

DATED

2019

**Draft at 14 Feb**

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

- and -

**SUTTON HOUSING PARTNERSHIP LIMITED**

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**AGREEMENT FOR  
HOUSING MANAGEMENT AND OTHER SERVICES**

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

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**THIS AGREEMENT** is made the

2019

**BETWEEN:**

- (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 and whose registered company number is 05589014 (“**SHP**”).

**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.
- (C) The Council and SHP agree that SHP shall continue to provide the Services and the Council shall continue to cooperate with SHP in doing so upon the terms and in the manner hereinafter set out and the Council and SHP mutually agree that all other agreements are from [the commencement of this agreement] terminated.
- (D) This Agreement replaces all previous management agreement between the Parties.

**1. Commencement and Duration**

- 1.1 This Agreement comes into effect on 1 April 2019 and shall, subject to the Council’s option to affect the break clause contained in 1.2, continue for a term of 10 Years (until 31 March 2029) unless terminated earlier.
- 1.2 The Council may, under this clause 1.2, terminate this Agreement on the fifth anniversary of the Commencement Date by giving SHP not less than six months’ notice in writing.

**2 The Council’s Housing Strategic Vision and Aims**

- 2.1 The Council’s vision and strategic aims for housing are set out in its housing strategy, the latest iteration of which can be found at:  
<https://drive.google.com/file/d/0B19JvLvJMV1RZGVJZWpicl8tNWc/view>
- 2.2 The Council’s Housing Revenue Account (HRA) Business Plan, reviewed annually, sets out its overall strategic aim and objectives in relation to the housing management function or landlord role, these being:

Strategic aim

**“To deliver 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”**

Objectives

1. To maintain all dwellings at the decent homes standard as a minimum and continue to improve and maintain them as an asset for the future
2. To regenerate homes where required and develop and acquire new local authority owned housing subject to funding and land availability
3. To invest in and improve estate grounds and the communal areas of flatted blocks
4. To provide high quality responsive repairs and cyclical maintenance services
5. To provide excellent tenancy management and leaseholder services and create attractive neighbourhoods where people feel safe and want to live
6. To ensure all customers have access to services and that the diverse needs of tenants and leaseholders are fully met
7. To promote and maximise the opportunities for customer involvement with delivery of the Services

**3 The Council’s Expectations of SHP**

- 3.1 The Council expects SHP to deliver on its aims and objectives for housing management, as set out above, and in so doing to:
- promote a culture of customer care that seeks to provide the best experience for residents;
  - achieve the levels of performance set by the Council through its suite of indicators and targets (see Clause 10 and Schedule 5) and incorporated within the SHP annual delivery plan (see Clause 11);
  - maximise value for money in both delivery of the Services and capital investment;
  - ensure that it maintains a skilled board of management underpinned by a strong governance framework;
  - innovate and take on new business opportunities as they arise, subject to the Council’s agreement; and
  - maintain an excellent organisational reputation and confidence amongst residents and the wider community, based on its commitment to care, quality and value.
- 3.2 SHP shall support the delivery of the Council’s wider objectives as set out in its corporate plan or any relevant plans or strategies that the Council may subsequently produce. The latest iteration of the corporate plan can be found at: [https://www.sutton.gov.uk/downloads/file/3551/ambitious\\_for\\_sutton\\_-\\_plan](https://www.sutton.gov.uk/downloads/file/3551/ambitious_for_sutton_-_plan)

- 3.3 The Council further expects SHP to work in partnership with other agencies and organisations and to support its regeneration programmes and wider property management activities.
- 3.4 SHP shall help deliver the Council's wider objectives as set out in other relevant strategies and plans for the borough, including but not limited to:
- The Sutton Plan
  - The Local Plan
  - Health and Wellbeing Strategy

#### **4 Governance and Decision Making**

- 4.1 The composition of the SHP Board is governed by SHP's Articles of Association which can be found on the Companies House website.
- 4.2 At 1st April 2019, there are three resident vacancies, and the Board has two co-opted residents, the latter being representatives of the Sutton Federation of Tenant and Resident Associations and the Sutton Leaseholders Association. Co-opted members are not company directors.
- 4.3 It is essential that all parties ensure that residents' voices are heard, and in this context it is important that the SHP Board retains the flexibility for the resident role to be reviewed and adapted to reflect best practice.
- 4.4 The configuration of the Board shall be kept under review to ensure it is proportionate to the task and enables the appropriate skills to be recruited.
- 4.5 Any changes to the configuration of the Board must be agreed by the Council. This will be done through changes to the Articles of Association.
- 4.6 The Managing Director of SHP shall be the Representative responsible for the delivery of the Services and may be invited to attend senior management meetings of the Council.
- 4.7 The Assistant Director, Housing, Planning and Regeneration shall be the Council's Representative responsible for managing the contractual relationship with SHP and shall attend the SHP Board of Management meetings.
- 4.8 The Council shall be invited to attend any committee or sub-committee of the SHP Board of Management.

#### **5 SHP Staffing**

- 5.1 SHP shall employ sufficient suitably qualified, competent, skilled, and experienced staff to ensure that the housing management service is properly and fully provided at all times.
- 5.2 SHP shall not appoint to any applicable post unless and until a satisfactory result has been received from the Disclosure and Barring Service in respect of the relevant applicant as appropriate.
- 5.3 In order to demonstrate that it is meeting its obligation under 5.1 SHP shall upon request provide to the Council a detailed staffing structure stating job titles,

responsibilities, grades, post holder names and telephone numbers of all employed staff and shall provide updates upon request.

- 5.4 SHP shall ensure that its staff, at all times when engaging with residents and other customers, wear appropriate identification and that when requested to do so disclose their identity and status.

## **6 HRA Business Plan**

- 6.1 The Council will retain responsibility for producing the HRA Business Plan and updating it on at least an annual basis. However, SHP shall contribute to its production, as required, which shall include undertaking financial modelling and providing all relevant asset management and other information.
- 6.2 As part of the management of the HRA, the Council will continue to set the levels of rent and other charges. SHP shall, however, undertake all necessary calculations and provide advice and support to the Council as required.
- 6.3 All changes to the HRA Business Plan will be subject to sign-off by the Council's section 151 officer.

## **7 Asset Management**

- 7.1 SHP shall produce and maintain an asset management strategy for all properties held within the HRA including commercial properties and undeveloped land. This shall be produced in consultation with Council officers and for the approval of the SHP Board of Management and the Council's Representative, and will be a key document informing the HRA Business Plan. The strategy shall be reviewed periodically, at least every five years.

## **8 Delegated Functions**

- 8.1 The housing management functions delegated to SHP are set out in Schedule 2, which also shows the housing functions retained by the Council or delegated to its trading company, Encompass. SHP shall be responsible for all housing management operational activity as well as changes to housing management and related policy. The latter, however, shall be subject to the approval of the SHP Board of Management and Council's Representative.
- 8.2 Where interfaces exist between functions carried out by SHP and those carried out by the Council, or a third party where applicable, Operational Protocols may be agreed in order to ensure a collective understanding of mutual roles and responsibilities and the smooth running of day to day operations. A schedule of the Operational Protocols in existence at the commencement of this agreement is set out in Schedule 3.
- 8.3 Either the Council or SHP may propose the delegation of further functions or activities where this may be of benefit either to SHP, the Council and / or its tenants and leaseholders. Such further delegation shall be confirmed in accordance with Clause 33.

**9 Service Standards**

- 9.1 SHP shall produce, publish and distribute to residents a suite of service standards covering all 'front facing' elements of the housing management function. The suite of service standards shall be subject to approval of the Council's Representative and reviewed at least every three years. Service standards shall also be produced for any new service undertaken or where there is any significant change in service delivery.
- 9.2 A schedule of the service standards currently in place shall be incorporated as an appendix to the Annual Delivery Plan (see clause 11).

**10 Delivering the Service**

- 10.1 SHP shall at all times perform the service with due skill, care and diligence and in accordance with the Annual Delivery Plan (see Clause 11) and with reference to the published service standards and the Key Performance Indicators set by the Council.
- 10.2 SHP shall comply with any reasonable instructions in connection with this agreement issued to it by the Council's Representative.
- 10.3 SHP shall allow the Council's Representative and client officers' access to its staff, offices, documents and records, including electronically held information.
- 10.4 SHP shall comply with its own Standing Orders and Financial Regulations as well as those of the Council where applicable.
- 10.5 SHP shall cooperate, liaise with, and co-ordinate its activities with those of any other company and/or sub-contractor employed directly or indirectly by the Council on housing or housing-related matters.
- 10.6 SHP shall ensure that its employees, agents, contractors and sub-contractors abide by all relevant statute and other legislation.
- 10.7 In delivering the housing management service SHP shall ensure it uses working methods, equipment, materials and consumables which minimise environmental damage and that it complies fully with the Council's environmental and sustainability policies.
- 10.8 SHP shall take appropriate account of the Public Services (Social Value) Act 2012 when commissioning services.
- 10.9 The Parties shall each appoint an individual to act as its Representative in relation to this Agreement and the performance of the Services
- 10.10 SHP shall cooperate with the Council develop and maintain a full suite of policies to ensure that the Services are delivered in accordance with this Service Standards, this Agreement and any additional relevant requirement that may reasonably be required by the Council to be incorporated into a relevant policy.

**11 Annual Delivery Plans**

- 11.1 SHP shall provide to the Council by 31 December each year an initial draft of its proposed Annual Delivery Plan for the forthcoming financial year. The Council will

seek to approve the draft by the following March and SHP shall publish it on its web site by no later than 30 April.

- 11.2 The Annual Delivery Plan shall, as a minimum, include the following supporting plans: a Performance Plan; a Service Improvement Plan; and a Financial Plan. In addition, the Annual Delivery Plan shall incorporate the current SHP Management Structure and an analysis of service delivery, including successes and failures, throughout the previous twelve months.
- 11.3 In developing its Annual Delivery Plans SHP shall consult with relevant resident representative bodies and take their views into account.
- 11.4 The Performance Plan shall comprise solely the suite of performance indicators that the Council deems appropriate for measuring and achieving success in delivering the housing management service. Targets against each indicator shall be set by the Council, in consultation with and upon the advice of SHP, prior to publication of the Annual Delivery Plan.
- 11.5 If the Council deems the draft Annual Delivery Plan to be not acceptable, it shall notify SHP of any changes required which SHP shall make in time to meet the Council's timescales for approval.
- 11.6 Where the Council is not satisfied with SHP's performance in relation to its Annual Delivery Plan it will advise SHP of the remedial measures it considers necessary for SHP to take.
- 11.7 Following the end of the financial year SHP shall prepare and publish an Annual Report to demonstrate to the Council and residents how the organisation has performed in relation to its Annual Delivery Plan and its longer term objectives. This report shall be provided to all residents and, if requested to do so, SHP shall present the report to Council members.

## **12 Value for Money and Continuous Improvement**

- 12.1 SHP shall ensure that its delivery of the Services and performance of this Agreement represents value for money and achieves continuous improvement and efficiency gains for the benefit of tenants, leaseholders, residents of the London Borough of Sutton and the Council.
- 12.2 Details of the framework which the Council will use to manage the performance of SHP are set out in Schedule 4.
- 12.3 Within nine months of the end of each financial year SHP shall submit a value for money self-assessment to the Council. In order to satisfy the Council that SHP is delivering value for money the Council may undertake a validation of the self-assessment or other review and require SHP to put in place remedial measures if considered necessary.

## **13 Service Review Meetings**

- 13.1 The Council and SHP nominated representatives and other senior officers as required shall meet monthly in order to review SHP's performance and any matter

in relation to this Agreement in accordance with Schedule 4. The meetings will be chaired by the Council and SHP Representatives on an alternate basis.

13.2 Every quarter the meetings shall review performance in relation to the full suite of performance indicators and to which the chair of the Board of Management and representatives of SFTRA and SLA will be invited to attend. The quarterly meetings will be chaired by the Council's representative.

13.3 All service review meetings shall be organised and serviced by SHP and held at SHP's offices.

#### **14 Complaints Handling and Whistleblowing**

14.1 SHP shall prepare a complaints and whistleblowing policy (always subject to the Council's review and required amendments) in relation to the Services and this Agreement. SHP shall deal with any complaints received from whatever source in a prompt, courteous and efficient manner.

14.2 SHP shall keep a written record of all complaints received and of the action taken in relation to such complaints and share this with the Council upon request. Such records shall be kept available for inspection by the Council at all reasonable times. SHP shall provide regular reports on complaints to the Council.

14.3 SHP shall maintain its own complaints and whistleblowing policies in agreement subject to any amendments or other requirements of the Council from time to time.

14.4 SHP acknowledges that for the purposes of this Clause 12 the term "complaints" includes (without limitation) suggestions from a member of the public as to how the Services might or should be performed as well as personal or particular concerns about tenancies or dwellings.

#### **15 Resident Involvement**

15.1 SHP shall promote and maximise the opportunities for resident involvement in service delivery. In so doing SHP shall produce and maintain, in consultation with residents and their representative bodies, a Resident Engagement Strategy setting out how SHP will facilitate and support resident involvement and the roles to be played by representative bodies, including individual tenant and resident associations, the Sutton Federation of Tenant and Residents Associations, the Sutton Leaseholders Association and any subsequently set up representative bodies.

#### **16 Equal Opportunities**

16.1 In delivering the housing management service SHP shall operate equal opportunity policies and procedures in all aspects of its work, follow best professional practice in relation to equality and diversity, comply with all relevant legislation and ensure that it does not unlawfully discriminate in any way against any person or organisation.

16.2 SHP shall, upon request, contribute as required to any relevant equality impact assessment which the Council may undertake.

**17 Council Support Services Provided to SHP**

- 17.1 The Council provides support services and other 'back of house' services which at the date of this Agreement are those listed in Schedule 5. The list may be updated from time to time throughout the Term in accordance with any change of arrangements.

**18 Provision of Services by SHP to Third Parties**

- 18.1 SHP may propose to undertake services on behalf of third parties. However, SHP shall not undertake any new or additional function without the prior approval of the Council and no approval extend beyond the scope of clause 18.2.
- 18.2 Such work or provision of services should not conflict with or impact adversely upon the services to the Council's tenants and leaseholders and it should not contravene the requirements of Regulation 12 of the Public Contracts Regulations 2015 or put at risk the Council's Teckal exemption.
- 18.3 For the Council to give its permission SHP shall first carry out and share with it a comprehensive risk assessment of the impact of the proposed work.
- 18.4 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.
- 18.5 SHP shall maintain adequate insurance cover for all potential liabilities to the Council or any third party arising from third party activity that it undertakes.

**19 Financial Arrangements**

- 19.1 The financial arrangement applicable to the carrying out of the housing management function are set out in Schedule 6. SHP shall comply with all the financial arrangements described.
- 19.2 In collecting rent or other sums on the Council's behalf, SHP shall act with all due diligence. Any rent or sums obtained shall be remitted forthwith to the Council and shall until receipt by the Council be held by SHP on trust for the Council. SHP shall keep full and proper records as to the receipt and transfer of all monies received in such form as the Council shall require.
- 19.3 SHP may retain for the purpose of investment in the service any surplus arising from company activity within the HRA, subject to prior agreement of the Council on an annual basis.

**20 Procurement Obligations, Contracts and Contract Register**

- 20.1 SHP shall at all times comply with the obligations imposed by the Public Contracts Regulations 2015, Directive 2014/24/EU on public procurement and any other requirement imposed on it in relation to procurement and competition law.
- 20.2 SHP shall operate under Procurement Rules that shall at least be sufficiently similar to the Contract Standing Orders operated by the Council as stated in its constitution. The Procurement Rules shall be subject to review by the Council and in any event shall not contradict clause 20.1.

- 20.3 In procuring services or goods SHP shall use the Council's e-tendering portal or such other suitable e-tendering portal as may be approved by the Council from time to time.
- 20.4 When procuring on the Council's behalf as its agent (for example, to deliver capital projects including major works) the method for doing so shall be compliant with the Council's Contract Standing Orders and shall also be subject to the agreement of the relevant Council committee where this is required.
- 20.5 SHP shall be responsible for the acts, defaults or neglect of any sub-contractors, its employees or agents in all respects. In managing its contracts SHP shall comply with all reasonable requirements of the Council, monitor and review the performance of its contractors, take all proper steps to enforce its contracts and supply any information or documents to the Council at its request. The requirements of the Council could include the provision of a remedial plan within 28 days in cases where the Council deems a contractor's performance to be failing significantly, as measured by Key Performance Indicators, including resident satisfaction.
- 20.6 SHP shall also liaise with the Council in respect of contract renewal or re-letting where there is a requirement to publish notification of the contract in the Open Journal of the European Union, or any future equivalent publication, and notify it promptly of any notice(s) served or received.
- 20.7 SHP shall be required to keep a contracts register which shall be available for inspection by the Council at all times. The contracts register shall at all times state the following as a minimum: contracts it enters into and the contracting parties, expected and actual expenditure, service goods or works provided (including where SHP provides any services).

## **21 Use of Assets**

- 21.1 SHP shall supply all vehicles, equipment, other assets, consumables, capital purchase of end user device rental and overheads and other materials needed to deliver the Services, and shall be responsible for the maintenance and (where necessary) replacement of all such assets and for any necessary licensing and insurances.
- 21.2 All assets used in delivering the service shall be either owned or hired by SHP and, where hired, be capable of assignment to the Council and shall conform to any applicable British Standard.

## **22 Use of Premises**

- 22.1 SHP shall comply with the terms of the lease of Sutton Gate and any other premises let to SHP for the purpose of delivering the Services.
- 22.2 SHP may procure alternative premises for use in the delivery of the service, always subject to approval of the Council. Where the Council gives its approval to the procurement of alternative premises the Council shall be entitled to place any relevant conditions on SHP in order to protect the Council's interest. Such conditions may include but shall not be limited to the timing of any formal notices to

be served, the making of other communications to the relevant landlord, the requirement to cooperate with, and be advised by, the Council regarding any response, the appointment of any other adviser in relation to this clause 22.2.

- 22.3 SHP shall advise the Council of the availability of any surplus office or other operational space and make this available to the Council in the first instance, otherwise cooperate with the Council's reasonable requests and policies regarding surplus accommodation.

### **23 Use of Computer Systems and Software and ICT Support**

- 23.1 The Council will permit SHP to use its computer systems (and equipment) and/or software required for the delivery of the Services.
- 23.2 SHP shall not, without the Council's permission, allow any third party to use the systems or equipment and shall take all practicable steps to safeguard against unauthorised access, tampering or systems failure.
- 23.3 SHP shall afford the Council access to any of the computer systems, software, databases and operations used by it, subject to appropriate data sharing arrangements being in place.
- 23.4 SHP shall comply with any system security policy which may from time to time be issued by the Council.
- 23.5 Where SHP is using its own computer systems and/or software, it shall at all times maintain appropriate, effective and up to date security policies and measures in place including but not limited to anti-virus, malware protection, firewalls and similar software.
- 23.6 Where the Council uses SHP's computer systems and/or software the Council will comply with any relevant security policy which may from time to time be issued by SHP.
- 23.7 SHP shall be entitled to seek the provision of various goods and services to be offered by the Council in support of the Services including ICT services as shall further be specified in clause 23.

### **24 Freedom of Information**

- 24.1 The Council and SHP acknowledge that each party is subject to the Freedom of Information Act (FOIA) and the Environmental Information Regulations (EIR). As such each party shall meet its respective obligations under the FOIA and the EIR. The Parties agree that they shall give such assistance to each other in order that they shall be able to meet their respective obligations under the FOIA and the EIRs.

### **25 Data and Data Protection**

- 25.1 Both parties shall comply with the data protection obligations stated in Schedule 7.

**26 Confidentiality**

- 26.1 Subject to sub-clause 26.2, the Council and SHP shall keep the other party's Confidential Information confidential and shall not:
- (a) use such Confidential Information except for the purpose of its rights and performing its obligations under or in connection with this agreement; or
  - (b) disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this Clause 26.
- 26.2 The obligation to maintain confidentiality of Confidential Information does not apply to any Confidential information:
- (a) which the other party confirms in writing is not required to be treated as Confidential Information;
  - (b) which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;
  - (c) which a party is required to disclose by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable law, including the FOIA or the EIR;
  - (d) which is in or enters the public domain other than through any disclosure prohibited by this agreement;
  - (e) which a party can demonstrate was lawfully in its prior to receipt from the other party; or
  - (f) which is disclosed by the Council on a confidential basis to any central government or regulatory body.
- 26.3 A party may disclose the other party's Confidential information to those of its representatives who need to know such Confidential Information for the purposes of performing or advising on the party's obligations under this agreement, provided that:
- (a) it informs such representatives of the confidential nature of the Confidential Information before disclosure; and
  - (b) it procures that its representatives shall, in relation to any Confidential Information disclosed to them, comply with the obligations set out in this clause as if they were a party to this agreement,
  - (c) and at all times, it is liable for the failure of any representatives to comply with the obligations set out in this Clause 26.3.

**27 Information Standards, Records, Audit, Inspections and Consultations**

- 27.1 Subject to clauses 24, 25 and 26 SHP shall keep and maintain records of all work carried out for the Council in connection with the Services, in accordance with the law and good industry practice, and any third party services. These records shall be made available for inspection on demand during normal office hours by the Council (including by the Council's internal and/or external auditors), Ombudsman or relevant statutory bodies.
- 27.2 Such information shall be maintained for the purposes of carrying out the Services and shall include but not be limited to the purposes of:
- facilitating the Council to complete returns of housing statistics;
  - providing all financial reports;
  - providing to the Council all information necessary for the performance review processes required under this Agreement;
  - meeting any statutory reporting requirements of the Council and SHP (including but not limited to data protection and freedom of information);
  - informing an interested party of relevant information including Council Members and Members of Parliament;
  - assisting bodies other than the Council carry out similar functions.

**28 Security**

- 28.1 SHP shall maintain the security of the Council's premises provided for its use ensuring that access is restricted solely to its own personnel and bona fide visitors.
- 28.2 SHP shall comply with the Council's security regulations including any made for the purpose of the Data Protection Legislation.
- 28.3 SHP shall not divulge or dispose of any confidential material or information provided by the Council without its prior permission.
- 28.4 SHP shall ensure that the Council's data relating to the service is kept up-to-date and shall take all practicable steps to safeguard such data and information against unauthorised access, tampering or system failure.
- 28.5 When using its own systems SHP shall at all times ensure that comprehensive security copies of any computerised Council data are updated at the end of each working day and at least twice a week are stored in a secure location, offsite from the location of the servers.
- 28.6 SHP shall ensure that adequate disaster recovery arrangements exist in the event of a partial or complete failure of its computer systems or software.
- 28.7 SHP shall comply with its obligations under the Data Protection Act 2018 and the Computer Misuse Act 1990.
- 28.8 SHP shall assist the Council in complying with its obligations under the Access to Personal Files (Housing) Regulations 1989.

**29 Health and Safety (including Fire Safety)**

- 29.1 In carrying out the Services SHP shall at all times comply with the relevant requirements of the Health and Safety at Work etc. Act 1974, the Management of Health & Safety at Work Regulations 1999, and of any other relevant legal provisions pertaining to the health and safety of its own staff, the Council's employees, residents, members of the public and others who may be affected by its performance of the Services.
- 29.2 SHP shall appoint an officer to be responsible for health and safety matters as required by the Health and Safety at Work etc Act 1974 and the Management of Health & Safety at Work Regulations 1999. Whilst on Council Premises SHP shall ensure that its staff are fully conversant with its health and safety arrangements and that they take all such precautions as are necessary to protect the health and safety of Council staff and others who may be affected by its undertaking. SHP shall require its staff to comply with the Council's safety policy statement, the lawful requirements of the Council's safety advisers and any detailed safety arrangements specific to those Council Premises whilst on those premises. Without prejudice to the generality of the foregoing SHP shall ensure that staff are properly trained and instructed with regard to fire risks and fire precautions.
- 29.3 SHP shall comply with the Regulatory Reform (Fire Safety) Order 2005 in respect of the premises it manages.

**30 Emergency Planning**

- 30.1 SHP shall upon the occurrence of a civil emergency use its best endeavours to provide various services to the Council and the community as may be required - e.g. providing temporary accommodation, protecting property, deploying staff to emergency rest centres or other related activities.
- 30.2 SHP shall permit the Council to use any of the premises in its control at any time in the event of a civil or other emergency.
- 30.3 SHP shall assist the Council in meeting its obligations in relation to the Civil Contingencies Act 2004 to put in place effective emergency response plans and business continuity plans enabled through planning, exercising and responding. Such assistance shall include but not be limited to the following:
- (a) identification of risks and preparation and maintenance of Risk Registers;
  - (b) arrangements for, and participation in, exercises in order to ensure that the business continuity and emergency plans are effective; and
  - (c) regular review of emergency and business continuity plans.

**31 Insurances**

- 31.1 The Council shall remain responsible for insuring its premises, including properties leased to third parties as a result of the Right to Buy, against fire, explosion, storm and damage etc.
- 31.2 SHP shall at its own cost effect and maintain with a reputable insurance company of sound financial standing insurance providing, as a minimum, the following cover:

- (a) public liability insurance with a limit of indemnity of not less than £25,000,000;
- (b) employer's liability insurance with a limit of indemnity of not less than £10,000,000;
- (c) all other insurance as may be necessary or prudent for the delivery of its services.

Such insurances shall have the interest of the Council endorsed upon them or shall otherwise expressly by their terms confer their benefits upon the Council.

- 31.3 SHP shall give the Council, on request and in any event annually, copies of the then subsisting full policy wordings for the required insurances together with receipts or other evidence of payment of all the latest premiums due under those policies.
- 31.5 The terms of any insurance or the amount of cover shall not relieve SHP of any liabilities under this agreement.
- 31.6 SHP agrees to discharge its obligations under this clause, upon cessation of any existing long term agreements, by procuring the above insurances through the Council, unless such arrangements are not objectively in the mutual interest of both parties. The Council shall charge SHP a reasonable amount in respect of such insurances and its cost of servicing such arrangements.

### **32 Fraud and Bribery Act 2010**

- 32.1 SHP shall notify the Council immediately of any actual or suspected fraudulent or unlawful activity or breach of the Bribery Act 2010 in the provision of the Services (including the conduct of its Contractors) and carry out such investigations as are necessary. Such information shall be provided to the Council to the extent lawfully possible and to such other relevant investigatory person.
- 32.2 SHP shall have and shall maintain in place throughout the term of this Agreement its own policies and procedures (always subject to the Council's review), including but not limited to adequate procedures under the Bribery Act 2010. Such procedures should include promptly reporting to the Council any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this Agreement.

### **33 Variations**

- 33.1 No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their Authorised Representatives).
- 33.2 Any document expressed to be provided by SHP and subject to the Council's review or amendment shall not amount to a variation under this clause 33.

### **34 Dispute Resolution and Escalation**

- 34.1 In the event that the Parties consider that a matter needs to be escalated beyond normal officer communications, the Parties shall communicate that fact through the Representatives to be identified under clause 10.9.

- 34.2 The Representatives shall endeavour to resolve the matters referred to in clause 34.1. In the event that the Parties are not able to resolve any matter it shall be referred to a responsible Director from both Parties.
- 34.3 If any dispute or difference of any kind shall arise between the Parties either Party shall notify the other in writing as soon as is reasonably practicable that a formal dispute has occurred (where the matter has been escalated in accordance with 34.1 and 34.2 the Directors shall each be informed by Notice).
- 34.4 The Directors shall meet to attempt to resolve the dispute and shall meet as often as is necessary in order to gather and exchange all relevant information with respect to the matter in issue. In the event that the dispute cannot be within 20 working days they shall escalate the disagreement to dispute resolution in accordance with 34.5 within a further 10 working days.
- 34.5 Where the dispute cannot be resolved in accordance with 34.4 the Parties shall appoint an expert to determine the dispute ("Expert"). Where the identity of the Expert cannot be agreed, such Expert to be nominated by the President for the time being of the Chartered Institute of Housing or a person appointed by him. The Expert appointed under Clause 34.3 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.
- 34.6 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.
- 34.7 Subject to clause 33.2 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.

## **35 Termination**

### Termination without Cause and Suspension

- 35.1 The Council may terminate or extend this agreement at any time during the Contract Period upon giving SHP twelve months' written Notice.
- 35.2 The Council may suspend any part of this Agreement and arrange for the performance of that part by another party. Such suspension shall be effective upon service of Notice of the suspension. Reasonable notice shall be deemed to be either 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 one month's notice in any other case.

### *Termination for Breach*

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

- 35.3.1 commits a breach of any of SHP's obligations under the Agreement, which for the avoidance of doubt shall include a consistent failure to meet performance targets
  - 35.3.2 changes SHP's structure or staffing which puts SHP in breach of a material term or condition of this Agreement.
  - 35.3.3 has any director or senior manager of it convicted of any dishonesty offence;
  - 35.3.4 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
  - 35.3.5 has an application made under the Insolvency Act 1986 to the Court for the appointment of an administrator or an administrative receiver
  - 35.3.6 has a winding-up order made or (except for the purpose of amalgamation or reconstruction) a resolution for voluntary winding-up passed
  - 35.3.7 has a provisional liquidator, receiver, or manager of its business or undertaking duly appointed
  - 35.3.8 has an administrator or an administrative receiver (as defined in the Insolvency Act 1986) appointed
  - 35.3.9 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
  - 35.3.10 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 35.5.
  - 35.4 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 35.5.
  - 35.5 In the event of any one or more of the circumstances described in Clauses 35.3 and 35.4 the Council may take any or all of the following actions:-
    - 35.5.1 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;
    - 35.5.2 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;
    - 35.5.3 determine the whole of this Agreement;
- and in the event of action pursuant to Clauses 35.5.1 and 35.5.2 a corresponding variation to the Delivery Plan shall be made in accordance with Clause 35.

Reasonable notice shall be deemed to be either 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 one month's notice in any other case.

- 35.6 If the Agreement is terminated in whole or in part as provided in Clause 35.5 the Council shall:-
  - 35.6.1 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;
  - 35.6.2 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.
- 35.7 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 35 and any other right or remedy available to it) to take any or all of the following actions:-
  - 35.7.1 serve Notice on SHP to rectify the defect (where or when it is capable of rectification) within such time as the Council may reasonably direct; or
  - 35.7.2 carry out the relevant Services itself or by a third party and vary the Annual Delivery Plan to reflect the Council's loss, cost and expense in so doing.
- 35.8 The Council shall be entitled to terminate this Agreement in accordance with this Clause 35 upon service of a Notice and such termination shall take effect at the following times as shall be applicable:
  - 35.8.1 where this Agreement states a time period, upon expiry of that time period following service of the Notice;
  - 35.8.2 where this Agreement does not state a time period, either:
    - i. upon expiry of the time period stated in the Notice; or
    - ii. where there is no time period stated in the Notice upon service of the Notice.

reasonable notice shall be deemed to be either 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 one month's notice in any other case.

- 35.9 If the Council exercises its rights under this Clause 35 to terminate the whole or any part of the Agreement then in relation to the whole or any such part:-

- 35.9.1 SHP shall, unless the Council requests otherwise, forthwith cease to perform any of the Services;
- 35.9.2 hand over this Agreement to the Council without detriment to the interest of the Council's tenants, the Council or other customers of the Council.
- 35.10 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 35.3 and 35.4 and then only for so long as (in the Council's reasonable opinion) the relevant circumstances subsist.

#### Statutory Break Clauses

- 35.11 Pursuant to regulation 19 (Break clause in other housing management agreements) of the Housing (Right to Manage) (England) Regulations 2012, in the event that a subsequent TMO agreement is to be entered into in relation to houses to which the Services relate:
  - 35.11.1 the Council shall give notice to determine this Agreement to the extent that this Agreement relates to the said houses;
  - 35.11.2 upon determination referred to in clause 35.11 and 35.11.1 SHP shall cooperate with the Council in order that the Parties may make all necessary arrangements for the transfer of the management functions from SHP to the TMO and in any event such arrangements shall be in place within 3 months of the determination being affected.
- 35.12 Pursuant to regulation 2 of The Housing Management Agreements (Break Clause)(England) Regulations 2010 and the Housing and Regeneration Act 2008, where it is necessary for the transfer or tender of the requirement is imposed under section 247(2) or 249(2) of the Housing and Regeneration Act 2008 (requirement to put management out to tender or transfer management):
  - 35.12.1 the Council and SHP must make arrangements for the transfer of management functions from SHP and the tender of such functions, and
  - 35.12.2 the Council and SHP shall as soon as is reasonable determine the Agreement to the extent required under clause 35.12.
  - 35.12.3 so far as necessary to ensure that the Agreement does not continue to have effect as respects management functions which are the subject of the requirement imposed as result of the said regulation 2, terminate such part of this Agreement.

#### **36 Notices and Communication between the Parties**

- 36.1 Any Notice given to a Party under or in connection with this Agreement shall be in writing and delivered to the address of either Party stated at the head of this Agreement and marked for the attention of:
  - a) In the case of SHP: the Managing Director
  - b) In the case of the Council: the Assistant Director, Housing Planning and

### Regeneration

- 36.2 A Notice shall be deemed to be effective in the following circumstance and timescales
- a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
  - b) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
  - c) if sent by pre-paid first-class post or other next working day delivery service, at [9.00 am] on the [second] Working Day after posting [or at the time recorded by the delivery service].
- 36.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 36.4 Correspondence by email shall not amount to a Notice for the purposes of this Agreement.

### **37 Legal Investigations**

- 37.1 SHP immediately upon becoming aware of the same shall notify the Council's Representative of any accident, damage or breach of the Law and any statutory provision which affects or might reasonably be expected to affect SHP's ability to deliver the Services in accordance with this Agreement
- 37.2 If requested to do so by the Council, SHP shall provide the Council 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.
- 37.3 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 Representative of the existence of any such matter together with such particulars as are available.

### **38 Severability**

- 38.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.
- 38.2 If one party gives notice to the other of the possibility that any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal,

valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

### **39 No Partnership or Agency**

- 39.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other Party.
- 39.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

### **40 Survival of this Agreement**

- 40.1 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.
- 40.2 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.

### **41 Entire Agreement**

- 40.1 This Agreement and the documents referred to in it constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 41.2 Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

### **42 Counterparts**

- 42.1 This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this agreement, but all the counterparts shall together constitute the same agreement. No counterpart shall be effective until each party has executed at least one counterpart.

### **43 Governing Law**

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

**44 Jurisdiction**

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

**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 )

in the presence of:- )  
Authorised Signatory under Standing Order 33

Seal Register No:

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

in the presence of:- )  
Director  
Secretary/Director

**Schedule 1****DEFINITIONS**

Capitalised terms in this Agreement shall be interpreted in accordance with this Schedule 1:

**“Agreement”** means this management agreement (including all Schedules Appendices and Annexes) and any variations in accordance with the Agreement.

**“Annual Delivery Plan”** means the plan produced by SHP prior to the commencement of each forthcoming financial year, which shall incorporate a performance plan, a service improvement plan and a finance plan

**“Annual Report”** means the report to be prepared by SHP stating how it has performed in the previous 12 months as against the Annual Delivery Plan, the Key Performance Indicators, the Objectives and compliance with its requirements in relation to Service Provision.

**“Expiry Date”** means 10 years from the Commencement Date.

**“Commencement Date”** means the date on which this Agreement comes into effect as stated in clause [1]

**“Confidential Information”** means all confidential information (however recorded or preserved) disclosed by a Party in connection with this Agreement including but not limited to:

- any information that would be regarded as confidential by a reasonable business person relating to:
  - the business, affairs, customers, suppliers or plans of the disclosing party; and
  - (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party;
- any information developed by the parties in the course of carrying out this agreement;
- any information that is commercially sensitive.

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

**“EIRs”** means the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

**“FOIA”** the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

**“Finance Plan”** means the plan produced by SHP as part of its Annual Delivery Plan comprising a summary of the approved Housing Revenue Account (HRA) estimates for the forthcoming year and a breakdown of the SHP management fee by key expenditure area.

**“Information”** has the meaning given under section 84 of FOIA.

**“KPIs”** or **“Key Performance Indicators”** means the key performance indicators referred to in Schedule 4

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

**“Management Fee”** means the sum paid by the Council to SHP for the delivery of the service

**“Notice”** means a notice under this Agreement in accordance with Schedule [10] and clause [36]

**“Objectives”** means the objectives as set out in clause 2.2 and Schedule 4

**“Operational Protocols”** means the operational protocols set out in Schedule 3

**“Performance Plan”** means the plan referred to in the performance framework set out in Schedule 4

**“Procurement Rules”** means the procurement rules to be prepared by SHP for the conduct of procurement by SHP and the entering into contracts, which shall be subject to the Council’s periodic review and amendment.

**“Representative”** means the officer appointed by the Parties in accordance with clause 10.

**“Request for Information”** means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIRs.

**“Review”** means a review of the Services and performance of this Agreement

**“Risk”** means any matter that is determined or should reasonably determined to be a risk to the Parties in relation to the Services.

**“Risk Register”** means the register of Risks to be maintained by SHP.

**“Service Improvement Plan”** [insert agreed definition from performance framework]

**“Services”** means the services to be delivered by SHP under this Agreement.

**“Service Standards”** means the standards by which SHP shall provide the Services set out in Schedule 1 and the Operational Protocols all in accordance with the KPIs.

**“Term”** means the period from the Commencement Date to the Expiry Date.

**Schedule 2**

**FUNCTIONS DELEGATED**

The table below sets out the housing management function delegated to SHP under this agreement. At the same time, it also shows the functions retained by the Council and those wider housing functions that are delegated to Encompass (the Council’s local authority trading company that has responsibility for its statutory housing functions).

Functions delegated to SHP	Council retained functions	Housing functions delegated to Encompass
<p><b>Housing management policy</b></p> <p><b>Asset management</b> Stock condition surveying Asset management strategies</p> <p><b>HRA business planning</b> Supporting the preparation and updating of the HRA Business Plan</p> <p><b>New tenancies</b> Granting of new tenancies (sign-ups) Successions Mutual exchanges Other assignments</p> <p><b>Repairs and maintenance</b> Responsive repairs Planned maintenance Major repairs and improvements Energy efficiency works Fire Safety Health and Safety</p> <p><b>Void and empty property management</b> Tenancy terminations Property clearance Inspections and void repairs Advertising vacancies Property viewings</p>	<p><b>Housing strategy</b></p> <p><b>HRA Business Plan</b></p> <p><b>Commissioning and performance management</b></p> <p><b>Housing policy outside of housing management</b></p> <p><b>Housing regeneration</b></p> <p><b>Housing development</b></p> <p><b>Housing related support</b></p> <p><b>HRA commercial sites and properties</b></p>	<p><b>Homelessness administration</b></p> <p><b>Housing advice</b></p> <p><b>Housing Register administration</b></p> <p><b>Property allocations</b></p> <p><b>Annual lettings plans</b></p>

<p><b>Tenancy management</b></p> <p>Tenancy conditions enforcement</p> <p>Illegal occupation enforcement</p> <p>Tackling tenancy fraud</p> <p>Tackling anti-social behaviour</p> <p>Court action and evictions</p> <p>Management of non-secure tenancies</p> <p><b>Traveller site management</b></p> <p>Licence fee collection</p> <p>Enforcement of Licence Conditions</p> <p>Illegal Occupation Enforcement</p> <p>Repairs</p> <p>Site maintenance and improvements</p> <p><b>Estate management</b></p> <p>Grounds maintenance</p> <p>Estate cleaning / caretaking</p> <p><b>Older people housing</b></p> <p>Older people housing scheme management</p> <p>Independent housing management services</p> <p><b>Right to Buy Administration</b></p> <p><b>Leasehold Management</b></p> <p>Service charge calculations</p> <p>Leaseholder consultations</p> <p>Service charge billing</p> <p>Income collection / recovery</p> <p>Enforcement of Lease Provisions</p> <p><b>Finance and accounting</b></p> <p>Financial management of the HRA</p> <p>Rent and charges collection</p> <p>Recovery of arrears and debts</p> <p>Insurance and claims</p>		
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<p><b>Procurement</b></p> <p>Letting of contracts in relation to delegated activities</p> <p><b>Resident Involvement</b></p> <p>Resident Engagement Strategy</p> <p>Resident association development</p> <p>Liaising with resident representative bodies</p> <p>Annual reports to residents</p> <p>Resident newsletters etc</p> <p><b>Other assets (including lettings management and clearance)</b></p> <p>Garages</p> <p>Localised hubs / offices / surgeries</p> <p><b>New build / acquisitions</b></p> <p>Property acquisitions</p>		
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**Schedule 3**

**OPERATIONAL PROTOCOLS**

Adaptations to council dwellings

Allocations and lettings

Children and family support

Community alarm / mobile response

Emergency planning

Health and safety

Housing and health

Housing benefit

Shanklin Village Community Centre

Pensions

Re-housing and regeneration

Safeguarding

Safer Sutton Partnership

Temporary accommodation

Tenancy fraud

Traveller site

**Schedule 4****PERFORMANCE MANAGEMENT FRAMEWORK**

This framework sets out the Council's approach to managing SHP's performance, covering the reporting mechanisms and documentation to be produced and the governance structures that provide oversight, both within the Council and SHP.

SHP's Annual Delivery Plans

At the heart of the performance management framework are the delivery plans that SHP is required to produce annually. As set out in clause 11, SHP is required to produce delivery plans prior to the commencement of each forthcoming financial year, and which shall incorporate a performance plan, a service improvement plan and a finance plan. The essential requirements for these and other aspects of the delivery plan are as set out below.

Performance Plan

This shall comprise a suite of performance indicators (PIs) set by the Council, but which will be the subject of consultation with SHP. The PI suite will broadly cover the range of functions within housing management and will remain in place for a five year period. Targets for each of the PIs will be set by the Council, again in consultation with SHP, annually for the year ahead. In addition, indicative targets for SHP to reach by the end of the five year period will also be set, and these may be adjusted during the period depending upon actual performance achieved and other circumstances.

Targets for all PIs shall be included within the performance plan for the following year along with outturns to date in relation to the previous year, and with commentary on the latter as appropriate.

In addition to the suite of PIs, SHP shall provide reports, either annually or six-monthly, on a range of housing management functions giving more specific details of the organisation's performance.

Service Improvement Plan

The service improvement plan shall set out SHP's proposals for improving service delivery during the coming year and shall be set in a 'SMART' format, with specific, measurable and achievable actions, target dates and lead officer names. It shall also be in an organised structure, related to function area, and shall address areas of previously identified underperformance where these have occurred.

Finance Plan

The finance plan shall comprise a summary of the approved Housing Revenue Account (HRA) estimates for the forthcoming year and a breakdown of the SHP management fee by key expenditure area. The latter shall also show any additional sources of SHP income projected for the following year. In addition, the finance plan shall set out a summary of the approved HRA capital programme, showing key areas of expenditure and sources of income.

### Other Requirements of the Annual Delivery Plan

The annual delivery plan shall include a statement of SHP's purpose, mission, priorities and values. It shall also include an overview of service delivery during the previous year including in relation to service standards (see below) and the actions contained within the service improvement plan. It shall further include an assessment of challenges ahead and how these will be met, and a risk register identifying all key risks to the organisation and service delivery together with mitigative measures to be taken.

### Service Standards

The current suite of service standards, covering customer facing and other aspects of the housing management service, shall set be appended to the annual delivery plan (see clause 9). This shall be published on SHP's website and be periodically reviewed jointly by SHP and the Council.

Performance against the service standards is in some, but not all, cases measured through a specific PI. Notwithstanding this, SHP shall within its annual delivery plans set out an analysis of performance against the standards during the previous year.

### Performance Benchmarking

In addition to providing outturns against the suite of PIs, SHP shall also undertake benchmarking of its service delivery against other housing management organisations, either via HouseMark or using other appropriate sources of data. This shall include illustrations of SHP's performance, on all measurable areas, in terms of the quartile it sits within.

### Value for Money

Per clause 12, SHP shall provide, within nine months of the end of the previous financial year, a value for money (VFM) statement or assessment in relation to performance during the previous year. The format and content of the statement shall be agreed in advance with the Council and shall, as a minimum, include benchmarking data on the cost and performance of the service broken down by its various functional elements, and measures to be taken to improve VFM where benchmarking or other intelligence suggests that this is needed.

### Governance and Performance Management Structures

#### *Performance and Partnership Group*

The Council's oversight of SHP's performance shall primarily be conducted via monthly 'Performance and Partnership Group' (PPG) meetings comprising the managing director and other senior officers of SHP and the Council's assistant director, housing, planning and regeneration and senior client and finance officers. On a quarterly basis the chair of the SHP Board of Management and the chair of Sutton Federation of Tenants and Residents Associations (SFTRA) shall be invited to attend to enable SFTRA to raise and comment on issues from a resident perspective.

Agendas for the PPG meetings shall be agreed in advance and shall include PI outturn and other performance data as a standing item along with other partnership or policy issues as

these arise. The chairing of the meetings will alternate, except those involving SFTRA when the Council will be in the chair. SHP shall host and service the meetings and distribute agendas and circulate notes in a timely fashion.

#### *HEB Committee*

The Council's Housing, Economy and Business (HEB) Committee will approve the SHP annual delivery plan at its March meeting. It will also approve rent levels, usually in January, and the HRA Business Plan at its March meeting. The Strategy and Resources Committee, at its February meeting, will be responsible for approving the HRA estimates and the annual HRA capital programme. These will determine the SHP management fee for the following year (see Schedule 6) and also the amount of funding available for major works and other capital projects.

In addition to financial matters, the HEB Committee remains responsible for all of housing policy matters including in relation to the landlord function, subject to matters being delegated to officers.

#### *Day to Day Client Liaison*

The Council's client officers will liaise with SHP on a day to day basis in regard to issues as they arise and will be a point of contact for SHP to refer matters for the Council's consideration and steer as appropriate.

#### *SHP Governance Structures and Internal Performance Management*

Under its constitution the SHP Board of Management has final decision making powers and is ultimately responsible for overseeing the performance of the organisation. Its Performance Committee scrutinises performance in detail and is constituted to allow for resident involvement in the process. Council client staff shall attend both the Board and the Performance Committee.

The Board shall be expected to continue to receive regular reports on key areas such as financial management and budgeting, capital programme delivery as well as performance on key PIs and proposed changes to service delivery.

At an officer level, SHP has a number of groups set up to oversee certain aspects of service delivery and performance, including one for asset management and another for overseeing the responsive repairs service. Council client staff shall also be invited to attend these.

#### *SHP Monitoring of Third Party Providers*

SHP has a number of contracts in place with other organisations to deliver elements of the service – e.g. responsive repairs, grounds maintenance etc. It also receives a number of 'back office' or support services from the Council either directly or via its shared service arrangements with other councils – e.g. legal services, finance and accounting etc. SHP shall establish and maintain appropriate clienting and performance management mechanisms with all such providers.

**Schedule 5**

**CONTRACTS FOR SUPPORT SERVICES**

Legal services

HR services

Communication services

ICT services

Insurance services

**Schedule 6****FINANCIAL ARRANGEMENTS****1 Fees for the Service**

- 1.1 The Annual Delivery Plan shall specify annual fees in respect of the following:
- A HRA-funded Management Fee for the management of the delegated functions;
  - Any fees for services funded by the Council from outside the HRA (e.g. fees for the management of the Traveller site);
  - A fee to fund and manage the capital investment programme for HRA assets.
- 1.2 The various fees applicable will be agreed annually.
- 1.3 Where SHP delivers services outside of those referred to above, 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 Annual 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 HRA within each Financial Year. The various elements of the HRA are calculated as follows:

Income

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

Expenditure

SHP Mgt Fee	-agreed as part of the HRA Business Plan
Council Costs	-annual adjustment based on rent changes
Heating	-annual adjustment based on charge and volume changes
Bad Debt Provision	-based on agreed formula
Depreciation	-based on agreed formula
Debt Repayments	-where agreed as part of HRA Business Plan
Debt Management	-based on borrowing levels and interest rates
Revenue Contributions to Capital Outlay (RCCO)	-where agreed as part of the HRA Business Plan

Balance

Working balance	-must at least be at the minimum level (5% of income)
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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 February for the following year. The HRA budget will contain the SHP Management Fee for the year.

2.4 The HRA funded Management Fee will be paid to SHP in twelve equal monthly instalments at the start of each month.

### **3 Other Fees for Housing Services**

3.1 Where fees are due to be paid for services contained in Appendix A but payment is from outside the HRA, 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 HRA 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 will formally notify SHP of an approved Estimated Capital Programme Fee at least 21 days prior to 1<sup>st</sup> April.

### **5 Management of The Pastures (Traveller site)**

5.1 In relation to the financial arrangements for the management of The Pastures, 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.

5.2 At the end of each year SHP will provide an annual statement of income and expenditure, identifying any surplus available for reinvestment. Surpluses will be retained by SHP on approval from the Council.

### **6 Financial Management**

6.1 Each year SHP shall prepare a balanced budget ensuring an appropriate level of contingency and reserves are maintained. SHP will exercise robust financial management with performance against this budget monitored internally no less than monthly.

6.2 SHP shall notify the Council at the earliest opportunity if it is unable to meet its financial obligations from income and reserves. In this event SHP may apply to the Council for an additional payment from HRA general reserves.

**Schedule 7****DATA PROTECTION**

**This Schedule shall operate as an obligation imposed on SHP and a protocol to be followed.**

- 1 In this Schedule the terms "data controller", "data processor", "data subject", "personal data", "sensitive personal data" and "processing" shall have the meaning given to them in the Data Protection Act 2018 (the "DPA"), and "Data" shall mean the personal data and sensitive personal data provided by the Council to SHP pursuant to this Agreement or which is otherwise processed by SHP on behalf of the Council pursuant to this Agreement.
- 2 The Parties acknowledge that the Council is a data controller and SHP is a data processor in relation to the Data. The Parties also acknowledge that, in relation to certain processing of the Data, SHP shall be a data controller and SHP agrees, in relation to Data for which it is a data controller, to comply with its obligations under the DPA and the GDPR as stated in 9.3.
- 3 SHP and the Council shall each comply with their respective obligations under the DPA and other applicable statutory provisions or provisions of any European Directive in respect of appropriate records. SHP shall, from 25 May 2018, comply with its obligations under the General Data Protection Regulation (EU) 49 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (the "GDPR") as a data processor and to the extent SHP is a data controller, SHP shall comply with its obligations under the GDPR as a data controller. For the purpose of this Schedule 7, a reference in this Agreement to the DPA shall from 25 May 2018 be construed as being a reference to the GDPR and the terms referred to in Schedule 12.1 shall have the meaning given to them in the GDPR. Any reference in this Agreement to "sensitive personal data" shall from 25 May 2018 be construed as meaning "special categories of personal data" as referred to in the GDPR.
- 4 SHP shall:
  - (a) process the Data only on the written instructions of the Council to perform its obligations under this Agreement and if SHP is aware, or of the opinion, that any instruction given by the Council breaches the DPA or the GDPR or data protection law of any European Union member state, SHP shall immediately inform the Council of this giving details of the breach or potential breach;
  - (b) comply with such technical and organisational measures as are necessary to ensure compliance with the GDPR by SHP and the Council from 25 May 2018 and to protect the rights of relevant data subjects;
  - (c) assist the Council to comply with its obligations in relation to security and protection of the personal data under the DPA or the GDPR (as applicable) including but not limited to prompt assistance with SHP's obligations pursuant to the GDPR and any other applicable Legislation regarding notification of security breaches to any relevant regulatory authority and notification of personal data

breaches to data subjects in accordance with the timescales set out in, and the requirements of, the GDPR;

- (d) provide appropriate technical and organisational measures against unauthorised or unlawful processing, accidental loss or destruction of or damage to the Data;
- (e) notify the Council immediately if SHP becomes aware of any breach, reportable to the ICO, of the DPA or the GDPR (as applicable) in relation to the personal data and/or if it becomes aware of a breach of the provisions of this Schedule 7 and SHP shall immediately provide full details of the relevant breach;
- (f) take all reasonable steps to ensure the reliability of the Staff who have access to the Data and ensure that access to the Data is limited to such authorised Staff only who require access to it for the purpose of complying with the obligations under this Agreement and who will maintain the confidentiality and security of the Data;
- (g) not process or transfer Data outside of the European Economic Area (or any country deemed adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC) without the prior written consent of the Council and without putting in place adequate protection for the Data to enable compliance by the Council and SHP with their obligations under the DPA and the GDPR (as applicable);
- (h) at all times perform its obligations under this Agreement in such a manner as not to cause the Council in any way to be in breach of the DPA or the GDPR (as applicable);
- (i) process Data for no longer than necessary for the purpose of performing its obligations under this Agreement and return and/or destroy Data as instructed by the Council from time to time in writing and in any event return or destroy (as directed by the Council) all Data on termination of this Agreement;
- (j) provide such information as is reasonably necessary to enable the Council to satisfy itself of SHP's compliance with this Schedule 7 and compliance by a third party with their obligations imposed in accordance with the provisions of paragraph 12.6 and allow the Council and its Authorised Representatives, upon reasonable prior written notice to SHP, reasonable access to any relevant premises to inspect the procedures and measures referred to in this Schedule 7;
- (k) perform its obligations under this Agreement (and any other agreement relating to the provision of the Services) in full compliance with all applicable guidelines, statutory orders, supplementary laws and codes of practice issued by relevant regulators pursuant to or in connection with the DPA and the GDPR, including as may be issued by the UK Information Commissioner's Office, data protection regulators of other European Union member states or as may be issued by the European Commission or the Board and "Board" shall have the meaning given in the GDPR;
- (l) assist the Council with compliance with data subject rights under the DPA and the GDPR including rights of rectification, erasure (right to be forgotten),

restriction of processing, portability, right to object to processing, rights in relation to automated individual decision making (including profiling);

- (m) inform the Council from time to time of Subject Access Requests received in relation to the Data processed pursuant to this Agreement and provide prompt assistance in complying with any such requests;
  - (n) immediately inform the Council of and promptly provide assistance with responding to any enquiry made, or investigation or assessment of processing initiated by the Information Commissioner's Office or other regulatory authority in respect of the Data; and
  - (o) immediately inform the Council of any request for disclosure of the Data from a third party which SHP receives directly and provide a copy of such request and SHP shall not disclose or release any Data without first consulting with and obtaining the consent of the Council, except where required by applicable Legislation or any court of competent jurisdiction.
- 5 SHP shall:
- (a) consider all relevant DPA and GDPR requirements and shall assist the Council to implement all necessary DPA and GDPR compliance requirements;
  - (b) assist the Council to comply with its obligations under the DPA and the GDPR, including but not limited to, assisting the Council with:
  - (c) transparent information collection (including but not limited to the issuing of relevant data protection notices);
  - (d) obtaining any necessary consents from data subjects;
  - (e) compliance with restrictions regarding personal data processing which are imposed by European Union or European Union member state law pursuant to the GDPR; and ( conduct of data protection impact assessments in relation to any processing of Data and where required by the GDPR or otherwise by relevant data protection laws, assist with consultation with, and provision of, information to the Information Commissioner's Office or other relevant regulator or data protection authority in relation to such data protection impact assessment(s).
- 6 SHP shall put in place in writing with any third party, including consultant, Subcontractor, agent or professional adviser or other third party which may receive and/or have access to Data ("Sub-Processor"), contractual obligations which are at least equivalent to the obligations imposed on SHP pursuant to this Schedule.
- 7 In the event that SHP becomes aware that it or any third party processing Data pursuant to or in connection with this Agreement is processing, or has processed, the Data in contravention of this Agreement or relevant sub-contract, SHP shall promptly and in writing, notify the Authorised Officer with full details of the contravention.
- 8 Copies of Council systems and data will be kept at a secure offsite storage location by the Contractor at its own expense. The storage media will be accessible only to authorised Staff of SHP and the authorised employees of the Council.

- 9 Subject to paragraph 12.10, SHP shall ensure that the Council's data or information is not provided to another party and that no data is destroyed or deleted by SHP unless instructed by the Authorised Officer.
- 10 SHP shall, on termination of this Agreement or any part of it, and at any time on the request of the Council, return to the Council (securely and in such format and such media as the Council may reasonably require), or if requested by the Council, securely destroy the Data (including all copies of it) immediately (provided that in relation to any partial termination of the Services it shall not be required to do so where this would adversely affect SHP's ability to provide the remaining services).
- 11 SHP shall (and shall procure that any Subcontractor shall) operate, or be able to demonstrate it is working towards implementation by the Commencement Date of, a verifiable system that guarantees compliance with a security system relevant to the Services and based on the principles in ISO 27001:2013 (or any amendment, re-enactment or replacement of it) or any other equivalent security measures.
- 12 SHP warrants that it is not, at the date of this Agreement, aware of any matter or circumstance which would cause it to be unable to fully comply with the provisions of this Schedule 7.
- 13 SHP shall indemnify and keep indemnified the Council against all costs, claims, losses, damages and expenses (including legal expenses) arising out of, or in connection with, any breach of this Schedule 7 by SHP, its Sub-Processors and/or its representatives.

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