

REVISED MANAGEMENT AGREEMENT

DATED 15th June 2018

**THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF
SUTTON**

- and -

SUTTON HOUSING PARTNERSHIP LIMITED

**AGREEMENT FOR
HOUSING MANAGEMENT AND OTHER SERVICES**

South London Legal Partnership
Gifford House
67c St Helier
Morden
SM4 6HY
Legal Reference: 1079/8149

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THIS AGREEMENT is made the 15th June
BETWEEN:

2016⁸
SUTTON

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF SUTTON** of Civic Offices St Nicholas Way Sutton Surrey SM1 1EA ("the **Council**"); and
- (2) **SUTTON HOUSING PARTNERSHIP LIMITED** whose registered office is situate at Sutton Gate Offices, 1 Carshalton Road, Sutton SM1 4LE ("**SHP**") and whose registered company number is 05589014.

WHEREAS

- (A) The Council is the local housing authority for its area pursuant to Sections 1 and 2 of the Housing Act 1985 and pursuant to the powers contained in that Act provides housing accommodation and exercises general management, regulation and control of its housing accommodation.
- (B) Pursuant to Section 27 of the Housing Act 1985 and with the approval of the Secretary of State and pursuant also to Section 1 of the Localism Act 2011 and all other enabling powers the Council agreed that a third party exercises such of the Council's management and other functions as may be specified and accordingly the Council and SHP entered into the Original Agreement on 31st March 2006 for the provision of the Services.
- (C) The Council and SHP agree that SHP shall continue to provide the Services and the Council shall continue to co-operate with SHP in doing so upon the terms and in the manner hereinafter set out and the Council and SHP mutually agree that the Original Agreement shall henceforth be terminated save for clause 71 of the Original Agreement the text of which is set out within the Sixth Schedule

IT IS AGREED AS FOLLOWS:

PART A - PARTNERSHIP IN DELIVERY BETWEEN SHP AND THE COUNCIL

1 The Council's Expectations of SHP

- 1.1 As an arm's length company of the Council, SHP shall seek to deliver the services entrusted to it to further the Council's housing objectives in a way that reflects the Council's values.
- 1.2 The Council expects that residents are fully and effectively involved in SHP and that SHP is led by a skilled board of management and underpinned by a strong governance framework.
- 1.3 SHP shall promote a culture of customer care that seeks to provide the best experience for residents. Issues raised shall be followed through by SHP to completion and where things go wrong SHP will address them promptly and identify the lessons learnt which SHP shall, thereafter, employ in the continuing delivery of the service.
- 1.4 Within the resources available and through an understanding of residents' needs, SHP shall provide excellent and appropriately focused services that are reflected in high levels of resident satisfaction. Through efficient use of all its resources, SHP shall maximise value for money in both service delivery and capital investment.

- 1.5 On the Council's behalf SHP shall maintain a comprehensive and up to date asset management strategy and shall deliver the strategy in partnership with the Council.
- 1.6 The Council expects SHP to innovate and take on new business opportunities as they arise, subject to the Council's prior written consent.
- 1.7 In line with the Council's HRA Business Plan, SHP shall focus on delivering excellent, cost effective housing management services that improve the quality of life of the Council's tenants and leaseholders and provide a decent home for all.
- 1.8 SHP shall maintain an excellent organisational reputation and confidence amongst residents and the wider community, based on its commitment to care, quality and value.

2 **SHP's Purpose, Vision and Priorities**

- 2.1 At a strategic level SHP has set a purpose, a vision and priorities that are in tune with both Council and resident expectations. These are:

SHP Purpose - Working together to deliver homes and communities where residents feel happy and secure.

SHP Vision - A thriving, first choice service provider with a reputation for care, quality and value.

SHP Priorities -

Excellent Customer Service - Continuously improve the level of customer service to meet the diverse needs and expectations of all residents

Quality Homes in Secure Neighbourhoods - Deliver all services to the highest standards, investing in homes and providing secure neighbourhoods to promote the safety and wellbeing of all residents;

Value for Money - Ensure we provide residents with sustainable, value for money services by making the best use of the resources available to us

Reputation for excellence - Achieve an excellent reputation locally and beyond for the care, quality and value of our services

- 2.2 SHP shall evidence its success and how it wants to develop as the Council's delivery partner through the plans and reports produced over the term of this Management Agreement.

3 **Commitment to the Community**

- 3.1 The Services to be carried out by SHP are set out in the Delivery Plan (clause 7) and are part of an important relationship between the Council and the community it represents. SHP has a duty to help deliver the Council's objectives. SHP through its annual Delivery Plan and other supporting plans shall ensure that its policies, other supporting plans and activities support the objectives of all relevant Council strategies and plans ("**the Strategies**") including (but not exclusively) the following:-

- Corporate Plan
- Housing Strategy;

- Housing Revenue Account Business Plan;
- One Planet Action Plan.

3.2 For such purposes SHP shall:-

3.2.1 ensure appropriate staff are aware of and understand the Strategies;

3.2.2 provide information to help the Council to update and develop the Strategies;

3.2.3 demonstrate in the Delivery Plan how SHP contributes to meeting the objectives of the Strategies.

4 Equal Opportunities

4.1 The Council has a strong commitment to equal opportunities and in providing the Services SHP shall operate equal opportunity policies and procedures in all aspects of its work. By implementing these policies and procedures SHP shall ensure that it does not discriminate against any person or other organisation on the grounds of race, ethnic origin, disability, nationality, marital status, gender, sexual orientation, age, class, appearance, religion, religious belief, responsibility for dependants, unrelated criminal activities, being HIV positive or having AIDS, or any other matter which causes a person to be treated with injustice.

4.2 SHP shall follow the best professional practice in relation to equality and diversity and in particular (but without limitation) shall comply with all relevant legislation as well as statutory and other official guidance and codes of practice.

4.3 SHP shall maintain its own Equality and Diversity Policy

4.4 SHP shall provide such information as the Council may reasonably request for the purpose of assessing SHP's compliance with this Clause 4.

5 Tenant and Leaseholder Involvement

5.1 The Council has a partnership with its tenants and leaseholders, and to further this relationship SHP shall maintain a Resident Compact so as to support and encourage tenant and leaseholder involvement.

5.2 SHP shall amend the Resident Compact periodically so far as necessary to comply with all statutory requirements and other official guidance issued from time to time and shall follow best professional practice at all times.

5.3 The Resident Compact signatories will be asked to confirm that they are meeting their obligations and responsibilities as detailed within the Resident Compact on an annual basis.

5.4 The Resident Compact shall include strategies for involving 'under represented' groups and those tenants who do not normally get involved in the management of their homes.

5.5 The Council and SHP recognise the role of the Sutton Federation of Tenant and Resident Associations (SFTRA) in representing the interests of tenants, leaseholder and freeholders who pay a service charge and will ensure that they provide appropriate support to SFTRA to enable it to fulfil its role. This does not preclude other informal structures that may be set up as necessary to meet the terms of the residents compact.

PART B – PERFORMANCE RESPONSIBILITIES OF THE COUNCIL

6 Achieving Value for Money

- 6.1 The Council has a duty to achieve value for money and seeks to secure continuous improvement in the way in which its functions are exercised having regard to a combination of economy, efficiency and effectiveness. In discharging its responsibilities under this Agreement SHP shall also make arrangements to secure value for money (clause 8 – Performance and Value for Money).
- 6.2 The Council may propose periodically specific value for money reviews of the way in which functions delegated to SHP by this Agreement are delivered and resourced. SHP shall comply with any such proposals made by the Council.
- 6.3 Wherever the Council so requests SHP shall carry out, within the period(s) specified by the Council, any reviews of SHP's housing management function which the Council is required by statute to carry out.

PART C – PERFORMANCE RESPONSIBILITIES OF SHP

7 Delivery Plans

- 7.1 SHP shall provide to the Council's Representative by 31 December each year an initial draft of the Delivery Plan, which shall include the following supporting plans, for the subsequent financial year:
 - 7.1.1 a Service Improvement Plan;
 - 7.1.2 a Performance Plan;
 - 7.1.3 a Financial Plan and
 - 7.1.4 the current SHP Management Structure.
- 7.2 In addition, the Delivery Plan shall include:
 - 7.2.1 at least every five years:
 - a review of SHP's objectives in respect of the Services;
 - the overall strategy of SHP and how SHP will support the key strategic goals of the Council and the community which the Council serves;
 - 7.2.2 the financial and staffing resources required to enable SHP to deliver the Delivery Plan and perform the Services with skill, care and diligence;
 - 7.2.3 an analysis of the Services provided throughout the previous twelve months, identifying those areas which were successful and those which were unsuccessful;
 - 7.2.4 an identification in SHP's view of the reason for its successes and failures recognising that: (a) some of the matters may be due to SHP's performance of the Services (or the performance of its sub-contractors, Staff or agents); (b) others may be due to the actions or omissions of the Council, other companies engaged by the Council and/or the Council's staff; and (c) other matters may be due to external or other circumstances;
 - 7.2.5 any other matters specified by the Secretary of State under Section 6 of the Local Government Act 1999.

- 7.3 In developing the draft Delivery Plan SHP shall consult with relevant resident representative bodies and take their views into account.
- 7.4 The annual Service Improvement Plan shall set out a timetable of proposed strategic measures that might be taken by SHP in order to deliver the priorities identified in the Delivery Plan.
- 7.5 SHP shall make suggestions in the draft Service Improvement Plan for possible improvements in or development of the Services. The Council will consider any such suggestions but will be under no obligation to agree to any or all of them.
- 7.6 The annual Performance Plan shall contain the key performance indicators that measure SHP's progress in delivering both the priorities identified in the Delivery Plan and the strategic measures set out in the Service Improvement Plan with performance targets. It shall also contain any key performance indicators and targets which the Council deems appropriate for measuring and achieving success in delivering the housing management service.
- 7.7 SHP shall use all reasonable endeavours to comply with the timescales set out in the Delivery Plan for the current year when submitting the draft of the Delivery Plan each year to the Council's Representative.
- 7.8 The Council shall give due consideration to the draft Delivery Plan and shall notify SHP within fifteen (15) Working Days (or such other period as may be agreed between the parties) of receipt of the draft Delivery Plan as to whether the Delivery Plan is agreed.
- 7.9 If the Council notifies SHP that the draft Delivery Plan is not acceptable, it shall further notify SHP of any changes required which shall be made in time to meet the Council's timescales for formal (Member) approval of the Delivery Plan.
- 7.10 The annual Delivery Plan shall be agreed in accordance with this clause 7. In the event that the Council and SHP shall not have agreed the draft Delivery Plan by the relevant anniversary of the New Commencement Date the matter shall be resolved in accordance with the dispute resolution provisions in Clause 65 and pending final resolution in accordance with Clause 65 the then current Delivery Plan shall continue in full force and effect (incorporating such changes as shall have been agreed by both parties) until such resolution whereupon the draft Delivery Plan shall be adopted in accordance with the outcome of the dispute resolution process.
- 7.11 The Council and SHP shall hold a series of meetings throughout the year involving senior officers of both parties to discuss and review SHP's performance in the delivery of the current Delivery Plan.
- 7.12 Where the Council is not satisfied with SHP's performance following the review carried out in accordance with Clause 7.11 the Council shall be entitled to issue instructions to SHP to implement any measures which the Council may deem necessary to perform the current Delivery Plan.
- 7.13 Following the end of the financial year SHP shall prepare an annual report that allows the Council and residents to see how SHP has performed in relation to its annual Delivery Plan and its longer term service plan. This report shall be made available to all

residents and, if requested by the Council to do so SHP shall, present the report to the Housing Economic and Business Committee of the Council.

- 7.14 The Council may use the Delivery Plan in compiling its own service or business plans and in conducting any of its own service reviews (whether relating wholly or partly to housing or cross-cutting or otherwise).

8 Performance and Value for Money

- 8.1 Throughout the Contract Period the parties shall work together to ensure that this Agreement and SHP's performance of the Services pursuant to it represent value for money and achieve continuous improvement and efficiency gains for the benefit of the Council's tenants and leaseholders.
- 8.2 The submission of the annual Performance Plan by SHP to the Council as part of the Delivery Plan shall be without prejudice to any monitoring or performance review which may be carried out by the Council under any of the other terms of this Agreement .
- 8.3 At any time following any failure by SHP properly to perform its obligations under Clause 7 the Council shall be entitled to carry out itself (or to engage a third party to carry out) a review of the Services or any part thereof. SHP shall offer all necessary assistance to the Council and/or any third party in the carrying out of such review and shall attend such meetings and provide such documents and information as may be reasonably requested by the Council for this purpose.
- 8.4 SHP shall carry out any measure reasonably required by the Council or recommended by the Secretary of State or the relevant Social Housing Regulator in order to achieve value for money. SHP shall co-operate with and assist fully the Council, the Secretary of State and the relevant Social Housing Regulator during any inspection.
- 8.5 Within six (6) months of the end of each financial year SHP shall submit a value for money self-assessment to the Council. This self-assessment shall be based on any value for money standards currently in use by the Social Housing Regulator. In order to satisfy itself that SHP is delivering value for money the Council may, in discussion with SHP, undertake a validation of the self-assessment or other review as considered necessary.
- 8.6 Any dispute between the parties in relation to this Clause 8 may be referred by either party to the dispute resolution procedure in accordance with Clause 65.
- 8.7 In the event that following the submission of the value for money self-assessment, in accordance with clause 8.5, an external validation indicates that SHP was not demonstrating value for money the Council shall be entitled to terminate this Agreement upon giving six (6) calendar months' notice in writing to SHP or with immediate effect.

9 Performance Indicators

- 9.1 Whenever reasonably requested to do so by the Council SHP shall provide to the Council such information and data as are necessary to establish whether or to what extent SHP's performance of the Services matches the performance indicators set from time to time for local authority housing services and other similar measures.

10 Official Returns, Housing Inspections etc

- 10.1 SHP shall keep and maintain all necessary information and shall provide all necessary assistance to enable the Council to complete returns of housing statistics and other information relating to the Services including but without limitation:-
- 10.1.1 returns to central Government;
- 10.1.2 information required by the relevant Social Housing Regulator;
- 10.1.3 submissions or responses in respect of inspections.
- 10.2 SHP shall within the reasonable period of time specified by the Council in requesting the relevant assistance and/or information, provide the Council with such assistance and information as the Council may reasonably require to enable it to allocate such expenditure as the Council may incur under this Agreement between its General Fund and Housing Revenue Account. In particular, SHP shall provide copies of all relevant financial reports to SHPs Board and to the Council's Section 151 Officer.
- 10.3 SHP shall within the reasonable time specified by the Council in requesting the information provide such information as the Council from time to time shall reasonably require to permit the Council to complete management reports (whether of a regular or cyclical nature) on the provision of the Services.

PART D – STRATEGIC RESPONSIBILITIES OF SHP

11 Advice and Support in Developing Corporate Strategies and Reviews in the Council

- 11.1 SHP will be a strategic partner of the Council. The views of SHP as a stakeholder, a service user and service provider will be essential in the development of the Council's corporate strategies and reviews of services. SHP shall respond within agreed timescales to consultation requests on such corporate issues and will provide information as required. The Council shall have regard to such responses acting reasonably.
- 11.2 The Council will also consider the role that SHP might be able to play as a strategic partner when considering its commissioning options for a range of services.
- 11.3 The role of SHP as a strategic partner of the Council will provide a focus for regular meetings between the Council's Chief Executive and SHP's Chief Executive.

12 Working with the Council in Related or Partnership Activity

- 12.1 SHP shall at the request of the Council's Representative or in pursuit of Delivery Plan objectives work with other agencies, bodies and organisations in partnerships, fora and projects. This might include (but not be limited to) area and other consultative fora, community safety meetings, regeneration partnerships and social services case conferences.
- 12.2 SHP shall co-operate and work with the Council on Council-led regeneration and refurbishment projects by undertaking any work as may be required by the Council which is consistent with its role as housing management provider. SHP's role shall also extend (but not so as to be inconsistent with its principal role as a housing management

provider) to cover the management of commercial and other properties (which may include land) as specified by the Council and which falls within the delegation of functions as set out in the Fourth Schedule.

PART E – CONSULTATIONS

13 Consultation with Statutory and other Bodies

- 13.1 The Council's Representative shall carry out any and all consultations and negotiations with statutory or voluntary bodies in relation to such matters as shall from time to time be stipulated by the Council's Representative, and SHP shall, when required to do so by the Council's Representative, provide information, advice and assistance to support such consultations or negotiations.
- 13.2 Subject to Clause 13.1 and Clause 26 SHP shall carry out all other consultations or negotiations with the said statutory or voluntary bodies and shall respond to any enquiries from such bodies in relation to the circumstances of individual tenants or applicants for accommodation on such a basis (as to confidentiality and otherwise) as is appropriate and consistent with both SHP's and the Council's legal obligations and duties.

14 Consultation with Tenants and Leaseholders

- 14.1 Without prejudice to its continuing obligations under Section 105 of the Housing Act 1985 or Section 137 of the Housing Act 1996 the Council shall whenever reasonably requested by SHP to do so or otherwise as the Council shall deem appropriate in connection with the Services consult with its tenants and leaseholders about the subject-matter of this Agreement.

PART F – RESPONSIBILITIES OF SHP

15 Functions Delegated

- 15.1 The functions delegated by the Council for the purposes of this Agreement shall be those functions or activities identified in the Fourth Schedule as the responsibility of SHP.
- 15.2 SHP shall at any time be entitled to propose the delegation from the Council of any further functions or activities to SHP where SHP believes that such delegation may assist in the delivery of an improved housing service to tenants and leaseholders of the Council.
- 15.3 Upon receipt of a proposal from SHP pursuant to Clause 15.2 above the Council shall, acting reasonably, consider the proposal and shall notify SHP within a period of 21 days from receipt of the proposal of its response to the proposal. For the avoidance of any doubt the Council shall have complete discretion in deciding upon its response to SHP.
- 15.4 Where interfaces exist between operational processes carried out by SHP and those carried out by the Council, or a third party where applicable, and where considered necessary by either party, Operational Protocols shall be agreed between the parties and put in place in order to ensure a collective and agreed understanding of mutual roles and responsibilities and the smooth running of day to day operations. A listing of

the suite of Operational Protocols as at the date of this Agreement is set out in the Fifth Schedule.

- 15.5 For the avoidance of doubt the Operational Protocols may be varied from time to time and new Operational Protocols agreed by the parties may be added from time to time with the agreement of both parties.

16 Providing the Services

- 16.1 In consideration of the Management Fee SHP shall at all times perform the Services in accordance with this Agreement including the Contract Standard which shall require SHP to perform the Services with all due skill, care and diligence and in accordance and otherwise in compliance with:-
- 16.1.1 the Delivery Plan and in particular (but without limitation) the key performance indicators of the Services set out therein;
 - 16.1.2 any performance indicators issued by the Government or regulatory body which are relevant to the performance of the Services or any part thereof;
 - 16.1.3 any reasonable instructions issued to SHP by the Council's Representative pursuant to or in connection with this Agreement;
 - 16.1.4 any conditions attached to the approval given by the Secretary of State pursuant to Section 27 of the Housing Act 1985 to delegate those functions referred to in clause 15;
 - 16.1.5 all legislation;
 - 16.1.6 in a manner which shall preserve, promote and enhance and shall not prejudice the reputation and interests of the Council;
 - 16.1.7 in good and full co-operation with any other company or consultant engaged by the Council to carry out related or relevant works or services on behalf of the Council; and
 - 16.1.8 in a manner which has regard to the interests and welfare of tenants and/or residents and the management and maintenance of the Dwellings to a high standard.
- 16.2 SHP shall inform the Council's Representative promptly, and confirm in writing, within two Working Days of such notification if SHP is unable or fails to provide the Services or any part thereof, or if SHP is aware of anything of whatsoever nature and whether or not the result of any act or omission on the part of the Council which prevents or hinders or which may prevent or hinder SHP from complying with its obligations under this Agreement giving details of the circumstances, reasons and likely duration. Notification given by SHP in accordance with this Clause 16.2 shall not in any way release or excuse SHP from any of its obligations under this Agreement.
- 16.3 Should SHP require any further instruction or information which is necessary for or in connection with the provision of the Services, SHP shall make a written application in adequate detail for the same to the Council's Representative and the Council shall respond in a reasonable timescale.
- 16.4 SHP shall at all times during the provision of the Services allow the Council's Representative and such persons as may from time to time be nominated by the Council's Representative access to:

- 16.4.1 all offices and work places of SHP for the purpose of monitoring and inspecting work being performed in order to provide the Services;
- 16.4.2 all offices and work places of SHP for the purpose of inspecting any or all records and documents in the possession, custody or control of SHP in connection with the provision of the Services;
- 16.4.3 any personnel or agents of SHP for the purpose of interviewing such persons in connection with the provision of the Services;
- 16.4.4 all technology, resources, equipment, systems, and procedures used or proposed to be used in connection with the provision of the Services.
- 16.5 SHP shall at all times comply with SHP's Standing Orders and Financial Regulations as the same may from time to time be amended, varied or replaced except that where SHP acts as agent of the Council SHP shall (as far as is relevant) comply with the Council's Standing Orders and Financial Regulations.
- 16.6 If SHP is unable or fails to provide the Services or any part thereof in accordance with the requirements of this Agreement the Council may itself provide or may employ and pay other persons to provide the Services or any part thereof and all costs incurred thereby shall (if and to the extent the Council so determines) be reflected in a variation to the then Delivery Plan. The Council's rights under this Clause 16.6 shall be without prejudice to any other rights or remedies which it may possess.
- 16.7 SHP shall as may be necessary or desirable co-operate, liaise with, and co-ordinate its activities with those of any other company(ies) and/or sub-contractor(s) employed directly or indirectly by the Council and shall provide the Services in harmony with and at no detriment to any other services provided by or on behalf of or to the Council. In particular (but without limitation) SHP shall take all practicable steps to ensure that upon the expiry or earlier termination of this Agreement any replacement company which takes over responsibility for provision of the Services or the Council's own employees can immediately provide services to the Council on the same basis and to the same standard as set out herein.
- 16.8 SHP shall provide each year to the Council's Representative a copy of its audited accounts within six (6) months of the relevant accounting reference date. In the event that SHP fails to provide accounts in accordance with this Clause 16 then, without prejudice to any other rights or remedies available to the Council, the Council's Representative or such persons as may from time to time be nominated by the Council's Representative shall be given access to all and any accounting documents and information in the possession, custody or control of SHP.
- 16.9 SHP shall maintain such quality management systems and procedures as are appropriate to enable SHP to ensure that the Services are always provided to the Contract Standard and SHP shall afford the Council full access to such systems and procedures for audit or other purposes. In the event that SHP fails to comply with this Clause 16.9 the Council shall be entitled to establish its own quality management systems and procedures and require SHP to use the same.
- 16.10 SHP from its own resources shall join and co-operate with the Council in such tenant consultation and liaison as the Council may reasonably require from time to time.

- 16.11 SHP shall ensure that in the event of any emergency or significant unforeseen difficulty occurring with respect to the delivery of the Services appropriate SHP personnel shall advise the Council's Representative as a matter of urgency and shall continue to take responsibility for the situation until it is agreed by the Council's Representative that responsibility may be handed over to another agency or authority.
- 16.12 SHP shall ensure that it, its employees, agents, contractors and sub-contractors abide by the Bribery Act 2010.
- 16.13 SHP shall not permit its interests to interfere or conflict with its duty (which SHP hereby acknowledges) to provide the Services with the utmost good faith.
- 16.14 SHP shall include in its policies and procedures and comply with the principles contained in:
- (a) the Government Prevent Strategy; and
 - (b) the Government Prevent Guidance and Toolkit.
- 16.15 SHP shall include in its policies and procedures a requirement for staff to complete appropriate training programmes in order to comply with the Government Prevent Strategy.
- 16.16 SHP shall appoint and maintain a lead officer on Prevent matters and shall ensure that all times that person is appropriately authorised and resourced to procure the full and effective performance of SHP's obligations under Clauses 16.14 and 16.15.
- 16.17 SHP shall notify the Council's Representative in writing of any change to the identity of the lead officer as soon as practicable and, in any event, no later than ten (10) Working Days after the change.
- 16.18 SHP shall in its performance of the Services use all reasonable endeavours to ensure it uses working methods, equipment, materials and consumables which minimise environmental damage. In particular, SHP shall ensure that it fully complies with the environmental obligations laid down in the Council's Environmental Policy and Environmental Purchasing Policy, that it is familiar with the Council's Environmental Policy provided to SHP by the Council and that it will support and assist the Council in meeting the aims laid down in it.
- 16.19 SHP shall have either a registered Environmental Management or be willing to work with the Council to develop an Environmental Improvement Programme.

17 Statutory Requirements

- 17.1 Without prejudice to the particularity of other Clauses in this Agreement SHP shall comply with all statutory requirements to be observed and performed in connection with the Services.

18 Variations to Tenancy Agreements

- 18.1 SHP shall not vary or accept or acquiesce in any variation to the Council's form of secure, introductory or any other applicable form of tenancy agreement or conditions or any handbook or other provisions incorporated therein without the prior written consent of the Council.

19 SHP's Personnel

- 19.1 SHP shall employ sufficient persons to ensure that the Services are provided at all times and in all respects in accordance with this Agreement.
- 19.2 SHP's personnel employed in and about the provision of the Services shall be properly and sufficiently qualified, competent, skilled, honest and experienced and shall at all times exercise care in the execution of their duties and SHP shall ensure that such persons are properly and sufficiently instructed and supervised with regard to the provision of the Services and in particular:
 - 19.2.1 the task or tasks such persons have to perform
 - 19.2.2 all relevant provisions of this Agreement
 - 19.2.3 all SHP's guidelines and policies in relation to customer care
 - 19.2.4 all relevant policies, rules, procedures, standards and Standing Orders and Financial Regulations of SHP and of the Council where SHP acts as agent of the Council
 - 19.2.5 all relevant rules, procedures, statutory requirements and EU Directives concerning health and safety, including SHP's health and safety policy.
- 19.3 SHP shall maintain and submit to the Council a schedule setting out the posts to which SHP will check the applicants' names with the Disclosure & Barring Service. SHP shall not appoint an applicant to any such post unless and until a satisfactory result has been received from the Disclosure and Barring service in respect of the relevant applicant.
- 19.4 SHP shall review the Schedule referred to in clause 19.3 annually or as often as may reasonably be required and submit the same to the Council each time it is updated.

20 Control and Supervision of SHP's Personnel/SHP's Representative

- 20.1 SHP shall appoint a senior person as SHP's Representative empowered to act on behalf of SHP for all purposes connected with this Agreement. Such appointment or any further appointment shall be subject to the written approval of the Council. SHP's Representative shall not be replaced without the prior written approval of the Council, such approval not to be unreasonably withheld. Any notice, information, instruction or other communication given to SHP's Representative shall be deemed to have been given to SHP.
- 20.2 SHP shall forthwith give notice in writing to the Council's Representative of the identity, address and telephone numbers of the person appointed as SHP's Representative and of any subsequent appointment.
- 20.3 SHP shall forthwith give notice in writing to the Council's Representative of the identity, address and telephone numbers of any person authorised to act for any period as deputy for SHP's Representative and when such deputy ceases to be so authorised.
- 20.4 SHP shall ensure that SHP's Representative, or a competent deputy, duly authorised by SHP to act on its behalf, is present at all work places of SHP, where work in connection with the Services is being carried out and available to meet the Council's Representative at all reasonable times.

20.5 SHP shall provide and shall ensure that its personnel wear, at all times when engaged in the provision of the Services, such identification (including photographic identification) as may be specified by the Council, and shall ensure that when requested to do so any personnel of SHP shall disclose their identity and status as personnel of SHP.

21 Use of Assets

21.1 SHP shall at all times during the Contract Period provide and maintain all such vehicles, equipment and other assets (hereinafter together referred to as "**Assets**") and materials as may be necessary from time to time for the provision of the Services.

21.2 SHP shall be responsible for the maintenance and (where necessary) replacement of all Assets.

21.3 All Assets employed by SHP in the performance of the Services at any time shall be either owned or hired by SHP pursuant to a contract of simple hire (and not hire purchase) (the "Hire Contract") the benefit of which contract must be capable of assignment by SHP to the Council or to an organisation nominated by the Council for the purpose of carrying out the Services (or any of them) so that the Assets are available in order that the Services may continue to be provided by the Council or a third party in the event of the termination of this Agreement for any reason.

21.4 SHP shall ensure that any such Hire Contract requires the owner of the relevant Assets to hire the Assets to the Council on the same terms as the Assets were hired to SHP save that the Council shall be entitled to permit the use of the Assets by any other body or person providing the Services (or any of them) or such other organisation providing the Services (or any of them) on behalf of the Council PROVIDED THAT the Council shall have served on the said owner after termination of this Agreement notice in writing requiring compliance with the said provision of the Hire Contract and upon the Council undertaking to pay all hire charges from the date of such notice.

21.5 SHP shall at all times be responsible for any necessary licensing and for the payment of all licensing fees, taxes and insurances as may be required in connection with the possession or use of all Assets employed in the provision of the Services.

21.6 SHP shall put, keep and maintain all Assets employed in the performance of the Services at all times in good and serviceable repair and in such condition as is required for the proper performance by SHP of its obligations under this Agreement.

21.7 All Assets and materials used by SHP shall conform to any applicable British Standard and when so requested SHP shall provide the Council with evidence to prove that such Assets and materials so conform.

21.8 SHP shall permit the Council to inspect at any time any Assets or materials used or proposed to be used by SHP in the provision of the Services and SHP shall facilitate such inspections.

21.9 At the expiry of the Contract Period (or upon termination of this Agreement, if earlier) the Council may serve a notice upon SHP requiring SHP to transfer free of charge to the Council or any other person or persons as may be specified in such notice (a) all Assets and materials used by SHP; and (b) the benefit of all contracts or agreements relating to the hire of the Assets.

21.10 Upon receipt of a notice under Clause 21.9 requiring SHP to transfer to the Council or any Council nominee the benefit of any contract or agreement for the hire of any Assets SHP shall forthwith execute all documents required to effect such transfer and shall deliver such Assets to the Council in such condition as it may be in at the date of the said notice.

22 Contracts to be Administered

22.1 SHP shall act on behalf of the Council in administering the Contracts and shall:-

22.1.1 comply with all reasonable requirements of the Council in respect of any or all of the Contracts

22.1.2 monitor and review the performance of those carrying out the Contracts

22.1.3 take all proper steps (but not including legal action or proceedings unless so required expressly in writing by the Council) to enforce the Contracts

22.1.4 at the request of the Council supply all information including copies of any documents to the Council

22.1.5 liaise with the Council in respect of any renewal or re-letting of any of the Contracts;

22.1.6 notify the Council promptly of any notice(s) received from any party to a Contract and forward such notice(s) to the Council's Representative within two (2) Working Days of receipt.

23 Assignment, Sub-contracting and the Provision of Services to Third Parties

23.1 SHP shall not:

23.1.1 assign this Agreement or any part thereof or the benefit or advantage of this Agreement or any part thereof;

23.1.2 sub-contract the provision of the Services or any part thereof to any person without the previous written consent of the Council's Representative and which if given shall not relieve SHP from any liability or obligation under this Agreement and SHP shall be responsible for the acts, defaults or neglect of any sub-contractors, its employees or agents in all respects as if they were the acts, defaults or neglect of SHP itself.

23.2 SHP shall ensure that any sub-contractor permitted to perform any part of the Services under this Clause 23.1.2. shall be fully supplied with all necessary information about this Agreement (including any relevant instructions given by the Council's Representative to SHP).

23.3 SHP shall be entitled to carry out work for or provide services to third parties provided that:

23.3.1 it ensures that it first carries out a comprehensive risk assessment of the impact of work for third parties on its obligations under this Agreement, which it shall share with the Council, taking into account the volume of activity that this work will entail;

23.3.2 such work or provision of services to third parties does not conflict with or impact adversely upon the provision of the Services or contravene the requirements of Regulation 12 of the Public Contracts Regulations 2015;

- 23.3.3. SHP does not put at risk its Teckal exemption; and
- 23.3.4 in all cases SHP carries out a risk assessment and provides this to the Council prior to any formal agreement being reached with a third party. The Council shall have the right to raise any questions or comments about this.
- 23.4 SHP shall indemnify the Council against any claims losses or other liability arising out of the carrying out of such work and/or provision of such services to third parties provided that the Council shall promptly notify any such claim to SHP and shall not admit or compromise any such claim without SHP's consent (such consent not to be unreasonably withheld or delayed);
- 23.5 SHP shall maintain adequate insurance to cover for all of SHP's potential liabilities to the Council or any third party under this Clause 23 and shall produce evidence of the same to the Council on demand.

24 Use of Computer Systems and Software

- 24.1 The Council shall permit SHP to use for the purposes of providing the Services those elements of the Council's Computer Systems and/or Software as referred to in the First Schedule subject to such terms, conditions and stipulations as are set in the First Schedule or as the Council may notify to SHP from time to time.
- 24.2 SHP shall use the Council's Computer Systems and/or Council's Software for the purposes of providing the Services and for the benefit of the Council and shall not under any circumstances (unless expressly authorised so to do by the Council's Representative) make use of the Council's Computer Systems and/or Council's Software for any third party or allow any other party to use the same
- 24.3 Without prejudice to Clause 24.8 SHP shall take all practicable steps to safeguard those parts of the Council's Computer Systems and the Council's Software under the control or influence of SHP against unauthorised access, tampering or systems failure.
- 24.4 If and to the extent that SHP wishes to use any other computer systems and/or software in the provision of the Services and to the extent that interface with the Council's Computer Systems and/or Council's Software is necessary so to do SHP shall first obtain the written consent of the Council's Representative and if such consent is given it shall be a condition thereof that SHP shall:-
 - 24.4.1 ensure that such other computer systems and/or software are compatible with the Council's Computer Systems and/or the Council's Software and further will have no adverse effects on the Council's other Computer Systems and/or Software and/or procedures;
 - 24.4.2 ensure that any computer software it uses is properly licensed;
 - 24.4.3 comply with all relevant requirements of any supplier of the Council's Computer Systems and/or the Council's Software.
- 24.5 If at any time SHP believes that changes modifications or updating to the Council's Computer Systems and/or Council's Software or to its other computer systems and/or software (as the case may be) are required or would assist in the provision of the Services SHP may make proposals for such changes to the Council's Representative

and if the Council's Representative gives his consent to such changes it shall be a condition of such consent that:-

- 24.5.1 all rights (including licences) in or arising from such changes shall become vested in the Council insofar as they relate to the Council's Computer Systems and/or Council's Software;
- 24.5.2 the Council shall be entitled to require SHP on termination of this Agreement by expiry of time or otherwise either to take all necessary steps (including the assignment of licences) to vest the rights in such changes and all data and information in respect of the Services and all related matters in the Council or such other person as the Council may direct or to restore the Council's Computer Systems and/or the Council's Software to the status quo ante the said changes. The cost of such changes modifications or updating shall be reflected in the relevant part of the Delivery Plan.
- 24.6 If at any time the Council has reason so to do (including but not limited to actual or threatened interference with or damage to the Council's Computer Systems and/or the Council's Software) the Council shall be entitled to require that SHP ceases to use the Council's Computer Systems and/or the Council's Software and disconnect or otherwise separate SHP's own computer systems and/or software from the Council's Computer Systems and/or Council's Software. The Council will not exercise this right without giving as much notice as practicable (save in cases of urgency) and agreeing to an appropriate variation to the Delivery Plan in accordance with Clause 61 to reflect the cost of SHP providing its own computer systems and software.
- 24.7 SHP shall afford access to any of the computer systems, software, databases and operations used by it pursuant to this Agreement to the Council's Representative and any person (including auditors) nominated by them for all purposes connected with the subject-matter of this Agreement and the Council's own activities.
- 24.8 SHP shall comply with any security policy which may from time to time be issued by the Council relating to those Council Systems identified in the First Schedule.
- 24.9 Where SHP is using its own computer systems and/or software, it shall have appropriate security policies in place.
- 24.10 Where the Council uses SHP computer systems and/or software as identified in the First Schedule, the Council will comply with any relevant security policy which may from time to time be issued by SHP.
- 24.11 On termination of this Agreement by expiry of time or otherwise SHP shall transfer all data and information in respect of the Services and all matters relating thereto within a reasonable time and with due expedition to the Council or such other person as the Council may direct and until such transfer shall on being so requested by the Council afford access to the same to the Council or such other person as the Council may authorise including but not limited to permitting use thereof and providing all data and/or information requested.

25 Data

- 25.1 SHP shall ensure that the Council's data relating to the Services is kept up-to-date.

- 25.2 Without prejudice to Clauses 24.3 and 24.4 and subject to Clause 26 SHP shall take all practicable steps to safeguard such data and information as is stored on the Council's Computer Systems and/or Council's Software against unauthorised access, tampering or system failure.
- 25.3 SHP shall at all times ensure that where (following consent under Clause 24.4) SHP is using SHP's own computer systems:-
- 25.3.1 comprehensive security copies of any computerised Council Data are updated at the end of each Working Day in relation to that day and at least twice a week are stored in a secure location so as to enable SHP (or in the event of the default of SHP the Council or such other third party as the Council may appoint) to initiate and operate such alternative processing arrangements as may be necessary including (but without limitation) in the event of a partial or complete failure of SHP's own computer systems
- 25.3.2 adequate recovery arrangements exist to ensure that SHP can continue to comply without interruption with its remaining obligations under this Agreement in the event of a partial or complete failure of SHP's own computer systems or software.

26 Data Protection

- 26.1 Without prejudice to Clause 25 and subject to Clause 24.8:-
- 26.1.1 both parties shall comply with their obligations under the Data Protection Act 1998 (including where appropriate obtaining registration thereunder) and the Computer Misuse Act 1990 insofar as the performance of the Services and the other requirements of this Contract give rise to obligations under that Act;
- 26.1.2 each party shall provide the other with such information as the other party may require to satisfy itself that the other party is complying with the obligations referred to in Clause 26.1.1;
- 26.1.3 SHP shall provide the Council with all such assistance as the Council may require to enable the Council to comply with its obligations under the Access to Personal Files (Housing) Regulations 1989;
- 26.1.4 SHP shall make such application for a change in its registration and take such other steps as may be necessary to afford the Council access to information which is required by the Council in connection with any of its statutory duties and responsibilities and for any purpose connected with this Agreement.
- 26.2 Neither party shall knowingly do anything which places the other in breach of its obligations under the Data Protection Act 1998 or under the Human Rights Act 1998 or the Freedom of information Act 2000.

27 Confidentiality

- 27.1 SHP shall not and shall ensure that its employees agents and subcontractors shall not divulge or dispose of or part with possession custody or control of any confidential material or information provided to SHP by the Council pursuant to this Agreement or prepared or obtained by SHP pursuant to this Agreement other than in accordance with the express written instructions of the Council's Representative or in compliance with statutory requirements.

28 Health and Safety

28.1 Both parties shall at all times comply with the requirements of the Health and Safety at Work, etc. Act 1974, the Management of Health and Safety at Work Regulations 1999 (including the provision by SHP of a copy of its risk assessment under such regulations), and of all other Acts, Regulations, Orders or rules of law pertaining to health and safety.

29 Insurances

29.1 Save as otherwise provided in the leases referred to in clause 39.1 the Council shall during the Contract Period be responsible for insuring its premises against fire, explosion, storm and damage on such terms and against such other risks as the Council shall from time to time determine.

29.2 SHP shall at all times maintain in force such policies of insurance with reputable insurers or underwriters approved by the Council as shall fully insure and indemnify SHP against its liability:-

29.2.1 to the Council and any employee of the Council;

29.2.2 to the employees of SHP;

29.2.3 to any other person;

in the sum of an amount that meets or exceeds industry norms.

29.3 SHP shall insure against any expense, liability, loss, claim or proceedings in respect of any damage whatever to private property (real or personal) insofar as such damage is due to the negligence, act, omission or default of SHP, its employees or agents or any sub-contractor or person for whom the sub-contractor is responsible.

29.4 Without prejudice to the generality of this Clause 29, it is hereby agreed and declared that SHP shall be liable for any loss or damage whatsoever and howsoever caused to the contents of the Premises.

29.5 SHP shall maintain insurance in such sum as shall be specified by the Council in respect of personal injury to or the death of any person under a contract of service with SHP and arising out of an incident occurring during the course of such person's employment in compliance with the Employer's Liability (Compulsory Insurance) Act 1969 and the Road Traffic Act 1988 and any statutory orders made thereunder.

29.6 SHP shall maintain all other insurances as may be necessary or prudent for the performance of the Agreement.

29.7 SHP shall ensure that all relevant insurance policies shall have the interest of the Council endorsed upon them or shall otherwise expressly by their terms confer their benefits upon the Council.

29.8 SHP shall as at the New Commencement Date and thereafter on each anniversary thereof and at such other times as the Council may reasonably require supply the Council with certified copies of all insurance policies required by any of the provisions of this Clause 29 and with any cover notes, premium receipts or other documents

necessary to show that such policies are fully maintained and otherwise comply with the Agreement.

- 29.9 If and to the extent that the Council is dissatisfied as to the adequacy of any policy of insurance effected by SHP pursuant to this Clause 29 it shall give notice in writing to SHP to that effect and upon receipt of such notice SHP shall forthwith procure and effect such additional, enhanced or other insurance as the Council may require.
- 29.10 In the event that SHP fails to comply with a requirement of the Council in accordance with Clause 29.9 the Council shall be entitled to take either or both of the following steps:-
- 29.10.1 effect such insurances itself and reflect the costs of so doing in the then current Delivery Plan;
- 29.10.2 commence termination or other action in accordance with Clause 63.
- 29.11 The Council acknowledges that SHP may (if the Council so agrees) discharge its obligations under this Clause by procuring some or all the above insurances through or by the Council or its agents.
- 29.12 SHP's obligation to insure under this Clause 29 shall not apply in respect of a particular area of insurance to the extent that the parties agree in writing that such insurance is not available from a reputable insurer at commercially acceptable rates.

30 Co-operation with the Housing Regulator

- 30.1 Without prejudice to the other applicable provisions of this Agreement SHP shall co-operate fully with the Regulator in respect of the inspection of (a) the operation of this Agreement and the work of SHP and (b) the Council's own housing service whether in relation to SHP's work on behalf of the Council or the Council's own retained functions and activities.

31 Provision of Information

- 31.1 Without prejudice to the other provisions of this Agreement SHP shall provide, within the time specified by the Council in the request all relevant information which may be required by the Council in order that the Council can act fairly, properly and in accordance with its statutory obligations in connection with the provision of the Services or the future provision of the same or any similar services and also to deal with investigations or inquiries by an Internal or External Auditor, Ombudsman and similar persons or bodies.
- 31.2 Subject to Clause 31.1 SHP shall consult as often as may be necessary with the Council's Representative or with such other member of the Council's retained housing staff as the Council's Representative may specify from time to time to ensure that the Services are provided and continue to be provided in a continuous and efficient manner and in accordance with the provisions of this Agreement.
- 31.3 SHP's Representative and the Council's Representative shall at a mutually convenient time and location attend the following meetings to be arranged from the New Commencement Date:-

- 31.3.1 at least once a month to discuss operational issues;
- 31.3.2 at least once a month to discuss:
 - (i) the manner and extent of SHP's provision of the Services pursuant to this Agreement and the Delivery Plan
 - (ii) financial and budgetary issues
 - (iii) any other relevant issues which may arise from time to time;

subject to the Council's right reasonably to vary the number of such meetings by providing SHP with reasonable prior notice thereof.

- 31.4 SHP shall observe and comply with any reasonable and appropriate instructions or directions given or made by the Council's Representative so as to help ensure the proper performance of the Services in accordance with the Delivery Plan and all such instructions or directions shall be confirmed in writing by the Council's Representative before the end of the Working Day which follows the issue of such instructions or directions.
- 31.5 SHP shall inform the Council's Representative immediately by telephone or email (and shall confirm in writing as soon as practicable following such call or email) of any or all of the following matters:-
 - 31.5.1 any failure by SHP or its employees or agents or other persons providing services to the Council to meet obligations under this Agreement;
 - 31.5.2 any acts or omissions by the Council or such other persons as are referred to in Clause 31.5.1 which prevent or hinder or are likely to prevent or hinder SHP from complying with its obligations under this Agreement;
 - 31.5.3 any points of contention or other difficulties with any local tenants groups or comparable organisations which might prevent or hinder SHP from complying with its obligations under this Agreement.
- 31.6 SHP shall co-operate with all Council departments and vice versa to enable them and SHP better to perform their functions and duties either by means of the provision of information or by such other appropriate means as do not involve out-of-pocket expenditure.
- 31.7 SHP and the Council shall establish such mutual arrangements as may be necessary (whether by pager, mobile telephones, email or otherwise) to ensure that the liaison arrangements stipulated in this Agreement can be achieved.
- 31.8 SHP shall liaise with Council Members, Members of Parliament and other elected representatives in such a manner as shall be reasonably required from time to time by the Council's Representative.

32 Fraud

- 32.1 As soon as SHP becomes aware of or suspects any fraudulent action or malpractice in the provision of the Services or which otherwise affects it SHP's Representative shall notify the Council's Representative and at the same time fully and expeditiously investigate the alleged fraud or malpractice to a conclusion.

- 32.2 SHP shall afford all possible access and facilities to the Council's Representative and his nominees and agents in the event that the Council's Representative in his sole discretion decides to carry out his own investigation into any such fraudulent action or malpractice, whether the investigation arises following a notification under Clause 32.1 or as a result of the Council's Representative's own information.
- 32.3 The Council's Representative shall have the right (without prejudice to Clause 32.2) to require that SHP suspend from any further work on this Agreement any person suspected of fraudulent action or malpractice.
- 32.4 Without prejudice to any other rights the Council may have (including but not limited to termination under Clause 63) the Council's Representative shall be entitled to require that SHP suspends all or any stipulated further work under this Agreement if the Council's Representative has reasonable grounds for believing that fraudulent activity or malpractice has taken place.

33 Complaints / Whistle Blowing

- 33.1 SHP shall at the request of the Council's Representative, in the places and in a form approved by the Council's Representative, arrange for notices to be permanently displayed giving information as to how complaints about the provision of the Services may be made. SHP shall deal with any complaints received from whatever source in a prompt, courteous and efficient manner.
- 33.2 SHP shall keep a written record of all complaints received and of the action taken in relation to such complaints. Such records shall be kept available for inspection by the Council's Representative at all reasonable times. SHP shall provide regular reports on complaints to the Council's Representative.
- 33.3 SHP shall maintain its own complaints and whistle blowing policies in agreement with the Council.
- 33.4 Any costs incurred by the Council in responding to and dealing with any justified complaints about SHP's performance of the Services (including any matters raised with the Ombudsman) shall be reflected in a variation to the current Management Fee.
- 33.5 SHP acknowledges that for the purposes of this Clause 33 the term "complaints" includes (without limitation) suggestions from a member of the public or an elected representative as to how the Services might or should be performed as well as personal or particular concerns about tenancies or Dwellings.

34 Legal Investigations

- 34.1 SHP immediately upon becoming aware of the same shall notify the Council's Representative of any accident, damage or breach of any statutory provision which affects or might reasonably be expected to affect SHP's ability to comply with the Delivery Plan or deliver the Services in accordance with this Agreement
- 34.2 If requested to do so by the Council's Representative, SHP shall provide the Council's Representative with any relevant information in connection with any legal inquiry, arbitration or court proceedings in which the Council may become involved or any

relevant disciplinary hearing internal to the Council and through the appropriate officers or employees shall give evidence in such inquiries or proceedings or hearings.

- 34.3 Should any part of the Services involve SHP in performing duties or exercising powers under some other contract it shall upon becoming aware of anything which is likely to give rise to arbitration or litigation forthwith notify the Council's Representative of the existence of any such matter together with such particulars as are available.

35 Agency

- 35.1 Neither SHP nor its personnel shall in any circumstances hold itself or themselves out as being the servant or agent of the Council otherwise than in circumstances expressly permitted by this Agreement.
- 35.2 Neither SHP nor its personnel shall in any circumstances hold itself or themselves out as being authorised to enter into any contract on behalf of the Council or in any other way to bind the Council to the performance, variation, release or discharge of any obligation otherwise than in circumstances expressly permitted by this Agreement.
- 35.3 Neither SHP nor its personnel shall in any circumstances hold itself or themselves out as having the power to make, vary, discharge or waive any byelaw or regulation of any kind.

36 Security

- 36.1 SHP shall maintain and shall ensure that its personnel and all its visitors maintain the security of such of the Council's Premises whether or not SHP's use has been permitted under leases under Clause 40 or otherwise both when in use and when not in use.
- 36.2 SHP shall ensure that access to the Premises of the Council which it is permitted to use, whether under Clause 39 or not, is restricted to its personnel and visitors engaged upon or in connection with the provision of the Services.
- 36.3 SHP shall comply with the Council's security regulations including any made for the purpose of the Data Protection Acts 1984 and 1998.
- 36.4 SHP shall provide to any of its personnel, who shall at any time have access to any relevant Premises of the Council, security passes in such form as the Council may from time to time determine and issue to SHP.
- 36.5 SHP shall be responsible for the safekeeping of any keys, passes and other means of access provided to SHP by the Council.

PART G – RESPONSIBILITIES AND RIGHTS OF THE COUNCIL

37 Provision of information

- 37.1 Subject always to any legally binding constraints (whether under statute or otherwise) the Council shall use its reasonable endeavours to provide SHP with such information as SHP may properly require to enable it to comply with its obligations under this Agreement.

38 Assignment

38.1 The Council shall not assign the benefit of this Agreement save by operation of law pursuant to a statutory scheme or otherwise as directed by the Secretary of State.

38.2 SHP shall not assign, sub contract or novate this Agreement or any part of it.

39 Use of Premises

39.1 SHP shall continue to hold the lease of the Premises granted to it by the Council under the terms of the Original Agreement.

39.2 In relation only to the Sutton Gate Leases which the Council assigned to SHP pursuant to the Original Agreement the following provisions shall apply:-

39.2.1 SHP shall continue to hold the Sutton Gate Leases on the following conditions:-

39.2.1.1 in relation to the whole or any part of the premises demised by the Sutton Gate Leases SHP shall not assign or underlet to or hold in trust for or part with or share possession or occupation with anyone other than the Council without permission from the Council;

39.2.1.2 the Council shall have the right (which shall be exercisable at its sole discretion) to require SHP to assign to it the remainder of the term under any of the Sutton Gate Leases (and for the avoidance of doubt, the Council is under no obligation to exercise this right in relation to any Sutton Gate Lease which has been renewed by SHP on terms which have not been previously agreed by the Council) in the event that the exercise of the general management, regulation and control of the Council's housing accommodation reverts to the Council.

39.2.2 Upon written notice from the Council to SHP requiring assignment of any of the Sutton Gate Leases SHP shall assign the Sutton Gate Leases to the Council without undue delay.

40 Housing Regulator

40.1 The Council shall afford SHP all reasonable assistance in order to enable SHP to comply with its obligations under Clause 30.

41 Audits

41.1 SHP shall at all times (including following the termination of this Agreement) allow or procure for any auditor or for the Council's Representative (or his nominee) for the purposes of an internal or external audit or inspection:-

41.1.1 immediate access to:

41.1.2 permission to copy and remove any copies of:

41.1.3 permission to remove the originals of:

any books, records and information in the possession or control of SHP which in any way relate to or are or were used in connection with the provision of the Services including (but without limitation) any of the Council's Data and any such information stored on a computer system operated by SHP.

41.2 SHP shall provide all co-operation and afford all access to personnel and records in order to assist the Council in carrying out any investigations which are carried out after the termination or expiry of this Agreement.

42 Services Supplied by the Council

42.1 The Council shall supply the services described in the Third Schedule on the terms set out therein. SHP shall have the right to use other suppliers to provide the services.

43 Intellectual Property Rights

43.1 At the expiry or earlier termination of this Agreement, SHP shall transfer to the Council or whomsoever the Council shall direct all documents, material, data and other information (in whatever form) in its possession relating to this Agreement, together with any relevant computer software processing facilities.

43.2 Any and all intellectual property rights in any matter or thing developed under this Agreement or arising from the provision of the Services by SHP (including, without prejudice to the generality of the foregoing, any software) other than intellectual property rights belonging to a third party shall belong to the Council and SHP agrees that it shall execute or cause to be executed all deeds, documents and acts required to vest such intellectual property rights in the Council.

44 Right to Use Documents

44.1 The ownership of and an unrestricted right to use any document produced by SHP, its sub-contractors and agents for all purposes envisaged by or arising under this Agreement shall be vested in the Council.

44.2 At the expiry or earlier determination of this Agreement SHP shall transfer all documents, materials and other information (in whatever form) in its possession relating to this Agreement to the Council or whomsoever the Council shall direct.

45 Right to use Premises

45.1 SHP shall permit the Council to use any of the Premises at any time in the event of a declaration of a civil emergency by the Council and SHP shall give all necessary assistance including the provision of staff to the Council in arranging emergency use.

45.2 Without prejudice to the provisions of Clause 45.1 SHP shall upon the occurrence of a civil emergency and at the request of the Council use its best endeavours to provide the following services under the control and direction of the Council's Emergency Officer or his designated representative:-

45.2.1 to make provision for persons made homeless as a result of the emergency and evacuees and to supervise and co-ordinate the efforts to secure immediate temporary accommodation for the same including the use of vacant dwellings, sheltered schemes, communal areas in community centres, and other halls and meeting places as SHP (having consulted with the Council) deems appropriate and in addition SHP shall so far as possible assist in the equipping of such places for use as temporary accommodation

- 45.2.2 to liaise with the Council and such other organisations as the Council shall decide in order to co-ordinate action in dealing with homeless persons and evacuees;
- 45.2.3 to co-ordinate and supervise the operation of the provision of temporary accommodation described in Clause 45.2.1;
- 45.2.4 to set up and maintain arrangements for the reasonable protection of any property brought to any temporary accommodation by evacuees and to liaise with the police and other relevant bodies in relation to the safe custody of the same;
- 45.2.5 whenever so requested by the Council to arrange for the provision of temporary accommodation for homeless persons and/or evacuees;
- 45.2.6 to manage the temporary accommodation secured pursuant to these provisions for so long as the emergency lasts;
- 45.2.7 to produce monthly accounts to the Council itemising its reasonable costs incurred in the provision of the services detailed in Clauses 45 such costs to be agreed between the parties (and thereupon treated as a variation of the Management Fee) and in default of such agreement the matter shall be referred to an Expert pursuant to the provisions of Clause 65.
- 45.3 At the request of the Council SHP shall attend such training sessions and/or exercises as may be specified by the Council and the number of SHP's employees who shall be required so to attend shall be agreed between the Council and SHP and in default of agreement the Council shall specify the number of SHP's employees to attend.
- 45.4 During the period when the Council is occupying the Premises SHP shall not be liable to the Council for any loss or damage caused as a result of the Council's occupation of the Premises and shall not be liable for any breach of this Agreement which is attributable to the Council's occupation of the Premises pursuant to this Clause 45.

46 Exclusion of Liability

- 46.1 The Council shall not be liable to SHP, whether in contract, tort or otherwise, for any loss damage or injury howsoever caused or arising out of or in connection with the provision by SHP of the Services or the use of or occupation by SHP of any of the Council's premises (including the Premises) save in relation to any deliberate or negligent act or omission of the Council or any of its employees (in the course of their employment) and in particular any such deliberate or negligent act or omission which gives rise to death or personal injury.
- 46.2 The Council shall not in any circumstances be liable to SHP for any indirect or consequential loss whatsoever, irrespective of the cause or causes of such loss.
- 46.3 SHP shall not be liable under this Agreement to the extent (and only to the extent) that such liability arose directly as a result of any failure on the part of the Council to properly comply with its obligations under this Agreement.

47 Rights and Duties Reserved

- 47.1 All rights, duties and powers which the Council has as a local authority or which the Council's officers have as local authority officers are expressly reserved and in

particular (but without limitation) the Council reserves the right to exercise its powers as a landlord in respect of any of its properties notwithstanding the provisions of this Agreement.

48 Waiver

- 48.1 Failure by the Council at any time to enforce the provisions of the Agreement or to require performance by SHP of any of the provisions of this Agreement shall not be construed as a waiver of or as creating an estoppel in connection with any such provision and shall not affect the validity of this Agreement or any part thereof or the right of the Council to enforce any provision in accordance with its terms.

PART H – FINANCIAL ARRANGEMENTS AND OTHER MATTERS

49 Financial Arrangements

- 49.1 SHP shall comply with all the financial arrangements described in the Second Schedule.

50 Recovery of Rent and Payment of Rent Collection Fee

- 50.1 In collecting rent or other sum or sums from tenants or any other third parties on the Council's behalf, SHP shall proceed therewith with all due expedition and diligence and generally in accordance with all requirements of the Council's Representative. Any rent or sums so obtained shall be remitted forthwith to the Council and shall until receipt by the Council be held by SHP on trust for the Council. If any such other monies are temporarily paid by SHP into any bank, building society or other similar account, such account shall be designated as a trust account with the Council's name appearing in its title. No such monies shall be mixed with any other money. SHP shall keep full and proper records as to the receipt and transfer of such monies in such form as the Council's Representative may approve and shall provide whenever requested access thereto and copies thereof. The fee for the provision of this part of the Services shall be included in the Management Fee.

51 Right to Use Surpluses

- 51.1 If SHP out-performs the Delivery Plan and if as a consequence the Council would benefit from sums for which it had not budgeted and the Council did not require the same to meet any obligations or commitments (whether to third parties or otherwise) which are the subject of Council resolutions or incorporated in Council budgets then to the extent permitted by and subject to any conditions set out in the Delivery Plan SHP shall be entitled to use such sums in accordance with any scheme for surpluses forming part of the Delivery Plan or such other scheme for surpluses as may be agreed in writing by the Council (such agreement not to be unreasonably withheld or delayed).

52 Interest on Overdue Payments

- 52.1 Save where payment is reasonably disputed by the Council and SHP has been notified of such dispute, if and whenever any payment due by either party in accordance with this Agreement shall at any time remain unpaid for a period of twenty-one (21) days next after becoming payable, a further and additional sum by way of interest on the

same calculated on a day-to-day basis at an annual rate higher by two (2) per cent than the Barclays Bank plc Base Rate in force from time to time from the date upon which such sum first became payable shall (if demanded) be accounted for (as if paid by) the defaulting party to the other party.

53 Value Added Tax

- 53.1 All payments by either party hereto to the other party pursuant to the terms of this Agreement shall be exclusive of any value added tax chargeable in respect of the supply of goods or services for which the payment is consideration and in so far as such payments fall to be made under this Agreement such value added tax shall be added to the amount thereof and paid in addition thereto upon production of a proper value added tax invoice.

PART I – EMPLOYMENT AND STAFFING

54 Employees

- 54.1 SHP shall indemnify and hold harmless the Council against each and every cost, claim, liability, expense or demand arising out of:-
- 54.1.1 any claim or allegation by a Transferring Employee that in consequence of the transfer of the Undertaking to SHP there has been or will be a substantial change in such Transferring Employee's working conditions to his detriment
- 54.1.2 any act or omission of SHP in relation to any Transferring Employee occurring on or after the Original Commencement Date and any claim for redundancy payments or protective awards and any liability for wrongful dismissal or unfair dismissal or otherwise in connection with the transfer of the employment of the Transferring Employees to SHP
- 54.1.3 any claim made against the Council under Regulation 10 of the Regulations which results from a failure by SHP to supply information to the Council pursuant to the said Regulation
- 54.1.4 any failure by SHP to provide broadly comparable retirement or death-in- service benefits for or in respect of any Transferring Employees to which such persons would have been entitled immediately before the Original Commencement Date.
- 54.2 SHP shall:-
- 54.2.1 establish such staffing arrangements as may be appropriate to ensure the due and proper performance of the Services
- 54.2.2 provide details of the said staffing arrangements to the Council's Representative.
- 54.3 SHP shall notify the Council's Representative in writing of any amendments in the said staffing structure during the Contract Period providing to the Council's Representative a listing of all of its staff, their job titles, roles and contact details and updating of such listings on an agreed periodic basis.
- 54.4 If so requested by the Council's Representative, SHP shall provide to the Council such information as is required to enable the Council to comply with its obligations under Regulation 10 of the Regulations including but without limitation details of (a) the legal, economic, organisational and social implications of the transfer of the Undertaking for

the Transferring Employees and other affected employees, (b) the measures which SHP envisages will be taken in connection with these Transferring Employees and (c) the reasons for such measures.

55 Information about Employees

- 55.1 SHP shall within the six (6) month period immediately before the expiry of this Agreement or within such other period as the Council may specify in the event of earlier termination of this Agreement either in whole or in part and upon a continuing basis provide such information as the Council may require about the terms and conditions of employment of any employees employed by SHP in connection with the provision of the Services so as to enable the Council and any third party to assess the implications (if any) of the Regulations.
- 55.2 SHP shall provide the information in accordance with Clause 55.1 within the period specified by the Council and time shall be of the essence.
- 55.3 Following the provision by SHP of the information in accordance with Clause 55.1 SHP shall provide the Council with updated information each calendar month thereafter.
- 55.4 SHP agrees that within the period of twelve (12) months immediately preceding the expiry of this Agreement SHP shall not make any changes to the terms and conditions of employment of its employees employed in connection with the provision of the Services without the prior written agreement of the Council.

56 Right to Representation

- 56.1 Without prejudice to its obligations under the Regulations, SHP shall take all appropriate steps consistent with good employer practice to ensure that its employees have appropriate representation (whether through trade unions or otherwise).

PART J – MONITORING AND MANAGEMENT

57 Meetings between the Council and SHP

- 57.1 Without prejudice to the specific provisions of this Agreement, the Council and SHP shall meet at such level and with such frequency that the Council's Representative considers is necessary to ensure that this Agreement is honoured and the Delivery Plan performed.

58 Council's Representative

- 58.1 The Council's Representative shall be the person nominated in writing by the Council from time to time to act in the name of the Council for the purposes of the Agreement.
- 58.2 The Council's Representative shall have power to issue instructions to SHP on any matter relating to the provision of the Services and SHP shall comply therewith. If any such instruction is a variation within Clause 61 it shall be subject to the terms thereof. Provided that any delay resulting does not affect the provision of the Services or the discharge of the Council's statutory duties SHP shall be entitled to object to any such instructions which would have the effect of significantly varying the fundamental nature

of the Services and the delivery thereof and such objection shall be referred to dispute resolution pursuant to clause 65.

- 58.3 From time to time the Council's Representative may appoint one or more representatives to act for him generally or for specified purposes or periods. Immediately any such appointment is made, the Council's Representative shall give written notice thereof to SHP.

PART K – TENANT MANAGEMENT ORGANISATIONS

59 Tenant Management Organisations

- 59.1 In the event that in accordance with regulations made under Section 27AB of the Housing Act 1985 any tenants propose to form a Tenant Management Organisation (as defined in Section 27AB(8) of the said Act) the Council shall be legally responsible for dealing with all aspects of such proposal.
- 59.2 The Council may pursuant to such a proposal instruct SHP to provide such assistance as may be required to the Council and any tenants making such proposal which assistance shall include:-
- 59.2.1 provision of information and records about the Services
 - 59.2.2 providing such reports or other documentation as the Council may reasonably require in a manner and timescale prescribed by the Council for consideration by the tenants or the Council
 - 59.2.3 attendance at meetings of such tenants; and
 - 59.2.4 such other help or advice as the Council may require to enable the Council to fulfil its statutory obligations
- 59.3 At such time as a decision is made that a transfer of management responsibility for all or part of the Services is to take place in accordance with the provisions of this Agreement the Council may issue further instructions to SHP requiring SHP to make arrangements to transfer responsibility for the Services and the Dwellings so affected to the Tenant Management Organisation in such manner and within such timescale as the Council may prescribe and SHP shall comply with such instructions which may include (but not be limited to):-
- 59.3.1 transferring data, records, statistics, files and other information in a format and manner prescribed by the Council
 - 59.3.2 transferring to the Tenant Management Organisation in accordance with the Regulations any staff who are wholly or mainly engaged in the provision of services to the Tenant Management Organisation
 - 59.3.3 transferring necessary equipment and materials as may reasonably be stipulated by the Council's Representative
 - 59.3.4 establishing working arrangements with the Tenant Management Organisation
 - 59.3.5 providing any other assistance reasonably needed to enable such transfer to take place.

- 59.4 At such time as a transfer of management responsibility to a Tenant Management Organisation takes place the Council shall be entitled to vary this Agreement in accordance with Clause 61 (giving three (3) months' notice to SHP) and where such a Variation is made the amendment to the Delivery Plan in accordance with Clause 61.3 shall reflect the cost of providing such Services as remain to be carried out under this Agreement and if no such Services remain this Agreement shall terminate (and the provisions of Clause 63.4 shall apply).
- 59.5 SHP shall assume all those responsibilities of the Council which are set out in any management agreement made between the Council and any Tenant Management Organisation or such of those responsibilities as may be notified to SHP in writing by the Council whether such agreement exists at the date of this Agreement or arises during the currency of it and the Council shall be entitled to vary this Agreement to reflect such agreement in accordance with Clause 61.
- 59.6 In the event that a Tenant Management Organisation to which responsibility for managing the Services has been transferred in accordance with this Clause 59 ceases to provide all or any part of those Services for all or any of the Dwellings the Council shall be entitled to vary further this Agreement in accordance with Clause 62 so as to require SHP to provide such ceased Services and where such a variation is effected a variation may also be made in relation to the current Delivery Plan in accordance with Clause 61.3.
- 59.7 The provisions of this Clause shall apply, mutatis mutandis, to the transfer of additional management responsibilities to an existing Tenant Management Organisation as well as any other Tenant Management Organisations.
- 59.8 SHP shall in complying with its obligations under this Clause 59 ensure that to the extent permitted by any existing agreement(s) with any Tenant Management Organisation the obligations to provide the Services at the level and standards required by the Agreement or otherwise prescribed by the Council are unaffected.

PART L – CONTRACT PERIOD

60 Duration and Renewal

- 60.1 This Agreement shall commence on the New Commencement Date and shall expire on 31st March 2021 unless terminated earlier or extended as provided herein.
- 60.2 The Council shall be entitled to terminate this Agreement at any time during the Contract Period upon giving SHP twelve (12) calendar months prior written notice of termination.
- 60.3 The parties may, by agreement, jointly review this Agreement on or about the time of any anniversary of the New Commencement Date.
- 60.4 Without prejudice to any other provision of this Agreement, the parties shall use their reasonable endeavours to agree any change(s) to this Agreement as identified by either party as a result of a review pursuant to this clause 60.
- 60.5 For the avoidance of doubt no change(s) made pursuant to Clause 60.4 shall be valid unless it is in writing and signed by the Council and SHP.

60.6 The Council shall be entitled (but without any obligation whatsoever) to extend the Contract Period for one or more further periods of five (5) years by giving notice to this effect to SHP no later than twelve (12) calendar months before the date on which the Agreement would otherwise expire.

PART M – VARIATIONS ETC

61 Variations

61.1 The Council may from time to time either unilaterally or in response to representations from SHP require changes (hereinafter referred to as “Variations” and each a “Variation”) to be made to the Services and accordingly may upon giving reasonable written notice thereof to SHP add to, delete from, or otherwise amend in any way the provisions of this Agreement and SHP shall be bound by any such Variations.

61.2 Reasonable notice for the purpose of Clause 61.1 shall be deemed to be either:-

61.2.1 three months’ notice for changes which the Council has determined will require consultation under s105 of the Housing Act 1985 or which it reasonably considers will result in more or fewer staff being required by SHP or significantly more cost being incurred by SHP; or

61.2.2 one month’s notice in any other case.

61.3 Where a Variation is effected a variation shall be made in relation to the current Delivery Plan as soon as practicable by the Council and SHP (both acting reasonably) by reference to any increase or reduction in SHP’s responsibilities and any likely increase or reduction in cost to SHP occasioned by such variation.

61.4 In the event that a Variation is effected by the Council which is not made in response to representations from SHP and which is likely to result in the redundancy of one or more of SHP’s employees engaged in the provision of the Services SHP shall as soon as practicable:-

61.4.1 identify the relevant employee or employees;

61.4.2 quantify and substantiate the costs which SHP is likely to incur by reason of the said redundancy or redundancies;

61.4.3 notify the Council of the same and on receipt of such notification the Council shall, having consulted (where necessary) with SHP, either:-

61.4.3.1 take account of the potential redundancy costs to be incurred by SHP as a result of the Variation in determining the variation to the Delivery Plan in accordance with Clause 61.3; or (if the Council so determines);

61.4.3.2 require SHP to provide to the Council such information as the Council may require to enable it to reach a determination in accordance with Clause 60.4.3.1.

61.5 No change to the Delivery Plan will be made in respect of the Variation if there is a compensating reduction or re-organisation of any part of the Services.

61.7 In the event of a dispute as to how any Variation affects the Delivery Plan pursuant to this Clause 61 the matter shall be referred to dispute resolution pursuant to Clause 65.

61.8 No deletion from, addition to, or variation of this Agreement shall be valid or of any effect unless agreed in writing and signed by the parties.

62 Alterations

62.1 Where and whenever the number of Dwellings undergoes a substantial change (hereinafter referred to as an "**Alteration**") during the Contract Period for any reason (save pursuant to Clause 61) a Variation shall be made to the Delivery Plan pursuant to Clause 61.3 and such variation shall take account of any increase or reduction in SHP's responsibilities and any likely increase or reduction in cost to SHP resulting from such Alteration.

62.2 A "**substantial change**" for the purposes of Clause 62.1 shall mean any increase or decrease of 2.5% or more in the number of Dwellings remaining to be managed by SHP since the New Commencement Date, and for the avoidance of doubt a substantial change shall be deemed to have arisen as soon as the said increase or decrease occurs whether as a consequence of one event or a series of events.

62.3 SHP shall provide to the Council such information as the Council may require for the purposes of Clause 62.1 and Clause 62.2.

62.4 It is hereby agreed that no Variation shall be made pursuant to Clause 61.3 as a result of an Alteration if there is a compensating reduction or reorganisation of any part of the Services.

62.5 If SHP disputes a Variation pursuant to Clause 61.3 arising from an Alteration it shall be entitled to refer the matter to dispute resolution pursuant to Clause 65.

63 Termination etc

63.1 If SHP or where applicable any director or any senior manager thereof:-

63.1.1 commits a breach of any of SHP's obligations under the Agreement

63.1.2 changes SHP's structure or staffing in a way which in the opinion of the Council adversely affects the ability of SHP to discharge its obligations under this Agreement to the Contract Standard

63.1.3 has any director or senior manager of it convicted of dishonesty

63.1.4 becomes bankrupt, or makes a composition or arrangement with its creditors, or has a proposal for voluntary arrangements for a composition of debts, or any scheme or arrangement approved in accordance with the Insolvency Act 1986

63.1.5 has an application made under the Insolvency Act 1986 to the Court for the appointment of an administrator or an administrative receiver

63.1.6 has a winding-up order made or (except for the purpose of amalgamation or reconstruction) a resolution for voluntary winding-up passed

63.1.7 has a provisional liquidator, receiver, or manager of its business or undertaking duly appointed

63.1.8 has an administrator or an administrative receiver (as defined in the Insolvency Act 1986) appointed

- 63.1.9 has possession taken by or on behalf of the holders of any debenture secured by a floating charge, or any property comprised in, or subject to, the floating charge
- 63.1.10 is in circumstances which entitle the court or a creditor to appoint, or have appointed, a receiver, a manager, an administrator or an administrative receiver, or which entitle the court to make a winding-up order then in any such circumstances
- the Council may (if it so decides) exercise the rights described in Clause 63.3.
- 63.2 If there is or has been any act, omission or failure by SHP, its employees, sub-contractors or agents in the performance of SHP's obligations under this Agreement which in the opinion of the Council delays, interrupts or prevents the performance of the Services required under this Agreement in accordance with the terms of the Agreement and any standard specified herein the Council shall be entitled to exercise the rights described in Clause 63.3.
- 63.3 In the event of any one or more of the circumstances described in Clauses 63.1 and 63.2 the Council may take any or all of the following actions:-
- 63.3.1 either provide itself or procure the provision of the whole or the relevant part of the Services until such time as (if at all) SHP shall demonstrate to the satisfaction of the Council that the whole or such part of the Services will be once more provided by SHP in accordance with the provisions hereof;
- 63.3.2 without determining the whole of this Agreement terminate forthwith the relevant part of the Services only and thereafter itself provide or procure a third party to provide such part of the Services;
- 63.3.3 determine the whole of this Agreement;
- and in the event of action pursuant to Clauses 63.3.1 and 63.3.2 a corresponding variation to the Delivery Plan shall be made in accordance with Clause 61.
- 63.4 If the Agreement is terminated in whole or in part as provided in Clause 63.3 the Council shall:-
- 63.4.1 be entitled to reoccupy any premises and repossess any other physical resources or assets licensed, loaned, or hired to SHP and to exercise a lien over any of the physical resources or any other thing belonging to SHP and shall have full and unfettered licence over all documents for use in connection with the Services;
- 63.4.2 be entitled to employ and pay other persons to provide and complete the provision of the Services or any part thereof and to use all such SHP physical resources or other things, and all such documents for the purpose thereof.
- 63.5 If at any time during the Contract Period the Council shall determine that the Services or any of them have either not been undertaken with due skill and care or have been carried out inadequately or otherwise not in accordance with the provisions of this Agreement the Council shall be entitled (without prejudice to the foregoing provisions of this Clause 63 and any other right or remedy available to it) to take any or all of the following actions:-
- 63.5.1 serve notice on SHP to rectify the defect (where or when it is capable of rectification) within such time as the Council may direct

- 63.5.2 carry out the relevant Services itself or by a third party and vary the Delivery Plan in accordance with Clause 61 to reflect the Council's loss, cost and expense in so doing.
- 63.6 The Council shall be entitled to terminate this Agreement in accordance with this Clause 63
- 63.7 If the Council exercises its rights under this Clause 63 to terminate the whole or any part of the Agreement then in relation to the whole or any such part:-
- 63.7.1 SHP shall, unless the Council requests otherwise, forthwith cease to perform any of the Services;
- 63.7.2 immediately hold all rent and other sums collected or obtained under this Agreement on trust for the Council notwithstanding any right of retention under Clause 51;
- 63.7.3 hand over this Agreement to the Council without detriment to the interest of the Council's tenants or other customers of the Council.
- 63.7.4 The Council undertakes to exercise its power to appoint and remove board members pursuant to the Articles of Association of SHP only in any of the circumstances described in Clauses 63.1 and 63.2 and then only for so long as (in the Council's reasonable opinion) the relevant circumstances subsist.

64 Variation of Contract

- 64.1 Not used

65 Dispute Resolution

- 65.1 All disputes between SHP and the Council arising out of or in connection with this Agreement or the performance of the Services by SHP or any failure by the parties to agree any matter to be agreed as referred to in this Agreement within a reasonable period shall first be referred to mediation (unless otherwise agreed by the parties) through a person nominated by the Centre for Effective Dispute Resolution and failing the matter being resolved to an expert to be agreed upon by the parties or in default of such agreement to be nominated by the President for the time being of the Chartered Institute of Housing or a person appointed by him.
- 65.2 The Expert appointed under Clause 65.1 shall be entitled to make such decision or award as he thinks just and equitable having regard to all the circumstances then existing and the costs of such Expert shall follow the event or in the case of neither party succeeding such cost shall be apportioned between the parties by the Expert in such proportions as he in his absolute discretion thinks fit.
- 65.3 The costs of mediation and any award of costs under Clause 65.2 shall be reflected in a variation to the Management Fee and any requisite amendment to this Agreement arising from the reference to dispute resolution shall reflected in a variation to the current Delivery Plan.
- 65.4 Any award or decision of the Expert under this Clause shall be final and binding on both parties save in the event of fraud or a mistake in law or material fact.
- 65.5 Until such time as a dispute between SHP and the Council is resolved SHP shall continue to perform the Services in accordance with this Agreement.

PART N – NOTICES AND OTHER MATTERS

66 Notices

66.1 Any demand, notice, or other communication required to be given hereunder shall be sufficiently served if served personally on the addressee, or if sent by prepaid first class recorded delivery post, or facsimile transmission to the registered office or last known address of the party to be served therewith and if so sent shall, subject to proof to the contrary, be deemed to have been received by the addressee on the second Working Day after the date of posting or on successful transmission, as the case may be.

67 Severance

67.1 If any provision of this Agreement shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity or unenforceability shall in no way impair or affect any other provision all of which shall remain in full force and effect.

68 Partnerships

68.1 Nothing in this Agreement shall be construed as establishing or implying any partnership or joint venture between the parties hereto and save as expressly provided nothing in this Agreement shall be deemed to make SHP the agent of the Council or authorise SHP (a) to incur any expenses on behalf of the Council (b) to enter into any engagement or make any representation or warranty on behalf of the Council or (c) to commit or bind the Council in any way whatsoever without in each case obtaining the Council's Representative's prior written consent.

69 Survival of this Agreement

- 69.1 Insofar as any of the rights and powers of the Council provided for in this Agreement shall or may be exercised or exercisable after the termination or expiry of this Agreement the provisions of this Agreement conferring such rights and powers shall survive and remain in full force and effect notwithstanding such termination or expiry.
- 69.2 Insofar as any of the obligations of SHP provided for in this Agreement remain to be discharged after the termination or expiry of this Agreement the provisions of this Agreement imposing such obligations shall survive and remain in full force and effect notwithstanding such termination or expiry.

70 Law

70.1 This Agreement shall be governed by and construed according to English Law.

71 Concurrent Remedies

71.1 No right or remedy herein conferred upon or reserved to either party by this Agreement is exclusive of any other right or remedy provided herein or by law or equity and each such right or remedy shall be cumulative of every other right or remedy and may be enforced concurrently therewith or from time to time and shall be without prejudice to any pre-existing liabilities or obligations of the other party under this Agreement.

72 Entire Agreement

- 72.1 This Agreement constitutes the entire agreement between the parties as to the subject matter hereof and supersedes all previous agreements and understandings (if any) between the parties with respect thereto.

PART O – TERMS USED ETC

73 Definitions and Interpretation

- 73.1 The definitions are as follows:

“Agreement”

means this Agreement (including the Schedules and Annexes) and any variations in accordance with Clause 61.

“Annual Performance Plan”

means the performance plan forming part of the Delivery Plan which is to be produced annually by SHP and which is described in Clause 7.

“Annual Report”

Means the report, produced by SHP and made publically available, setting out SHP’s performance and achievements in terms of service delivery and improvements to services during the preceding financial year.

“Contract Period”

means the period beginning on the New Commencement Date and continuing until 31st March 2021 unless (a) terminated sooner in accordance with the provisions of this Agreement or in accordance with common law or statute or (b) extended in accordance with the provisions of this Agreement.

“Contract Standard”

means the standard to which the Services are to be provided as defined in Clause 16.

“Contracts”

means the contracts for goods and/or services relating to the Undertaking and any replacements thereof or additions thereto as notified by the Council to SHP.

“Council Guidelines”

means relevant rules, procedures, guidelines, policies, codes of practice, Standing Orders and Financial Regulations and standards of the Council currently applying or as notified to SHP by the Council or the Council’s Representative from time to time, as any of the same may from time to time be amended by the Council and notified to SHP.

“Council’s Computer Systems” means the computer hardware systems owned, leased and/or operated from time to time by the Council or any third party either in whole or in part in connection with the Undertaking.

“Council’s Data”

means any information or data compiled by or on behalf of the Council in connection with the Services.

“Council’s Emergency Officer”

means the Chief Executive of the Council or such other individual as the Council may appoint from time to time

“Council’s Representative”

means the person nominated pursuant to Clause 58.

“Council’s Software”

means any computer software owned by or licensed to the Council relating to or used in connection with the Services.

“Delivery Plan”

means the document so entitled which describes the outputs to be achieved by means of the Services to be provided annually by SHP pursuant to Clause 7 and any variations of such document made pursuant to Clause 61.

“Dwelling(s)”

means any leasehold or tenanted dwelling house to be managed by SHP pursuant to this Agreement and includes (a) any part of a building occupied or intended to be occupied as a separate dwelling house (in particular but without limitation a flat and the communal areas of blocks of flats save that any flat let together with a shop unit as part of the same demise or otherwise as set out in the Third Schedule shall be excluded), (b) any land, gardens, outhouses, private paths or driveways usually enjoyed with any such dwelling house and (c) group homes for sheltered accommodation provided under the Enabling Acts together with any land, gardens or driveways usually enjoyed with any such sheltered accommodation.

“Enabling Acts”

means all those Acts which enable the Council to enter into this Agreement, including (but not limited to) the Housing Act 1985, the Local Government Act 1972 and the Localism Act 2011.

“Environmental Improvement Programme”

means a simple programme of environmental improvement which SHP draws up with the help of the Council. This is an alternative to a formal Environment Management System.

“Environmental Management System”

means a formal, externally audited managed system such as the Eco-Management and Audit Scheme or ISO14001 which ensures that SHP delivers continuous environmental improvement.

“Environmental Policy”

means the Council’s environmental policy, as may be updated from time to time.

“Environmental Purchasing Policy”

means the Council’s environmental purchasing policy, as may be updated from time to time.

“Expert”

means an individual appointed in accordance with Clause 65.

“Financial Plan”

means SHP’s financial resourcing as set out in the Delivery Plan

“Government Prevent Strategy”

means a policy forming part of HM Government’s counter-terrorism strategy, available at:

<http://www.homeoffice.gov.uk/publications/counter-terrorism/prevent/prevent-strategy/prevent-strategy-review?view=Binary>

as may be amended from time to time.

“Government Prevent Guidance and Toolkit”

means the Prevent Duty Guidance for England and Wales, available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/417943/Prevent_Duty_Guidance_England_Wales.pdf

as may be amended from time to time.

“Guidance”

means the guidance entitled “Guidance on Arms-length Management of Local Authority Housing” and any subsequent guidance which modifies or replaces the same.

“Management Fee”

means the fee received by SHP from the Council for providing the Services as determined in accordance with the Second Schedule.

“New Commencement Date”

means 1st April 2016

“Original Agreement”

means the agreement dated 31st March 2006 made between the Council and SHP for housing management and other services “

“Original Commencement Date”

means the 31st day of March 2006.

“Premises”

means the offices and other premises used by SHP to deliver the Services

“Regulations”

means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) and shall be deemed to include (without limitation) the Acquired Rights Directive 77/187 (howsoever amended or interpreted) as it applies to the Council and/or this Agreement and/or this or any subsequent transfer of the Undertaking.

“Regulator”

means the Homes and Communities Agency or any successor body.

“Resident Compact”

means the agreement between the Council, SHP and resident representative bodies setting out how residents will be involved in the delivery of the Services and the support provided to them By SHP to enable them to do so.

“Section 151 Officer”

means an officer of the Council responsible for making arrangements for the proper administration of the Council’s financial affairs pursuant to the Local Government Act 1972.

“Service Improvement Plan”

means the section within the Delivery Plan which sets out SHP’s proposals for improving services in the future

“Service Review”

means the process carried out whereby a particular aspect or element of the Services is reviewed

“Services”

means the services as set out in the Fourth Schedule to be provided by SHP in accordance with the Agreement and includes any variations thereto made pursuant to Clause 61.

“SHP’s Representative”

means the person who is to represent SHP appointed pursuant to Clause 20

“Social Housing Regulator”

means the official government-sponsored organisation responsible for the regulation of social housing

“Standing Orders and Financial Regulations”

means the documented orders and regulations of the Council or SHP as the case may be which must be complied with by SHP to the extent that they apply to the subject matter of this Agreement.

“Sutton Gate Leases”

means the under leases relating to the premises known as Sutton Gate, 1 Carshalton Road, Sutton SM1 4LE and any renewals thereof and “Sutton Gate Lease” shall be construed as any one of them as may be relevant.

"Tenancy Conditions"

means the conditions on the basis of which the Council's tenants occupy the Dwellings and shall be deemed to include all the Council's rights and obligations whether statutory or contractual and whether or not expressly incorporated.

"Tenant Management Organisation"

means a Tenant Management Organisation as defined in Section 27AB(8) of the Housing Act 1985.

“Undertaking”

means all of the undertaking of the provision of housing management services by the Council its servants or agents immediately before the Original Commencement Date.

“Vehicle Lease”

means any vehicle leasing or hire contract in respect of any vehicle leased or hired by the Council.

“Working Day”

means any day between the hours of 8.45am and 5.00pm save for Saturdays, Sundays, public holidays and other non-statutory holidays taken as public holidays by the Council and in relation to any time after 5.00pm shall mean the following Working Day.

- 73.2 Reference to SHP’s personnel shall be deemed to include SHP’s directors and employees and SHP’s agents, sub-contractors and essential visitors (as referred to in Clause 35) unless the context otherwise requires.
- 73.3 A reference to the Enabling Acts or any other Act of Parliament, or to any Order, Regulation, Statutory Instrument, or the like, shall be deemed to include a reference to any amendment, re-enactment, consolidation, variation, replacement or extension of the same respectively from time to time and for the time being in force.
- 73.4 Words denoting the singular shall include the plural and vice versa and words denoting the masculine gender shall include the feminine gender and vice versa and words denoting persons shall include firms and corporations.
- 73.5 References to Clauses, Schedules and Annexes shall be deemed to be references to the Clauses in and the Schedules and Annexes to this Agreement as so numbered.
- 73.6 In this Agreement headings are included for ease of reference only and shall not affect this Agreement or the interpretation thereof.

IN WITNESS whereof the parties have executed this Agreement as a Deed and delivered it the day and year first written above

THE COMMON SEAL of THE)
MAYOR AND BURGESSES)
OF THE LONDON BOROUGH)
OF SUTTON was hereunto affixed)

Jabir Akhbar

in the presence of:-)

Authorised Signatory under Standing Order 33

Seal Register No:



186979

THE COMMON SEAL of SUTTON)
HOUSING PARTNERSHIP)
LIMITED was hereunto affixed)

in the presence of:-)

Director

Secretary/Director

Steven Tucker
Managing Director



THE FIRST SCHEDULE
COMPUTER SYSTEMS AND SOFTWARE CURRENTLY USED BY THE
COUNCIL AND SHP

1. SHP shall fund and maintain its own ICT infrastructure, namely hardware, software and systems. All SHP staff with access to the SHP ICT infrastructure will be subject to SHP's ICT Code of Conduct and Data Protection Policies.
2. In addition, SHP makes use of a small number of the Council's systems. This currently includes the:-
 - corporate finance system supplied by Agresso;
 - Corporate Warning System supplied internally;
 - customer payments system supplied by Capita;
 - customer relationship management system supplied by Remedy; and
 - revenue and benefits system supplied by Northgate

All staff with access to the Council's systems quoted above will be subject to the Council's Computer Security Policy.

All Council staff with access to the SHP systems referred to above will be subject to SHP's ICT Code of Conduct.

Where either party has access to the other party's systems they shall also be given access to any helpdesk service that supports these systems.

Where either party is intending to make changes to the systems accessed by the other party, both parties shall be included in the formal change process from its initiation.

In the event of the Agreement coming to an end or being terminated, the assets, software licences etc that are part of the SHP infrastructure shall transfer to the Council.

THE SECOND SCHEDULE

FINANCIAL ARRANGEMENTS

1 Fees for the Services

- 1.1 The Delivery Plan shall specify annual fees in respect of the following:
- 1.1.1 A HRA funded Management Fee for the management of those services specified in the Fourth Schedule;
- 1.1.2 Any fees for services specified in the Fourth Schedule which are funded by the Council from outside the HRA (e.g. fees for housing support services);
- 1.1.3 A fee to fund and manage the capital investment programme for HRA assets.
- 1.2 The services specified in the Fourth Schedule and the fees applicable will be agreed annually.
- 1.3 Where SHP delivers services outside of those referred to in 1.1, either for the Council or for a third party, this will be undertaken under separate agreements and the fees applicable will not be included in the Delivery Plan

2 HRA funded Management Fee

- 2.1 The HRA funded Management Fee shall be calculated annually by reference to the availability of funds within the Housing Revenue Account within each Financial Year (between 1st April and 31st March). The various elements of the HRA are calculated as follows:

Income

Rental Income	annual adjustment based on rent & stock changes
Service Charges	annual adjustment based on charge & volume changes

Expenditure

SHP Mgt Fee	annual adjustment based on rent changes
Council Costs	annual adjustment based on rent changes
Heating & Water	annual adjustment based on charge & volume changes
Bad Debt Provision	based on agreed assumed percentage
Depreciation	based on agreed formula
Debt Repayments	where agreed as part of HRA Business Plan
Debt Management	based on borrowing levels & interest rates
Revenue Contributions to Capital (RCCO)	a residual item where funds are available

Balance

Working balance	must at least be at the minimum level
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- 2.2 If in any year the planned level of HRA income is not sufficient to cover all planned expenditure based on the above methods of calculation and provide for the minimum Working Balance, the Council will agree with SHP on an appropriate adjustment to the SHP Management Fee and Council Costs.
- 2.3 In consultation with the Council, SHP shall prepare an annual HRA budget to be approved by the Council in advance of 1st April. The HRA budget will contain the SHP Management Fee for the year.
- 2.4 The HRA funded Management Fee shall be paid to SHP in twelve equal monthly instalments.

3 Other Fees for Housing Services

- 3.1 Where fees are due to be paid for services contained in Annex 1 but payment is from outside the HRA (e.g. Supporting People, Right to Buy Administration), the source and level of payment will be agreed at least one month before the start of each financial year.
- 3.2 Any such fees shall be paid to SHP in agreed instalments.

4 Capital Programme Fee

- 4.1 The annual Capital Programme Fee shall be calculated by reference to the approved budget and funds for the annual Housing Revenue Account Capital Programme and shall represent the cost incurred by SHP in providing Capital Programme Management Services.
- 4.2 Before the start of each financial year, SHP shall prepare an estimate of expenditure it is likely to incur in managing the Capital Programme and notify the Council. The Council shall formally notify SHP of an approved Estimated Capital Programme Fee at least 21 days prior to 1st April.

5 Management of The Pastures

- 5.1 In relation to the financial arrangements for the management of The pastures (the Council's Traveller site), central support and depreciation charges will continue to be funded by the Housing General Fund, with all collected pitch fee income held by SHP to provide the management and maintenance service.

THE THIRD SCHEDULE

**SERVICES SUBJECT TO SERVICE CONTRACTS BETWEEN THE
COUNCIL AND SHP**

Supplied by the Council and paid for by SHP

Security/Out of Hours Service

iTrent (Human Resources system)

Insurance Services

Health and Safety Services

Supplied by SHP and paid for by the Council

Management of Non HRA Properties

Supplied and paid for by both parties

Information Systems Support

Supplied to SHP by the South London Legal Partnership and paid for by SHP

Legal Services

THE FOURTH SCHEDULE

SERVICES PROVIDED BY SHP UNDER THIS AGREEMENT

- 1. Housing Strategy**
 - 1.1 Supporting the preparation and updating of the HRA Business Plan
- 2. Stock Condition (including house condition surveys)**
- 3. New tenancies**
 - 3.1 Notification to and signing of new tenants
 - 3.2 Granting of new tenancies
 - 3.3 Successions
 - 3.4 Mutual exchange management
 - 3.5 Assignments
- 4. Repairs and Maintenance**
 - 4.1 Stock condition survey
 - 4.2 Response repairs
 - 4.3 Planned maintenance
 - 4.4 Modernisation and improvements
 - 4.5 Energy efficiency
- 5. Void and Empty Property Management**
 - 5.1 Terminations
 - 5.2 Inspection and repairs
 - 5.3 Major repairs
- 6. Tenancy Management**
 - 6.1 Conditions of Tenancy – recommendations, implementation, enforcement
 - 6.2 Evictions and court action to support enforcement
 - 6.3 Illegal occupation detection
 - 6.4 Anti Social Behaviour – management, orders, enforcement
- 7. Gypsy & Traveller Site Management**
- 8. Estate Management**
 - 8.1 Estate management
 - 8.2 Environmental services
 - 8.3 Grounds maintenance

- 9. Supported Housing**
 - 9.1 Sheltered housing schemes
 - 9.2 Temporary accommodation (shared with LBS)
- 10. Right to Buy Administration**
- 11. Leasehold Management**
- 12. Finance**
 - 12.1 Rent and charge account management
 - 12.2 Rent and charges collection
 - 12.3 Recovery of arrears and debts
 - 12.4 Financial management of the HRA
 - 12.5 Insurance and claims
- 13. Procurement**
 - 13.1 Letting of contracts in relation to delegated activities
- 14. Resident Involvement**
 - 14.1 Tenant Compact (shared with LBS)
 - 14.2 Resident association development
 - 14.3 Liaising with resident representative bodies
 - 14.4 Annual reports to residents
- 15. Other Assets (including lettings management and clearance)**
 - 15.1 Garages
 - 15.2 Tenant Resource Centres or Tenant Offices
- 16. Clearance and Disposal of Dwellings**
 - 16.1 Clearance
 - 16.2 Decanting tenants

THE FIFTH SCHEDULE
SUITE OF CURRENT OPERATIONAL PROTOCOLS

Adaptations to council dwellings
Adult safeguarding
Allocations and lettings
Asset management, planning and capital delivery
Children and family support
Community alarm / mobile response
Emergency planning
Finance
Freedom of information requests and member enquiries
Health and safety
Housing and health
Housing benefit
Management of Shanklin Community Centre
Pensions
Rehousing and regeneration
Safer Sutton Partnership
Street scene
Temporary accommodation
Tenancy fraud

THE SIXTH SCHEDULE
CLAUSE 71 OF THE ORIGINAL (2006) AGREEMENT

71 SURVIVAL OF THIS CONTRACT

- 71.1 Insofar as any of the rights and powers of the Council provided for in this Agreement shall or may be exercised or exercisable after the termination or expiry of this Agreement the provisions of this Agreement conferring such rights and powers shall survive and remain in full force and effect notwithstanding such termination or expiry.
- 71.2 Insofar as any of the obligations of the Organisation provided for in this Agreement remain to be discharged after the termination or expiry of this Agreement the provisions of this Agreement imposing such obligations shall survive and remain in full force and effect notwithstanding such termination or expiry.

