall consider it, provide the proposing party with its comments and the parties shall then discuss whether they wish to formalise the proposal so that it becomes a Project. Either party may, in its absolute discretion, decline to agree to formalise a proposal into a Project.

5.4 In order to formalise a proposal into a Project:

(a) either party may submit to the other a draft Project Schedule. Such document shall be based substantially on the template Project Schedule set out in [Schedule 1](#), but it may include additional matters or exclude matters contained in the template that are not relevant to the particular Project;

(b) each party may sign the Project Schedule or decline to do so. A Project Schedule shall not have operative effect under this agreement unless it is signed by both parties. Once signed by both parties, a Project Schedule becomes part of the agreement.

5.5 A Project Schedule that has been signed by both parties may be amended at any time in accordance with [Clause 26](#).

5.6 Unless terminated earlier in accordance with this agreement, each Project Schedule has contractual effect during the applicable Project Period.

5.7 Each party shall in relation to the obligations allocated to it in a Project Schedule agreed in accordance with this clause:

(a) perform such obligations, including by providing the Inputs in accordance with timeframes or milestones (if any) specified in the Project Schedule;

(b) use reasonable care and skill in performing such obligations;

(c) comply with good industry practice;

(d) comply with all laws applicable to it;

(e) obtain and maintain consents, licences and permissions (statutory, regulatory, contractual or otherwise) that are necessary to enable it to comply with such obligations;

(f) ensure that the Inputs it provides conform with descriptions and specifications (if any) set out in the applicable Project Schedule; and

(g) if on the other party's premises, comply with that party's health and safety

and site regulations made known to it.

5.8 Each party shall ensure that it uses employees or agents in performing its obligations under a Project Schedule who are suitably qualified and experienced.

6. CUSTOMERS

6.1 Each party agrees that it has no right to bind the other party in contract or otherwise in relation to any customers of either party, and it shall not represent that it has such right.

6.2 Nothing in this agreement constitutes one party a partner, employer, employee or agent of the other party in relation to either party's customers.

6.3 Neither party may provide to any of its customers any information, or make any representation, relating to the other party's products or services, unless that information or representation is approved in writing by that party for use in those circumstances.

INFORMATION FLOW AND PROJECT MANAGEMENT

7.1 To enable the parties to maximise the benefits of their collaboration, each party shall:

(a) engage the other in planning discussions in relation to the Focus from time to time;

(b) keep the other party informed about its own progress in relation to each Project; and

(c) facilitate regular discussions between appropriate members of its personnel and those of the other party in relation to each Project, including in relation to:

(i) performance and issues of concern in relation to each Project;

(ii) new developments and resource requirements;

(iii) compliance with deadlines; and

(iv) such other matters as may be agreed between the parties from time to time.

7.2 Each party shall:

(a) supply to the other party information and assistance reasonably requested by it relating to a Project as is necessary to enable that other party to perform its own obligations in relation to the Project; and

(b) review documentation, including draft specifications or service descriptions or other technical documentation, for use when performing its obligations in relation to a Project (if any), as soon as reasonably practicable at the request of the other party, and notify it of any errors or incorrect assumptions made in any such documents so far as it is aware.

8. CHARGES

8.1 Except as provided for in [Clause 8.2](#), each party shall:

(a) not be entitled to charge the other party for the provision of anything (including Inputs) it provides in connection with each Project and this agreement; and

(b) be otherwise responsible for its own costs incurred in connection with each Project and this agreement, including all Inputs it provides.

8.2 If a Project Schedule provides that a party is responsible for paying the other party any Charges, such Charges shall be invoiced and paid for in the currency specified in the Project Schedule in accordance with [Clause 9](#).

9. INVOICING AND PAYMENT

9.1 If a Project Schedule provides that a party will pay the other party any Charges in relation to a Project, the other party may issue invoices for such Charges:

(a) in accordance with the invoicing procedure (if any) provided for in the Project Schedule; or

(b) if no invoicing procedure is provided for in the Project Schedule, at the end of each calendar month.

9.2 Unless otherwise provided in a Project Schedule, the Charges specified in a Project Schedule are exclusive of VAT which shall be included in invoices and payable, if applicable, in addition to the Charges.

9.3 A party shall pay an invoice issued to it in accordance with this agreement within 30 days of the receipt of a valid and undisputed invoice.

9.4 If a party fails to make a payment due to the other Party under this agreement by the due date, then, without limiting the other party's remedies under [Clause 21](#) or [Clause 22](#), the defaulting party shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment.

9.5 Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

10. SET-OFF

All amounts due under this agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

11. CONFIDENTIALITY

11.1 Confidential Information means all confidential information (however recorded or preserved) disclosed by a party or its employees, officers, representatives or advisers (together its **Representatives**) to the other party and that party's Representatives whether before or after the date of this agreement in connection with the Focus or any Project, including information which:

(a) relates to the terms of this agreement or any agreement entered into in connection with the Focus or a Project;

(b) would be regarded as confidential by a reasonable business person relating to:

(i) the business, assets, affairs, customers, clients, suppliers, plans , intentions, or market opportunities of the disclosing party(or of any member of the Group to which the disclosing party belongs); and

(ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party (or of any member of the Group to which the disclosing party belongs);

(c) is developed by the parties in the course of carrying out this agreement or any Project; and

(d) is specified as confidential in any Project Schedule.

11.2 The provisions of this clause shall not apply to any Confidential Information that:

(a) is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause); or

(b) was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;

(c) was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party;

(d) the parties agree in writing is not confidential or may be disclosed; or

(e) is developed by or for the receiving party independently of the information disclosed by the disclosing party.

11.3 Each party shall keep the other party's Confidential Information confidential and shall not:

(a) use such Confidential Information except for the purpose of exercising or performing its rights and obligations under this agreement in relation to the Focus and any Project (**Permitted Purpose**); or

(b) disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause.

11.4 A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:

(a) it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and

(b) it procures that its Representatives shall, in relation to any Confidential Information disclosed to them, comply with the obligations set out in this clause as if they were a party to this agreement,

and at all times, it is liable for the failure of any Representatives to comply with the obligations set out in this clause.

11.5 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this [Clause 11.5](#), it takes into account the reasonable requests of the other party in relation to the content of such disclosure. For the avoidance of doubt, a party may disclose Confidential Information pursuant to a request made under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004, provided that the Confidential Information in question has not been designated by the Parties as exempt commercially sensitive information. The parties may record any designated commercially sensitive information in Schedule 3 of this Agreement, such Schedule to be updated by consent of both parties from time to time.

11.6 A party may, provided that it has reasonable grounds to believe that the other party is involved in activity that may constitute a criminal offence under the Bribery Act 2010, disclose Confidential Information to the Serious Fraud Office without first informing the other party of such disclosure.

11.7 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this agreement are granted to the other party, or to be implied from this agreement.

11.8 On termination of this agreement, each party shall:

(a) return to the other party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information;

(b) erase all the other party's Confidential Information from computer and communications systems and devices used by it, including such systems and data storage services provided by third parties (to the extent technically practicable); and

(c) certify in writing to the other party that it has complied with the requirements of this clause, provided that a recipient party may retain documents and materials containing, reflecting, incorporating or based on the other party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority. The provisions of this clause shall continue to apply to any such documents and materials retained by a recipient party.

11.9 Except as expressly stated in this agreement, no party makes any express or implied warranty or representation concerning its Confidential Information.

11.10 The provisions of this [Clause 11](#) shall continue to apply after termination of this agreement in accordance with [Clause 23](#)

12. ANNOUNCEMENTS

12.1 Subject to [Clause 12.2](#), no party shall make, or permit any person to make, any public announcement, communication or circular (**announcement**) concerning the existence, subject matter or terms of this agreement, the wider transactions contemplated by it, or the relationship between the parties, without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed). The parties shall consult together on the

timing, contents and manner of release of any announcement.

12.2 Where an announcement is required by law or any governmental or regulatory authority (including, without limitation, any relevant securities exchange), or by any court or other authority of competent jurisdiction, the party required to make the announcement shall promptly notify the other party. The party concerned shall make all reasonable attempts to agree the contents of the announcement before making it.

13. DATA PROTECTION

Each party shall, at its own expense, ensure that it complies with and assists the other party to comply with the requirements of all legislation and regulatory requirements in force from time to time relating to the use of personal data and the privacy of electronic communications, including (i) the Data Protection Act 2018 and any successor UK legislation, as well as (ii) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to data protection and privacy (for so long as and to the extent that the law of the European Union has legal effect in the UK).

14. INTELLECTUAL PROPERTY

14.1 This agreement does not transfer any interest in Intellectual Property Rights. All Intellectual Property Rights developed or created by a party pursuant to a Project shall be owned by that party (**Created IPR**).

14.2 Each party grants to the other party a non-exclusive, personal, royalty-free licence during the applicable Project Period to use its Created IPR in relation to a Project to the extent necessary for the other party to carry out its obligations in relation to that Project.

14.3 At the end of the applicable Project Period, a party licensed to use Created IPR under [Clause 14.2](#) shall cease to use that Created IPR and shall return any physical embodiment of the Created IPR (including any copies) in its possession or control to the other party.

14.4 Each party shall immediately give written notice to the other party of any actual, threatened or suspected infringement of any party's Intellectual Property

Rights (including Created IPR) used in connection with a Project of which it becomes aware.

15. EMPLOYEES AND NON-SOLICITATION

15.1 Each party agrees that it shall not, and shall procure that no member of its Group shall, without the prior written consent of the other party, at any time from the Commencement Date to date of termination of this agreement, solicit or entice away from that party or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of that party in relation to a Project.

16. ANTI-BRIBERY

16.1 Each party shall in relation to this agreement and each Project:

(a) 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**);

(b) 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;

(c) have and shall maintain in place throughout the term of this agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and [Clause 16.1\(b\)](#), and will enforce them where appropriate;

(d) promptly report to the other party any request or demand for any undue financial or other advantage of any kind received by it in connection with the performance of this agreement;

(e) immediately notify the other party (in writing) if a foreign public official becomes an officer or employee of it or acquires a direct or indirect interest in it and warrants that it has no foreign public officials as direct or indirect owners,

officers or employees at the Commencement Date);

(f) within three months of the Commencement Date, and annually thereafter, certify to the other party in writing signed by one of its officers, compliance with this [Clause 16](#) by it and all persons associated with it under [Clause 16.2](#). Each party shall provide such supporting evidence of compliance as the other party may reasonably request.

16.2 Each party shall ensure that any person associated with it who is performing obligations in connection with this agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on that party in this [Clause 16 \(Relevant Terms\)](#). Such party shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the other party for any breach by such persons of any of the Relevant Terms.

16.3 Breach of this [Clause 16](#) shall be deemed a material breach under [Clause 21.2](#) and [Clause 22.2](#).

16.4 For the purpose of this [Clause 16](#), the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this [Clause 16](#), a person associated with a party includes but is not limited to any subcontractor of that party.

17. WARRANTIES

17.1 Each party warrants that:

(a) it has full power and authority to enter into this agreement in accordance with their respective constitutions and carry out the actions contemplated under this agreement; and

(b) its entry into and performance under the terms of this agreement will not infringe the Intellectual Property Rights of any third party or cause it to be in breach of any obligations to a third party; and

(c) subject to [Clause 11.9](#), so far as it is aware, all information, data and materials provided by it under this agreement will be accurate and complete in all material respects, and it is entitled to provide the same to the other without recourse to any third party;

17.2 Except as expressly provided in this agreement, there are no conditions, warranties or other terms binding on the parties with respect to the actions contemplated by this agreement. Any condition, warranty or other term in this regard that might otherwise be implied or incorporated into this agreement, whether by statute, common law or otherwise, is, to the extent that it is lawful to do so, excluded by this agreement.

18. INDEMNITY

18.1 In this clause, a reference to an **indemnified party** shall include that party's subsidiaries, and the provisions of this clause shall be for the benefit of that party and each such subsidiary, and shall be enforceable by each such subsidiary, in addition to the party.

18.2 Each party (**indemnifying party**) shall indemnify the other party (**indemnified party**) against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the indemnified party arising out of or in connection with:

(a) any claim made against the indemnified party for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with:

(i) the indemnified party's use in accordance with this agreement of Intellectual Property Rights licensed to it by the indemnifying party under [Clause 14.2](#);

(ii) the receipt or use by the indemnified party of Inputs or other items or services provided by the indemnifying party in relation to a Project;

(b) OTHER MATTERS

18.3 This indemnity not cover the indemnified party to the extent that a claim under it results from the indemnified party's negligence or wilful misconduct.

18.4 If any third party makes a claim, or notifies an intention to make a claim, against the indemnified party which may reasonably be considered likely to give rise to a liability under this indemnity (**Claim**), the indemnified party shall:

(a) as soon as reasonably practicable, give written notice of the Claim to the indemnifying party, specifying the nature of the Claim in reasonable detail;

(b) not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the indemnifying party (such consent not to be unreasonably conditioned, withheld or delayed), provided that the indemnified party may settle the Claim (after giving prior written notice of the terms of settlement (to the extent legally possible) to the indemnifying party, but without obtaining the indemnifying party's consent) if the indemnified party reasonably believes that failure to settle the Claim would be prejudicial to it in any material respect;

(c) give the indemnifying party and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the indemnified party, so as to enable the indemnifying party and its professional advisers to examine them and to take copies (at the indemnifying party's expense) for the purpose of assessing the Claim; and

(d) subject to the indemnifying party providing security to the indemnified party to the indemnified party's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, take such action as the indemnifying party may reasonably request to avoid, dispute, compromise or defend the Claim.

18.5 If a payment due from the indemnifying party under this clause is subject to tax (whether by way of direct assessment or withholding at its source), the indemnified party shall be entitled to receive from the indemnifying party such amounts as shall ensure that the net receipt, after tax, to the indemnified party in respect of the payment is the same as it would have been were the payment not subject to tax.

18.6 Nothing in this clause shall restrict or limit the indemnified party's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under this indemnity.

19. INSURANCE

During the term of this agreement, and for the duration of any Project Schedule entered into under this Agreement which extends beyond the expiry of this Agreement, each party shall maintain in force, with a reputable insurance company, professional indemnity insurance in an amount not less than £5,000,000 (five million) for each and every claim and shall, on the other party's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium.

20. LIMITATION AND EXCLUSION OF LIABILITY

20.1 Nothing in this agreement shall limit or exclude a party's liability:

(a) for death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors;

(b) for fraud or fraudulent misrepresentation;

(c) for breach of any obligation as to title or quiet possession implied by statute;
or

(d) for any other act, omission, or liability which may not be limited or excluded by law;

(e) under the indemnity in [Clause 18](#).

20.2 Subject to [Clause 20.1](#), neither party shall have any liability to the other party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or for any indirect or consequential loss arising under or in connection with the agreement.

20.3 Subject to [Clause 20.1](#), a party's total liability to the other party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise,

arising under or in connection with this agreement shall be limited to £5,000,000 (five million).

20.4 The parties expressly agree that if any limitation or provision contained or expressly referred to in this [Clause 20](#) is held to be invalid under any applicable statute or rule of law, it shall, to that extent, be deemed omitted in accordance with [Clause 28](#).

21. TERMINATION OF A PROJECT

21.1 The grounds and procedures for terminating the agreement as a whole specified in [Clause 22](#) apply *mutatis mutandis* to a Project Schedule, and either party to a Project Schedule may terminate it in accordance with such clause.

21.2 For the purposes of this clause, notwithstanding [Clause 22.2](#), **material breach** in [Clause 22.1\(b\)](#) in relation to a Project Schedule means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from:

(a) a substantial portion of a Project; or

(b) any of the obligations set out in [Clause 5.7](#), over a six month period during the Project Period. In deciding whether any breach is material, no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

21.3 A party may terminate a Project Schedule on giving not less than three months' written notice to the other party.

21.4 Termination of a Project Schedule in accordance with this clause shall have the effect that:

(a) the terminated Project Schedule shall be severed from the agreement, which shall otherwise remain in full force and effect; and

(b) the provisions of [Clause 23](#) shall otherwise apply (*mutatis mutandis*) in relation to the Project Schedule.

22. TERMINATION OF AGREEMENT

22.1 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party:

(a) if the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 90 days after being notified in writing to make such payment;

(b) if the other party commits a material breach of any term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

(c) if the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;

(d) if the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words “it is proved to the satisfaction of the court” did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;

(e) if the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

(f) if a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

(g) if an application is made to court, or an order is made, for the appointment of

an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);

(h) if the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;

(i) if a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

(j) if a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within fourteen (14) days;

(k) if any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in [Clause 22.1\(d\)](#) to [Clause 22.1\(k\)](#) (inclusive);

(l) if the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or

(n) if there is a change of control of the other party; or

(o) if any warranty given by the other party in [Clause 17](#) of this agreement is found to be untrue or misleading.

(p) in accordance with [Clause 24](#).

22.2 For the purposes of [Clause 22.1\(b\)](#), **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from:

(a) a substantial portion of this agreement; or

(b) any of the obligations set out in [Clause 5.7](#), over any six month period during

the term of this agreement. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

22.3 Without affecting any other right or remedy available to it, either party may terminate this agreement on giving not less than one (1) month's written notice to the other party.

23. CONSEQUENCES OF TERMINATION

23.1 On termination of this agreement, the following clauses shall continue in force:

- (a) *Clause 1* (Interpretation);
- (b) *Clause 9* (Invoicing and payment);
- (c) *Clause 10* (Set-off);
- (d) *Clause 11* (Confidentiality) (subject to *Clause 11.10*);
- (e) *Clause 13* (Data protection);
- (f) *Clause 14* (Intellectual property);
- (g) *Clause 15* (Employees and non-solicitation);
- (h) *Clause 17.1(b)* and *Clause 17.2* (Warranties);
- (i) *Clause 18* (Indemnity);
- (j) *Clause 19* (Insurance);
- (k) *Clause 20* (Limitation and exclusion of liability);
- (l) *Clause 21.4* (Termination of a Project);
- (m) *Clause 23* (Consequences of termination);
- (n) *Clause 24* (Force majeure);

-
- (o) *Clause 27* (Notices);
 - (p) *Clause 28* (Severance);
 - (q) *Clause 29* (No partnership or agency);
 - (r) *Clause 30* (Rights and remedies);
 - (s) *Clause 31* (Inadequacy of damages);
 - (t) *Clause 32* (Waiver);
 - (u) *Clause 35* (Third party rights);
 - (v) *Clause 38* (Entire agreement);
 - (w) *Clause 39* (Mediation);
 - (x) *Clause 40* (Governing law); and
 - (y) *Clause 41* (Jurisdiction).

23.2 Termination of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination.

23.3 On termination of this agreement, each Project Schedule then in force at the date of such termination shall continue in full force and effect for the remainder of the applicable Project Period, unless earlier terminated in accordance with the terms of this agreement.

23.4 On termination of this agreement, unless such things are needed by it to perform its obligations under a Project Schedule (and only until the end of such time), each party shall, and shall use all reasonable endeavours to procure that its Representatives shall, no later than thirty (30) days after termination of this agreement:

(a) return or destroy (as directed in writing by the other party) any documents, handbooks, or other information or data provided to it by the other party for the purposes of this agreement. If reasonably required by the other party, it shall provide written evidence (in the form of a letter signed by it no later than thirty (30) days after termination of this agreement) that these have been destroyed and that it has not retained any copies of them; and

(b) return all of the other party's equipment and materials, failing which, the other party may enter the relevant premises and take possession of them. Until these are returned or repossessed, that party shall be solely responsible for their safe-keeping.

24. FORCE MAJEURE

Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for 3 months, the party not affected may terminate this agreement by giving 30 days' written notice to the affected party.

25. ASSIGNMENT AND OTHER DEALINGS

25.1 Subject to [Clause 25.2](#), neither party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under this agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).

25.2 Either party may, after having given prior written notice to the other party, assign or subcontract any or all of its rights and obligations under this agreement to a member of its Group for so long as that company remains a member of the assignor's Group. The assignor shall procure that such assignee assigns any rights assigned to it in accordance with this [Clause 25.2](#) back to the assignor or

another member of the assignor’s Group immediately before it ceases to be a member of the assignor’s Group.

26. VARIATION

26.1 No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

26.2 Any variation of this agreement agreed by the parties in accordance with [Clause 26.1](#) shall be deemed to apply to all future Project Schedules entered into after the date of such variation, but shall not apply to Project Schedules already in force at that date unless such variation specifically so provides.

27. NOTICES

27.1 A notice given to a party under or in connection with this agreement shall be in writing and sent to the party at the address or DX number or to the fax number given in this agreement or as otherwise notified in writing to other party.

27.2 The following table sets out methods by which a notice may be sent and, if sent by that method, the corresponding deemed delivery date and time:

Delivery method	Deemed delivery date and time
Delivery by hand.	On signature of a delivery receipt.
Pre-paid first class post or other next working day delivery service providing proof of postage.	9.00 am on the second Business Day after posting.

Pre-paid airmail providing proof of postage.	9.00 am on the fifth Business Day after posting.
Fax or electronic mail.	At the time of transmission.
Document exchange (DX).	9.00 am on the second Business Day after being put into the DX.

27.3 For the purpose of [Clause 27.2](#) and calculating deemed receipt:

(a) all references to time are to local time in the place of deemed receipt; and

(b) if deemed receipt would occur in the place of deemed receipt on a Saturday or Sunday or a public holiday when banks are not open for business, deemed receipt is deemed to take place at 9.00 am on the day when business next starts in the place of receipt.

27.4 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

27.5 A notice given under this agreement is not valid if sent by email.

28. SEVERANCE

28.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

28.2 If one party gives notice to the other of the possibility that any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

29. NO PARTNERSHIP OR AGENCY

29.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

29.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

30. RIGHTS AND REMEDIES

The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

31. INADEQUACY OF DAMAGES

Without prejudice to any other rights or remedies that a party (**first party**) may have, the other party (**other party**) acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this agreement by the other party. Accordingly, the first party shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this agreement.

32. WAIVER

32.1 A waiver of any right or remedy under this agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

32.2 A failure or delay by a party to exercise any right or remedy provided under this agreement or by law 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 provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

33. LANGUAGE

33.1 This agreement is drafted in the English language. If this agreement is translated into any other language, the English language version shall prevail.

33.2 Any notice given under or in connection with this agreement shall be in the English language. All other documents provided under or in connection with this agreement shall be in the English language, or accompanied by a certified English translation. If such document is translated into any other language, the English language version shall prevail.

34. COUNTERPARTS

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

34.2 Transmission of an executed counterpart of this agreement (but for the avoidance of doubt not just a signature page) by (a) fax or (b) email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this agreement. If either method of delivery is adopted, without prejudice to the validity of the agreement thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

34.3 No counterpart shall be effective until each party has executed at least one counterpart.

35. THIRD PARTY RIGHTS

35.1 Except as expressly provided elsewhere in this agreement, a person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

35.2 Unless it expressly states otherwise, this agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

35.3 The rights of the parties to rescind or vary this agreement are not subject to the consent of any other person.

36. FURTHER ASSURANCE

Each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this agreement.

37. COSTS

Subject to [Clause 8](#), each party shall pay its own costs incurred in connection with the negotiation, preparation, and execution of this agreement and any documents referred to in it.

38. ENTIRE AGREEMENT

38.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter.

38.2 Each party agrees that it shall have no remedies in respect of any representation or warranty (whether made innocently or negligently) that is not set out in this agreement. No party shall have any claim for innocent or negligent misrepresentation based on any statement in this agreement.

39. MEDIATION

39.1 If any dispute arises in connection with this agreement, the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (**CEDR**) Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing (**ADR notice**) to the other party to the dispute requesting a mediation. A copy of the request should be sent to CEDR.

39.2 The mediation will start not later than 60 days after the date of the ADR notice. The commencement of a mediation will not prevent the parties commencing or continuing court proceedings.

40. GOVERNING LAW

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

41. JURISDICTION

Each party irrevocably agrees that, subject to [Clause 39](#), the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated at the beginning of it.

SCHEDULE 1

PROJECT SCHEDULE TEMPLATE

Part 1

This Project Schedule is dated [INSERT] and made between:

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF BRENT** of Brent Civic Centre, Engineers Way, Wembley, Middlesex, HA9 0FJ (**Council**);
- (2) **NETWORK HOMES LIMITED** (registered as a Community Benefit Society with number 7326) whose registered office is at Olympic Office Centre, 8 Fulton Road, Wembley, HA9 0NU (**Network**).

[Part 2

Background

(A) The parties have entered into a co-operation agreement dated [DATE] (**agreement**), allowing the parties to co-operate on Projects (as defined in the agreement) where such Projects fall within the Focus (as defined in the agreement).

(B) In connection with the agreement, the parties have agreed to co-operate in accordance with this Project Schedule.

Part 3

Project provisions

The parties agree that:

1. STRUCTURE

1.1 This Project Schedule forms part of the agreement.

1.2 The terms and conditions of the agreement apply to this Project Schedule. Each party agrees that it shall perform its obligations set out in this Project Schedule in accordance with the agreement.

1.3 Unless otherwise defined in this Project Schedule, terms used in this Project Schedule shall have the meaning given to them in the agreement.

2. DESCRIPTION OF PROJECT

[INSERT DETAILED DESCRIPTION OF PROJECT HERE]

3. TERM

The Project shall commence on [the date of execution of this Project Schedule by the parties **OR** [INSERT DATE]] and, unless terminated earlier in accordance with the agreement, shall continue until [INSERT DATE] (**Project Period**).

4. INPUTS

The parties shall each provide the following Inputs in relation to the Project, in accordance with the following timeframes (if any):

Input	THE COUNCIL	NETWORK	Timeframe
[INCLUDE DESCRIPTION OR SPECIFICATION]			

5. CHARGES

The Charges that each party shall pay the other are as follows:

THE COUNCIL	NETWORK
[SPECIFY]	[SPECIFY]

6. INVOICING PROCEDURE

[SPECIFY ALTERNATIVE INVOICING PROCEDURE]

7. CONFIDENTIAL INFORMATION

The parties agree that the following information shall be Confidential Information (as defined in *Clause 11* of the agreement): [SPECIFY]

8. ADDITIONAL TERMS

[INSERT ANY ADDITIONAL TERMS APPLICABLE TO THE PROJECT].

Part 4

Project Schedule signatures

Signed by for and on
behalf of

**THE MAYOR AND
BURGESSESS OF THE
LONDON BOROUGH OF
BRENT**

Signed by for and on
behalf of

**NETWORK HOMES
LIMITED**

SCHEDULE

1. ROLES AND RESPONSIBILITIES

1.1 To enable the parties to maximise the benefits of their collaboration, each party shall undertake the roles and responsibilities in relation to the Project set out in this Schedule.

1.2 The parties acknowledge and agree that:

1.2.1 up to the date of this agreement they have made the respective financial contributions in respect of the Project set out in this Schedule

1.2.2 during the period of this agreement , they shall make the respective financial contributions in respect of the Project set out in this; and

1.2.3 the contributions made and referred to in this Schedule shall be accounted for in respect of the Project expenditure incurred and required to be incurred by the parties under any legally binding contractual arrangements for the Project which supersede the arrangements of this agreement.

1.2.4 The activities undertaken and contributions made by the parties during the period of this Project shall be monitored and planned at quarterly review and reporting meetings to be attended by the parties.

1.2.5 The parties acknowledge that where the GLA or other third party is contributing funding to the Project, the parties shall comply with the conditions of such funding.

(1) THE COUNCIL

PLEASE LIST HERE

(2) NETWORK

PLEASE LIST HERE

SCHEDULE

ADDITIONAL STATUTORY OBLIGATIONS

SCHEDULE 2

PROPOSED PROJECTS

The Parties have identified the following Projects on which they intend to collaborate under the terms of this Agreement:

A. Kilburn Square Estate, incorporating:

- a. Site 1 – Clinic and 13-15 Brondesbury Road (located on the southern boundary of the Kilburn Square Estate) where the building formerly used by the NHS can be demolished to provide between 120 – 150 new-build homes.
- b. Site 2 – Victoria Road (located on the north western boundary of the Kilburn Square Estate) where under-utilised open space can be rationalised to provide approximately 45 – 60 new build homes.
- c. Site 3 – Nursery/Maisonettes Site (located on the northern boundary of the Kilburn Square Estate) where 6 existing units, a nursery and a disused semi-basement car park can be demolished to provide approximately 50 – 70 new build homes.
- d. Site 4 – Brondesbury Road car park (located adjacent on the southern boundary the Kilburn Square Estate adjacent to Morland House) where a car parking court can be rationalised to provide approximately 15 - 22 new build homes.

B. Windmill Court, Shoot Up Hill, where potentially between 40 and 70 new homes can be delivered on under-utilised open space and potential demolition of an existing car park.

C. Watling Gardens, Shoot Up Hill, incorporating:

- a. 1 – 10 Watling Gardens where approximately between 50 and

70 new homes can be delivered through the demolition of existing single storey bungalows on the south west corner of the estate. A particular aim at Watling Gardens is to provide rented housing for older people in some form.

- b. Claire Court, Shoot Up Hill, where between 60 and 80 new homes can be delivered through the demolition of a large podium covered parking areas and two existing residential blocks.

SCHEDULE 3

COMMERCIALLY SENSITIVE INFORMATION

The Parties have agreed that the following information shall be designated as commercially sensitive information and shall be exempt from disclosure under requests made pursuant to the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004:

[to be updated from time to time by consent of both Parties]