

Dated

2022

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

HOMES FOR HARINGEY LIMITED

**MEMBER'S AGREEMENT
in relation to HOMES FOR HARINGEY LIMITED**

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PARTIES

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HARINGEY** of Civic Centre, High Road, Wood Green, N22 8LE (the "**Owner**")
- (2) **HOMES FOR HARINGEY LIMITED** (company number 05749092) a company limited by shares whose registered office is at 10 Station Road, London, England, N22 7TR (the "**Company**")

INTRODUCTION

- (A) The Company was incorporated on 20 March 2006 and, at the date of this Agreement, the Owner is the sole member of the Company.
- (B) The Company has been established for the purpose of, amongst other things, providing housing stock to the Owner to house homeless applicants.
- (C) This Agreement sets out the terms upon which the Owner will participate in the Company as its sole member and the terms upon which the Owner will retain decisive influence over both the strategic objectives and the significant decisions of the Company.

AGREED TERMS

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement:

Articles means the articles of association of the Company

Business means the business of the Company as set out in clause 2

Business Day means a day (other than a Saturday or Sunday) on which the banks in the City of London are open for business

CA2006 means the Companies Act 2006

Data Protection Legislation means all legislation and regulatory requirements in force from time to time relating to the protection and handling of personal data and the privacy of electronic communications, including, without limitation (i) any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation, as well as (ii) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to data protection and privacy (for so long as and to the extent that the law of the European Union has legal effect in the UK)

Director means a director of the Company

Environmental Information Regulations means the Environmental Regulations 2004

FOIA means the Freedom of Information Act 2000

Information has the meaning given to it under section 84 of the FOIA

Owner Consent means the prior written consent of the Owner

Owner Consent Matters means those matters listed in Schedule 1

Owner Representative means the person holding the role of assistant director for housing demand (or such successor title) from time to time or such other person as nominated by the Owner from time

to time to act as its authorised representative which shall be determined by the Owner in accordance with its constitution from time to time and notified to the Company in writing

Remuneration Policy means a policy adopted by the Company (following receipt of Owner Consent) in relation to the provision of remuneration (including salary, bonus, the provision of benefits-in-kind or otherwise) for employees, officers and consultants

Request for Information has the meaning set out in the FOIA or any apparent request for information made under the FOIA

Subsidiary has the meaning given in the CA2006

Teckal means the codified rule of EU procurement law as set out within Directive 2014/24/EU and Regulation 12 of the Public Contracts Regulations 2015, deriving from the Teckal case (*Teckal Srl v Comune de Viano and Azienda Gas-Acqua Consorziale (AGAC) di Reggio Emilia* (C-107/98) [1999] ECR I-8121) pursuant to which the requirement for open advertisement and tendering for public contracts in accordance with the Public Contracts Regulations 2015 does not apply

United Kingdom means the geographical area of the United Kingdom of Great Britain and Northern Ireland as at the date of this Agreement

1.2 A reference to a statutory provision includes a reference to:

- 1.2.1 a statutory amendment, consolidation or re-enactment (whether before or after the date of this Agreement);
- 1.2.2 statutory instruments or subordinate legislation (as defined in section 21(1) of the Interpretation Act 1978) or orders made under the statutory provision (whether made before or after the date of this Agreement); and
- 1.2.3 statutory provisions of which the statutory provision is an amendment, consolidation or re-enactment.

1.3 Reference to:

- 1.3.1 a person includes a legal or natural person, partnership, trust, company, government or local authority department or other body (whether corporate or unincorporate);
- 1.3.2 a statutory or regulatory body shall include its successors and any substituted body;
- 1.3.3 an individual includes, where appropriate, his personal representatives;
- 1.3.4 the singular includes the plural and vice versa; and
- 1.3.5 one gender includes all genders.

1.4 Unless otherwise stated, a reference to a clause or Schedule is a reference to a clause of or schedule to this Agreement and a reference to this Agreement includes its Schedules.

1.5 Clause headings in this Agreement are for ease of reference only and do not affect its construction.

1.6 In construing this Agreement the so-called ejusdem generis rule does not apply and accordingly the interpretation of general words shall not be restricted by words indicating a particular class or particular examples.

1.7 For the purposes of this Agreement **Party** means a party to this Agreement and reference to **Parties** shall be to all or more than one of them as applicable.

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

- 1.9 A reference to any agreement or document (or any provision of it) referred to in the Articles is a reference to that agreement or document (or the relevant provision of it) as varied, amended or supplemented (in each case, other than in breach of the provisions of that agreement or document) from time to time.
- 1.10 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.11 A reference to an **amendment** includes a novation, re-enactment, supplement or variation (and amended shall be construed accordingly).
- 1.12 A reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it.

2 BUSINESS AND BUSINESS PLAN

- 2.1 The Business of the Company shall be:
- 2.1.1 to provide private sector leases to the Owner for the provision of short term tenancies;
 - 2.1.2 to provide housing services to the Owner as notified by the Owner in writing;
 - 2.1.3 such other matters as notified by the Owner in writing;
- together with any activities reasonably incidental to the above or activities from time to time.
- 2.2 The Parties intend that the Company shall at all times be a Teckal-compliant company.
- 2.3 The Company shall deliver to the Owner by no later than November each year (or such other date as may be agreed between the Parties) its draft business plan and budget for the following financial year in a form approved by the Owner.
- 2.4 The Owner will use reasonable endeavours to respond in the following February (or such later date as may be agreed between the Parties) with any issues of concern with the draft business plan and budget, and the Company shall make such amendments to its draft business plan and budget as the Owner may reasonably require.
- 2.5 The Owner shall notify the Company of the reasons for raising issues of concern with its draft business plan and budget and the Owner and the Company will endeavour to work together to agree a revised business plan and budget for approval by the Owner as soon as possible. Until such issues are resolved the business plan and budget shall not become the Company's business plan and budget for the purposes of this Agreement and the preceding year's business plan and budget shall continue to have effect unless the Parties agree otherwise.
- 2.6 The Company covenants to carry on the Business in accordance with and only to enter into commitments as envisaged by the business plan and budget then in force or where any matter is outside the business plan and budget with Owner Consent.
- 2.7 The Company shall not introduce a new or amend an existing Remuneration Policy to allow for the payment of a Director or Directors without Owner Consent.

3 OWNER'S ROLE

- 3.1 The Owner will monitor and control the Business and affairs of the Company through the Owner Consent Matters, through receiving periodic reports, through its Directors and through ad hoc information requests.
- 3.2 The Owner:

- 3.2.1 shall have unlimited, unrestricted and prompt access to any Company information and documents requested pursuant to this Agreement;
- 3.2.2 will not usurp the functions of the Directors but will monitor the activities of the Company to ensure that they are acceptable and accountable to the Owner as ultimate owner of the Company; and
- 3.2.3 may, in addition to those matters requiring Owner Consent:
 - (a) make recommendations from time to time to the Directors; and/or
 - (b) give directions by notice in writing from time to time to the Directors.
- 3.3 Any notice to or from the Owner shall be sent to or from the Owner Representative. Where a consent or approval is expressed in this Agreement to be required of the Owner (including Owner Consent), it shall be given by the Owner Representative. Such consent or approval shall be given in writing in advance of the decision or matter requiring consent or approval and the Owner shall use its reasonable endeavours to communicate any such decision, consent or approval (including any decision not to give consent or approval) to the Company within a period of 20 Business Days from receipt of the request provided that the Owner shall not be deemed to have made a decision or given its consent or approval by virtue of the fact that it has not communicated the same within that time limit. Where the Company requires the Owner to make any decision or provide any consent or approval, the Company shall provide such material information as the Owner may require to enable it to consider the decision, consent or approval in question.
- 3.4 Once a consent or approval is given in accordance with clause 3.3 then, to the extent a special or an ordinary resolution is required pursuant to the CA2006 or otherwise, and the form of consent or approval doesn't already take the form of such a special or ordinary resolution, the Company shall prepare and circulate to the Owner a draft resolution for consideration and, if thought fit, approval by the Owner. The Owner shall approve any resolution which is in line with a consent or approval previously given.
- 3.5 The Company shall ensure that the Directors and and/or any employees of the Company as requested by the Owner shall attend such meetings or parts of meeting(s) of the Owner as the Owner may require and shall answer questions put by the Owner and provide information regarding the activities of the Company as reasonably requested.

4 CONDUCT OF THE COMPANY'S AFFAIRS

- 4.1 Meetings of the Directors shall be held no less than four times in every year and at not more than three monthly intervals.
- 4.2 With the exception of the Owner Consent Matters, the management of the Company shall be vested in the Directors. The Company shall ensure that no Owner Consent Matters shall be carried out without Owner Consent.
- 4.3 The Directors may, with Owner Consent, appoint a chief executive/managing director on such terms as they may think fit who shall be responsible for the day to day management of the Business within the terms of the business plan and budget then in force and this Agreement, and perform such duties as may be delegated to him by the Directors. The Directors may also remove such managing director, and appoint a replacement, in each case on such terms as they may think fit, providing that no appointment or removal shall be made without Owner Consent.
- 4.4 The Directors will determine the general policies of the Company and the manner in which the Business is to be carried out, subject to:
 - 4.4.1 the business plan and the budget then in force;
 - 4.4.2 those matters requiring Owner Consent; and

4.4.3 any other express provisions of this Agreement.

4.5 In particular, but without limitation, the Directors shall exercise all voting rights and other powers of control available to them in relation to the Company so as to procure (in so far as they are able in the exercise of such rights and power) that, at all times during the term of this Agreement, the Company shall:

4.5.1 carry on and conduct the Business and affairs in a proper and efficient manner, for its own benefit and in accordance with the business plan and budget and good business practices; and

4.5.2 transact all its business on arm's length terms.

4.6 The Company shall not carry out any activity which would render the Owner's membership of the Company unlawful provided that where a proposed change of law would render such membership unlawful the Owner will use its reasonable endeavours to take such steps as are necessary to allow it to continue lawfully to be a member of the Company.

4.7 The Company will, if it requires any approval, consent or licence for the carrying on of its Business in the manner in which it is from time to time carried on or proposed to be carried on, obtain and maintain the same in full force and effect.

4.8 The Company shall permit any Director to discuss the affairs, finances and accounts of the Company and its Subsidiaries with the Owner's designated officers and executives at any time. All books, records, accounts and documents relating to the Business and the affairs of the Company shall be open to the inspection of any such person, who shall be entitled to make any copies thereof as he or she deems appropriate to keep the Owner properly informed about the Business and affairs of the Company or to protect its interests as Owner. Any information secured as a consequence of such discussions and inspections shall be kept confidential by the Owner and its designated officers and executives in accordance with the terms of clause 6.

4.9 The Company agrees with the Owner that it will maintain effective and appropriate control systems in relation to the financial, accounting and record-keeping functions of the Company and will generally keep the Owner informed of the progress of the Business and affairs and in particular will procure that the Owner is given such information and such access to the officers, employees and premises of the Company as it may reasonably require for the purposes of enabling it to monitor its investment and interest in the Company.

4.10 The Company shall not breach nor cause the Owner to be in breach of the Local Authorities (Companies) Order 1995.

5 TERMINATION

5.1 This Agreement shall terminate upon:

5.1.1 the written agreement of the Parties in accordance with the terms agreed; or

5.1.2 when a resolution is passed by the Owner or creditors of the Company, or any order made by a court or other competent body or person instituting a process that shall lead to the Company being wound up and its assets being distributed among the creditors, Owner or other contributors; or

5.1.3 the Company ceasing to carry on its Business; or

5.1.4 the Company being convicted of a criminal offence; or

5.1.5 upon the Owner giving not less than 3 months' written notice of the date on which this Agreement will terminate.

6 CONFIDENTIALITY, FREEDOM OF INFORMATION AND DATA PROTECTION

- 6.1 Each Party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other Party except as permitted by clause 6.2.
- 6.2 Each Party may disclose the other Party's confidential information:
- 6.2.1 to its employees, officers, representatives or advisers who need to have such information for the purposes of carrying out the Party's obligations under this Agreement. Each Party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other Party's confidential information comply with this clause 6; or
 - 6.2.2 as may be required by law, court order or any governmental or regulatory authority.
- 6.3 Each Party acknowledges that the other Party is subject to the requirements of the FOIA and the Environmental Information Regulations, and shall facilitate the other Party's compliance with its Information disclosure requirements pursuant to and in the manner provided for in clauses 6.4-6.7.
- 6.4 If either Party (the **Recipient**) receives a Request for Information in relation to Information that the other Party is holding and which the Recipient does not hold itself, the Recipient shall within 6 Business Days of receiving a Request for Information:
- 6.4.1 respond to the Request for Information explaining that that the other Party shall be responding within the required timeframe; and
 - 6.4.2 refer the Request for Information to the other Party explaining that the other Party is holding the relevant Information and that the Request for Information must be met by the other Party within the required timeframe.
- 6.5 The Recipient shall provide all necessary assistance as reasonably requested by the other Party to enable the other Party to respond to the Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.
- 6.6 The Parties acknowledge that (notwithstanding the provisions of clause 6.1) a Recipient may, acting in accordance with the Freedom of Information Code of Practice 2018 and the Regulation 16 Code of Practice on the discharge of the obligations of public authorities under the EIR (as appropriate) disclose Information concerning the other Party:
- 6.6.1 in certain circumstances without consulting with the other Party; or
 - 6.6.2 following consultation with the other Party and having taken their views into account. The Recipient shall have absolute discretion as to whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations and whether Information is to be disclosed in response to a Request for Information.
- 6.7 Each Party shall transfer to the other Party any Request for Information which it receives but is addressed to the other Party as soon as practicable and in any event within 6 Business Days of receiving it.
- 6.8 The Parties acknowledge that any lists provided which itemise or outline confidential information are of indicative value only and that a Recipient may nevertheless be obliged to disclose confidential information in accordance with this clause 6.
- 6.9 The Parties shall comply with all Data Protection Legislation at all times when carrying out their respective obligations pursuant to this Agreement and any other agreement to which it is a party.

7 NO PARTNERSHIP

- 7.1 Nothing in this Agreement gives rise to a partnership between the Parties or constitutes one Party acting as the agent of the other.

8 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 8.1 Unless the right of enforcement is expressly granted, it is not intended that a third party, other than a lawful successor in title or a lawful assignee, should have the right to enforce a provision of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999. The Parties may rescind or vary this Agreement without the consent of a third party to whom an express right to enforce any of its terms has been provided.

9 COSTS OF THIS AGREEMENT

- 9.1 Each Party shall pay its own costs in connection with the negotiation, preparation, execution and performance of this Agreement.

10 WAIVER

- 10.1 The rights of each of the Parties in respect of a breach of this Agreement shall not be affected by completing, rescinding, or failing to rescind, this Agreement, or failing to exercise, or delaying to exercise, a right or remedy, or by anything else, except a specifically authorised written waiver or release. A single or partial exercise of a right or remedy provided by this Agreement or by law does not prevent its further exercise or the exercise of another right or remedy.
- 10.2 Waiver of a breach of a term of this Agreement, or of a default under it, does not constitute a waiver of another breach or default nor affect the other terms of this Agreement.
- 10.3 The rights and remedies provided in this Agreement are cumulative and not exclusive of any other rights or remedies.

11 VARIATION

- 11.1 A purported variation of this Agreement is not effective unless in writing and signed by or on behalf of each of the Parties.

12 INVALIDITY

- 12.1 If a provision of this Agreement is held to be illegal or unenforceable, in whole or in part, under an enactment or rule of law, it shall to that extent be deemed not to form part of this Agreement and the enforceability of the remainder of this Agreement shall not be affected. The Parties agree to negotiate in good faith to agree the terms of a mutually satisfactory provision to be substituted for the provision found to be illegal or unenforceable.

13 ENTIRE AGREEMENT

- 13.1 This Agreement (together with any documents entered into under it or at the same time as it) supersedes all prior understandings and agreements between the Parties (whether written or oral) relating to its subject-matter and contains the entire agreement between the Parties relating to its subject-matter.
- 13.2 Each Party acknowledges that it does not enter into this Agreement on the basis of, and does not rely on, warranties or representations made, or agreed to, by any person (whether a party to this Agreement or not).
- 13.3 Each Party waives its rights against the other in respect of warranties and representations (whether written or oral) not expressly set out or referred to in this Agreement.

13.4 Nothing in this clause 13 limits or excludes liability for fraud.

14 STATUS OF THIS AGREEMENT

14.1 In the event of any ambiguity or discrepancy between the provisions of this Agreement and the Articles, then it is the intention of the Owner that the provisions of this Agreement shall prevail. Accordingly, the Owner shall take all such steps and do all such acts and things as may be necessary or desirable, including, without limitation, exercising all voting and other rights and powers of control available to it in relation to the Company, so as to give effect to the provisions of this Agreement and shall further if necessary procure (insofar as it is able to do so by the exercise of those rights and powers) any required amendment to the Articles.

15 CONSENTS

15.1 Consents, notices, approvals or agreements to be given by the Owner under this Agreement (including Owner Consent) shall be given in writing.

15.2 Where this Agreement provides that a matter is subject to the consent, approval or agreement of either Party then (except as expressly provided otherwise), it shall be in the absolute discretion of that Party as to whether (and if so, on what terms and conditions) the consent, approval or agreement is made.

16 COMMUNICATIONS

16.1 Any notice or other communication under or in connection with this Agreement shall be in writing and shall be delivered personally or sent by first-class post or by email as follows:

16.1.1 if to the Owner:

Address: as recorded in the recitals in the recitals to this Agreement

Email: as notified to the other party from time to time

marked for the attention of the Owner Representative; and

16.1.2 if to the Company, to:

Address: as recorded in the recitals to this Agreement

Email: as notified to the other party from time to time

marked for the attention of the Company Secretary,

or to such other person, address, or email as any Party may specify by notice in writing to the other.

16.2 In the absence of evidence of earlier receipt, any notice or other communication shall be deemed to have been duly given:

16.2.1 if delivered personally, when left at the address referred to in clause 16.1;

16.2.2 if sent by mail, other than airmail, two Business Days after posting it;

16.2.3 if sent by email, when sent and there has been no communication by the recipient to the sender that the email has not been received,

provided always that a notice given in accordance with the above but received on a day which is not a Business Day or after business hours on a Business Day will only be deemed to be given on the next Business Day.

17 COUNTERPARTS

- 17.1 This Agreement may be executed in counterparts and by the Parties on different counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart, when executed, shall be an original, but all the counterparts together constitute the same document.

18 GOVERNING LAW AND JURISDICTION

- 18.1 This Agreement and the rights and obligations of the Parties shall be governed by and construed in accordance with the laws of England and Wales.
- 18.2 The Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales in respect of any dispute or claim arising out of or in connection with this Agreement or any of the documents to be executed pursuant to this Agreement or their subject-matter or formation (including non-contractual disputes or claims).
- 18.3 This Agreement has been executed as a deed and delivered on the date stated at the beginning of this Agreement.

SCHEDULE 1 - OWNER CONSENT MATTERS

The table below sets out the Owner Consent Matters that are reserved to the Owner

Number	Owner Consent Matters
	Constitution of the company
1	Varying in any respect the articles or the rights attaching to any of the shares or memberships (as applicable) in the company.
	Officers and Shareholders of the company
2	The appointment and the appointment terms (including any remuneration terms) of any Directors.
3	The removal of any Directors (including any terms on which such Directors are removed from their office as Directors).
4	The admission of further members to the Company or agreeing any rights or restrictions attaching to any shares or memberships allocated to such new shareholders or members as applicable).
	Future direction and development of the company
5	Forming any subsidiary or acquiring shares in any other company or participating in any partnership or incorporated joint venture vehicle.
6	Amalgamating or merging with any other company or business undertaking.
7	Selling or disposing of any part of the business of the Company.
8	Approving the Business Plan and any in-year material changes.
9	Undertaking any business or action which is inconsistent with the Business Plan then in force or omitting to undertake any action which is required by that Business Plan except with the prior written consent of the Owner.
10	Passing any resolution for its winding up or presenting any petition for its administration (unless it has become insolvent).
11	Agreeing or approving any other material services to be provided by the Company to a third party the total value of which exceeds either (i) £500,000 or (ii) 15% of the Company's current turnover.
12	Appointing any agent (not being a subcontractor), other than the Owner (or Owner owned entity) to conduct the whole or any part of the business of the Company, other than the appointment of an agent to conduct an area of the business of the Company.
13	Applying for the listing or trading of any shares in its issued capital or debt securities on any stock exchange or market (where applicable).

	Management of the business of the company
14	Changing the Company's registered office.
15	Changing the Company's name.
16	Creating or agreeing to create a charge, security or encumbrance over the Company's assets, shares or income.
17	Approving any matter that will have an adverse effect on the reputation of the Owner.
18	Changing the activities or nature of the business or commencing any new business which is not ancillary or incidental to the business of the Company.
19	Any acquisition of land.
20	Agreeing to enter into or entering into any acquisition or disposal of any material assets by the Company the total value of which exceeds (i) £500,000 or (ii) 15% of the Company's current turnover.
21	<p>Giving notice of termination of:</p> <ul style="list-style-type: none"> (i) any Joint Venture or (ii) any arrangements, contracts or transactions the total value of which exceeds (i) £500,000 or (ii) 15% of the Company's current turnover, <p>or materially varying any such arrangements, contracts or transactions and such termination or variation is likely to have an adverse impact on the financial status of a Company.</p>
22	Granting rights (by licence or otherwise) in or over any intellectual property owned by the Company.
23	Appointing and changing the Company's auditors.
24	Changing the Financial Year of the Company.
25	Agreeing to make or making any loan (otherwise than by way of a deposit with a bank or other institution, the normal business of which includes the acceptance of deposits or in the ordinary course of business) or granting any credit or giving any guarantee or indemnity (other than in the normal course of trading (which ordinary course includes guaranteeing rent to landlords).
26	Increasing or reducing the amount of its issued share capital, granting any option over or in its share capital, redeeming or purchasing any of its own shares or otherwise altering, or effecting any re-organisation of, its share capital (where applicable).
27	Declaring or paying any end of year dividend of the Company.
20	Assigning the rights to any Company assets to a third party.
32	Settling any claim made against the Company in a sum in excess of £50,000.
33	Approving any loan or mortgage taken out by the Company (including the terms of any security)

34	Approving the adoption of any regulatory regime, including, but not limited to, (i) becoming a Registered Social Landlord or Shared Ownership Provider, (ii) providing consumer credit or other FCA regulated activity or (iii) any other regulated activity
	Subsidiary
36	Approving any Owner Consent Matters or business plan for a Subsidiary which has a turnover in excess of £250,000.

In witness whereof the parties have executed this Agreement as a deed.

Executed as a deed by affixing)
the common seal of)
THE MAYOR AND BURGESSES OF THE)
LONDON BOROUGH OF HARINGEY)
in the presence of)
.....)
Authorised signatory)

Executed as a deed by)
HOMES FOR HARINGEY LIMITED)
acting by,)
a director and a director/secretary) **Director**

.....
Director/Secretary