



Dated: []2018

The Mayor and Burgesses of the London Borough of Haringey

and

Homes for Haringey Limited

Agreement for the delivery of housing management and other services

Trowers & Hamlins LLP
3 Bunhill Row
London
EC1Y 8YZ

t +44 (0)20 7423 8000
f +44 (0)20 7423 8001
www.trowers.com

trowers & hamlins

Agreement

dated

Parties

- (1) **The Mayor and Burgesses of the London Borough of Haringey** of Civic Centre, High Road, Wood Green, London N22 8LE (the **Council** and which shall include any statutory successors); and
- (2) **Homes for Haringey Limited** whose registered office is situated at Floor 4, 48 Station Road, Wood Green, N22 7TY (**HFH**).

Introduction

- (A) The Council is the local housing authority for its area pursuant to Sections 1 and 2 of the Housing Act 1985 (**1985 Act**) and pursuant to the powers contained in the 1985 Act provides housing accommodation and exercises general management, regulation and control of its housing accommodation.
- (B) Pursuant to Section 27 of the 1985 Act and with the approval of the Regulator and pursuant also to Section 1 of the Localism Act 2011 and all other enabling powers the Council agrees that HFH shall exercise such of the Council's functions as are specified herein.
- (C) The Council and HFH have agreed to extend the term for HFH's provision of the Services and have further agreed to work together within a spirit of mutual cooperation and have agreed to terminate the prior management agreement dated 7 September 2011 (as varied) with effect from the date of this Agreement and to enter into this Agreement to set out the ongoing terms and conditions upon which HFH will provide the Services on behalf of the Council.
- (D) This Agreement will be reviewed from time to time and in any event after three years in accordance with clause 22.6.

1 Definitions and interpretations

The definitions used are as follows:

Articles means articles of association of HFH;

Business Plan means the annual business plan for HFH as revised each year in accordance with clause 6;

Council's Representative means the individual appointed by the Council to exercise the Council's rights under this Agreement and such individual shall be nominated in writing from the Council to HFH. The Council may from time to time revoke the nomination of such representative, and nominate another representative in his place. All such nominations and revocations shall be in writing. The Council's Representative may appoint a person to act as Deputy and such Deputy shall be entitled to exercise the Council Representative's rights in his place either generally or limited by reference to subject matter, time or both as may be set out in the nomination. The Council's

Representative may from time to time at any time revoke the appointment of his/her Deputy and appoint another person in his/her place. All such nominations and revocations shall be in writing and the Council's Representative shall also act as the Council's representative in its capacity as sole member at HFH for the purposes of the Articles and as required by section 323 of the Companies Act 2006;

Data Protection Legislation means the Data Protection Act 1998 and, when in force in the United Kingdom, the General Data Protection Regulation (EU) 2016/679 and all other relevant legislation or regulations relating to data protection;

Dwellings means the residential accommodation owned or leased by the Council and managed by HFH pursuant to this Agreement;

Fee means the fees payable by the Council pursuant to and calculated in accordance with clause 11;

Financial Year means the period from 1 April to 31 March;

HCA means the Homes and Communities Agency;

HFH's Representative means HFH's managing director or such other person with a similar role who may be nominated from time to time by HFH;

HRA means the Housing Revenue Account of the Council;

Regulator means the HCA (acting through the Regulation Committee established by it) or any successor authority;

Representatives means collectively the Council's Representative and HFH's Representative;

Resident Engagement Strategy means a strategy prepared by HFH and approved by the Council setting out HFH's policy of engagement with residents of the Dwellings in relation to the Services, as varied by the Council and HFH from time to time in accordance with the provisions in such strategy and/or as part of the Business Plan review process set out in clause 6 of this agreement;

Services means the services described in Schedule 1 and any other services which from time to time are provided by HFH pursuant to this agreement subject to any variations pursuant to this agreement;

SLA means the current or future service level agreement(s) agreed by the parties under which the Council provides Support Services;

Support Services means such services provided by the Council to HFH under an SLA (or such other mutually agreed arrangement) as set out in Schedule 2;

Stock Maintenance and Improvement Programme means the maintenance and improvement programme managed by HFH as part of the Services;

1.2 A reference to any Act of Parliament, or to any order, regulation, statutory instrument, or the like, shall be deemed to include a reference to any amendment, re-enactment,

consolidation, variation, replacement or extension of the same respectively from time to time and for the time being in force.

1.3 A reference to any statutory authority, agency or regulatory body shall include a reference to any other such authority, agency or regulatory body which from time to time carries on substantially the same functions.

1.4 Wordings denoting the singular shall include the plural and vice versa and words denoting the masculine gender shall include the feminine gender and vice versa and words denoting persons shall include firms and corporations.

1.5 References to clauses, schedules and annexes shall be deemed to be references to the clauses in and the schedules and annexes to this Agreement as so numbered.

1.6 In this Agreement headings are included for ease of reference only and shall not affect this Agreement or the interpretation thereof.

2 **Current HFH Services and HFH Obligations**

2.1 HFH shall provide the Services in respect of:

2.1.1 all Dwellings, land or properties held within the Council's HRA, as more particularly delineated within the Council's land terrier, except for assets or land where the Council has another alternative management arrangement in place and which have been notified in writing from the Council to HFH from time to time;

2.1.2 any Dwellings that are held in the Council's General Fund and which are leased by HFH on behalf of the Council for the purpose of temporary accommodation or emergency accommodation; and

2.1.3 any other dwellings, land or property (whether or not such fall within the Council's area) designated by the Council as forming part of the Dwellings pursuant to clause 2.3.

Where properties are provided for the purposes of temporary accommodation and managed by a third party supplier, where the Council is not the occupier's landlord, HFH will only supply account management services.

2.2 The Council may nominate HFH to act as its agent in providing a client role to those third parties that may manage HRA assets from time to time. Any such nomination shall form part of the Business Plan review where possible, but the Council reserves the right to make changes in year where necessary, pursuant to clause 5.

2.3 The Council also reserves the right to alter the management arrangements for its stock, therefore reducing or adding to the Dwellings, land or other assets that HFH supplies Services in respect of, either as part of the annual Business Plan review pursuant to clause 6 or outside of the Business Plan review process. Where such alterations occur outside of the Business Plan review process, the Council will give as much notice as it reasonably can and any such change may be reflected in a change to the Fee pursuant to clause 11.

2.4 In consideration of the Fee, HFH shall at all times perform the Services to the satisfaction of the Council's Representative in accordance and in compliance with the Contract Standard. Where HFH's performance of the Services is dependent upon matters within the Council's control, the parties acknowledge that HFH shall use all reasonable endeavours to perform the Services to the satisfaction of the Council's Representative and in compliance with the Contract Standard. The **Contract Standard** is the standard which shall require HFH to perform the Services with all due skill, care and diligence and in accordance otherwise in compliance with:

- 2.4.1 the annual Business Plan and in particular (but without limitation) the key performance requirements of the Services set out therein;
- 2.4.2 any performance management framework that the Council sets for HFH;
- 2.4.3 any current performance indicators issued by the Regulator or other regulatory body which are relevant to the performance of the Services or any part thereof;
- 2.4.4 any reasonable instructions issued to HFH by the Council Representative pursuant to or in connection with the Agreement;
- 2.4.5 all statutory and regulatory requirements (including in relation to health and safety);

2.5 In this connection, HFH also agrees to:

- 2.5.1 devote resources to discharge its strategy; and
- 2.5.2 notify the Council promptly of failure to deliver any Services.

2.6 The Council acknowledges the existence of a subsidiary of HFH and for the potential for future subsidiaries to be established. HFH undertakes that its Business Plan will incorporate in reasonable detail the activities of any subsidiaries and how that links in with corporate objectives of the Council. The Council reserves the right to invoke the performance concerns framework if any Services or other functions of HFH are undertaken by a subsidiary or a subcontractor of HFH and there is a failure of, or performance concern about a Service or function.

3 **Council Responsibilities and Entitlements**

3.1 The Parties agree that the Council:

- 3.1.1 has ultimate responsibility for the HRA, setting rents and service charges for the Dwellings, and (in accordance with this agreement) setting the Fee and defining the Services.
- 3.1.2 will retain all decisions on the long term use of, or change of interest in land or property managed by HFH. These will include, but are not limited to the following examples:
 - (a) Licensing, way leaves and easements;
 - (b) Disposal or acquisition.

- 3.1.3 will retain responsibility for strategy and policy development in relation to such strategies and for the associated statutory consultation regarding the Services covered in this agreement including but not limited to its statutory obligations in relation to rent setting and under Section 105 Housing Act 1985. The Council has the ability to use its commissioning processes to delegate any aspect of policy or strategy development or associated consultation to HFH via the commissioning process and any such delegation shall, where the Council so directs, be documented in writing.
- 3.2 The Council will provide the Support Services to HFH, to be subject to a range of SLAs (or such other arrangements and protocols agreed between the parties) separate to this Agreement in accordance with Schedule 2. HFH is not able to withdraw from any Support Services provided by the Council, other than:
- 3.2.1 where such withdrawal is in accordance with the termination provisions in the SLA; or
- 3.2.2 with the mutual agreement of both parties where no such termination provisions are set out in the relevant SLA (where applicable).
- 3.3 If HFH has concerns about the Council's performance of the Support Services it shall:
- 3.3.1 register such concerns immediately in the form of an email or minute brought to the attention of the Council's Representative; and
- 3.3.2 where there has been a breach of an obligation in an SLA, provide the Council with an opportunity to remedy such breach (allowing reasonable time).
- 3.4 The parties will work together in good faith to resolve any matters raised in relation to the Council's performance of the Support Services as soon as reasonably practicable after the date they are raised by HFH under clauses 3.3.1 but if the parties do not consider that the matter has been adequately addressed (further to clause 3.3.2, if applicable) the provisions of clause 26 shall apply.
- 3.5 The parties may, by mutual agreement, carry out a joint review of the Support Services to consider whether these continue to (inter alia) remain satisfactory to the parties and provide best value. Where following such review:
- 3.5.1 the parties wish to vary the Support Services they shall do so in accordance with the provisions of the relevant SLA or, where no such provisions exist, by mutual agreement (acting in good faith) and be documented in writing;
- 3.5.2 HFH has concerns about the Council's performance of the Support Services, the provisions of clause 3.3 and 3.4 shall apply; and/or
- 3.5.3 the parties wish to withdraw any Support Services, the provisions of clause 3.2 shall apply.

4 Services provided by HFH

- 4.1 The scope of Services provided by HFH is contained in Schedule 1.

4.2 The Council is able to add to, vary, or remove services from the scope of services provided by HFH. This will generally be done within the context of the annual Business Plan settlement process as set out in clause 6, but it is acknowledged by the Parties that there may be circumstances where decisions are made by the Council in year.

4.3 Decisions will be made by the Council Representative and communicated to HFH in writing. Where possible, three months' notice will be given, but the Council cannot guarantee a minimum notice period.

4.4 The Council may revise the performance management framework for the Services and will set the reporting framework for other projects that HFH undertakes on the Council's behalf. This will be done as part of the annual Business Plan review process pursuant to clause 6 unless the matter is so urgent in which case as much notice as is reasonable shall be given.

4.5 From time to time, the Council may carry out an in depth review of Services, to establish and verify the accuracy of performance data supplied by HFH and to scrutinise performance

4.6 If the Council has concerns about HFH's performance, the following process shall be followed:

4.6.1 Stage 1:

The Council may register a performance concern. This can be in the form of an email or meeting minute brought to the attention of the appropriate director of HFH and logged by the commissioning function within the Council and the HFH director responsible for client liaison. Upon receipt of a concern, the appropriate director within HFH will prepare a remedial action plan that the Council is satisfied with, within ten working days of the concern being raised. HFH will then implement the remedial plan.

4.6.2 Stage 2:

If the Council is not satisfied with the remedial plan submitted under Stage 1 or if the concern is not adequately addressed through the implementation of the remedial plan at Stage 1, (allowing reasonable time), the Council may in its absolute discretion:

- (a) issue a direction;
- (b) undertake an intervention (acting reasonably); and/or
- (c) initiate a service review.

HFH and the Council will work jointly to undertake the review and to implement any interventions or directions. HFH will co-operate with the findings of the review or any other directions the Council may issue or interventions it undertakes.

Directions of the Council may include the temporary or permanent variation of the agreement, or any other measures the Council thinks appropriate in the circumstances of the performance concern.

Interventions of the Council may include the Council appointing/removing HFH staff or HFH board members (where their performance is linked to the relevant concern), exercising step in rights, recommissioning a service and/or any other measures the Council thinks appropriate in the circumstances of the performance concern (acting reasonably).

The scope of any service review will, in the Council's opinion, be sufficient to examine and address the performance concern. Any such review will be conducted and findings issued within one month of the Council requesting it. The Council will have the option to delegate the review to HFH to undertake.

Where any remedial solutions are imposed on HFH by the Council, the Fee shall be reviewed to reflect this. For the avoidance of doubt the Council may vary the Services in response to a performance concern.

4.6.3 Stage 3:

If the concern is not adequately addressed at stage 2 (allowing in the Council's opinion, reasonable time for this to be addressed), the Council may act in accordance with clause 26 (Disputes) or clause 22 (Termination) of this Agreement.

In the execution of the performance concerns process, both parties will work collaboratively and proactively to resolve the performance concern at the earliest opportunity, ideally at stage one.

5 **The annual Business Plan**

5.1 HFH shall prepare the annual Business Plan on an annual basis in accordance with clause 6.

5.2 The annual Business Plan shall:

5.2.1 Set out how HfH intend to translate the Housing related objectives of the Council's Corporate Plan into an operational delivery plan and how they intend to meet the outcomes specified in the Council's Housing Strategy.

6 **Business planning process**

The annual draft Business Plan shall be prepared by HFH covering April to March of the relevant year and shall be submitted to the Council's Representative by 1 February (or such other date as the Council may agree) of each year or in line with such other business planning time scales laid out by the Council from time to time.

6.1 The annual Business Plan will:

6.1.1 be outcome focused, setting out key objectives, performance measures, project milestones and targets for the next 12 months; for HFH and its subsidiaries

- 6.1.2 outline HFH's company strategy in respect of the Services and show how this supports the strategic goals that it has been set by the Council;
 - 6.1.3 confirm the financial and staffing resources required to deliver the plan;
 - 6.1.4 include delivery plans for service delivery and improvement over the next 12 months;
- 6.2 The Council and HFH will discuss any potential variation to Services as part of the annual business planning process and in doing so (and without prejudice to the Council's right to vary the Services pursuant to clause 4) the Council will have ultimate flexibility to add or remove Services and where the Services delivered by HFH materially vary (either pursuant to this clause or pursuant to clause 4), the Fee may be re-assessed to reflect this.
- 6.3 The HFH annual Business Plan will also reflect the requirements of the Council and enable HFH to deliver the required outcomes for the Council. There will be an annual performance framework review that accompanies the business plan review and the Council may revise any of the performance criteria, amend the items on the HFH score card, set targets, set exception reporting parameters and set monitoring meeting frequencies.
- 6.4 If the Council (via the Council's Representative) shall notify HFH that the draft Business Plan is not acceptable, further negotiations shall take place to achieve a mutually agreed resolution in order that there is a Business Plan approved by the Council and the HFH board of directors (the **HFH Board**) by 1 April in any year. Both parties are to use all reasonable endeavours to achieve this.
- 6.5 Once the Council's Representative has accepted the plan, they will formally approve it on the Council's behalf.
- 6.6 In the event that the Business Plan is not agreed under this clause 6 within sufficient time for there to be an agreed plan in place by 1 April, then the relevant existing Business Plan shall continue to be the Business Plan until the dispute is resolved under clause 26.
- 6.7 The Council's commissioning process will deal with the following:
- 6.7.1 any ad hoc requests for additional pieces of work;
 - 6.7.2 clarification and detailing of any requirements of the annual Business Plan;
 - 6.7.3 consideration and discussion of any initiatives or proposals, either to be enacted mid-year, or fed into subsequent annual Business Plans.

7 **Annual performance monitoring**

By the end of June every year, HFH will provide the Council with an annual performance report for the previous financial year. The report will consist of an annual score card and will examine and narrate performance over the year. The performance indicators within this report will have been predetermined within the performance management framework set by the Council and revised from time to time.

8 **Stock Maintenance and Capital Works**

8.1 HFH shall develop a programme of capital works, in accordance with the Council's planning requirements. This shall be done to complement the Council's budget setting process and in strict accordance with the business planning process (as set out in clause 6). This process may take account of (inter alia):

8.1.1 changing standards (such as energy efficiency);

8.1.2 future stock condition surveys;

8.1.3 legal and regulatory requirements (relating to fire safety guidance and all other relevant areas of health and safety compliance (whether mandatory or otherwise) from the Regulator and other matters).

8.2 The Council hereby appoints HFH as Responsible Person under the Regulatory Reform (Fire Safety) Order 2005 (the **2005 Order**), and HFH agrees that it has the necessary skill and care to perform this role in the context of the Dwellings.

8.3 HFH will at all times comply with the 2005 Order, any relevant fire safety or gas and electrical safety guidance relating to the Dwellings, good industry practice and all other health and safety legislation as it relates to the Services and/or the Dwellings.

8.4 The Council shall co-operate with HFH to assist HFH to discharge its responsibilities set out in clauses 8.2 and 8.3.

9 **Procurement and Contract Administration**

9.1 Subject to compliance with HFH's contract standing orders and procurement guide unless the Council (in its absolute discretion) decides otherwise, HFH will procure let and manage works contracts and other contracts as necessary to deliver the Services.

9.2 The contracts to be procured or let will be in relation to the management, maintenance and improvement of the Council's stock and other purposes connected with the Services. The letting or procuring of contracts will be in accordance with EU procurement legislation and any other relevant and applicable public procurement contract regulations.

9.3 The Council may decide to procure, let and manage contracts in its own name in connection to the management and/or maintenance of its stock. Where this is the case, the Council may name HFH as the Council's agent to operate the contract.

9.4 The Council may decide to name HFH as its agent when tendering for corporate contracts, so that HFH can access the suppliers within the corporate frameworks.

9.5 HFH will liaise with the Council in respect of any renewal or re-letting of any contract and will seek Council approval for all contracts that go beyond the term of this Agreement.

9.6 HFH will comply with all reasonable requirements of the Council in respect of any or all of the contracts including but not limited to providing all information (including copies of any documents) to the Council.

10 **Provision of information**

10.1 HFH will:

10.1.1 maintain effective and appropriate control systems in relation to its financial, accounting and record-keeping functions; and

10.1.2 keep the Council informed of its performance of the Services and in particular provide the Council with such information and such access to its officers, employees and premises as may reasonably be required to demonstrate HFH's delivery of the Services, in accordance with the measures and frequencies laid out within the performance management framework.

10.2 HFH will report to the Council, in such format as the parties (acting reasonably) shall from time to time agree, on its progress on the objectives contained in the Business Plan, its performance of the Services and any matters which may adversely impact on HFH's performance against the same, each quarter or in accordance with such other frequencies set out within the performance management framework.

11 **Fee**

11.1 For the first Financial Year of this Agreement (here meaning the period to [31 March 2018]) the Council will pay HFH a Fee of [£] for the provision of the Services.

11.2 The Fee shall only be varied in accordance with the process and principles set out in this clause 11.2 and any variance in the Fee shall always be subject to the provisions of clause 17:

11.2.1 the parties will commence discussions on the Fee for the next Financial Year as part of the settlement of the Business Plan in accordance with clause 6;

11.2.2 the Council may vary the Fee in connection with a variation of the Services in accordance with clause 4.6 or clause 6;

11.2.3 the Council may also vary the fee as a result of other changes, such as (but not limited to) a change in the Business Plan, or other circumstances that may (in its opinion) warrant a re-calculation.

11.3 The Fee due and payable under this clause 11 shall be paid in advance by equal payments each month.

12 **HFH and Council Accounts**

12.1 HFH shall maintain the following financial accounts:

12.1.1 company account – to be held within HFH and to include the necessary resources for landlord and tenant services. This account is paid for by the Fee and will generally include the cost of staffing resources employed by HFH, (other than those staff costs capitalised through the managed accounts or those paid for by grant funding); and

12.1.2 ring-fenced account – to be held within the Council's Housing Revenue Account (**HRA**) and to operate in the following way:

- (a) surpluses shall be declared at the end of the financial year, this will include non-budgeted savings;
- (b) any surpluses the Council decides can be retained by HFH will be held in the HRA ring-fenced account (for such period as the Council directs);

12.2 HFH shall:

- 12.2.1 manage the accounts set out in clause 12.1 (the **HFH Accounts**) with reasonable skill and care and balance each of such accounts at the end of the financial year;
- 12.2.2 regularly monitor revenue and capital income and any expenditure accounts;
- 12.2.3 put appropriate and adequate procedures in place to: monitor progress against the budget and objectives set out in the Business Plan or otherwise agreed between the parties;
- 12.2.4 report to the Council (in such form as the Council shall agree from time to time) on the operation of the HFH Accounts (including their balances) in accordance with this clause 12.2 each month (or such other frequency agreed by the Council);

13 **Future delivery of the housing service in Haringey**

13.1 HFH shall provide any assistance reasonably needed to enable the Council to review and reconfigure the delivery of the housing service in Haringey and which may include the conversion of HFH into a registered provider of social housing or similar landlord body. (and which HFH acknowledge may result in a change to HFH's constitution)

13.2 Such assistance may include:

- 13.2.1 provision of information and records about the Services;
- 13.2.2 providing such reports or other documentation as the Council may reasonably require in a manner and timescale prescribed by the Council for consideration by the tenants or the Council; and
- 13.2.3 attendance at meetings of such tenants.

14 **Additional Business**

14.1 HFH must obtain the consent of the Council before they bid for any contract to deliver services to a third party, either in their own name or through any subsidiary. Any such initiative on the part of HFH or their subsidiaries must either be agreed as part of the annual Business Plan, or be officially commissioned by the Council in year, by the commissioning process.

14.2 In considering whether it is minded to grant consent, the Council will give weight to any factors which it considers relevant, including (but not limited to) the following (non-exhaustive) factors:

- 14.2.1 whether the proposal is likely to have a negative impact on HFH to provide Services and other services that HFH already delivers for the Council;
- 14.2.2 whether there is any reputational risk for the Council;
- 14.2.3 whether the Council may wish to bid for these contracts in any way; and
- 14.2.4 whether there are any financial risks for the Council.

15 **Continuous Improvement**

- 15.1 The parties acknowledge the importance of the principle of continuous improvement in the provision of the Services and the delivery of the Stock Maintenance and Improvement Programme and accordingly:
 - 15.1.1 HFH will regularly review how better to perform its obligations hereunder; and
 - 15.1.2 the Council will support HFH to improve its performance.
- 15.2 Continuous improvement will result in either or both improved standards or greater cost-effectiveness.

16 **HFH's Constitution**

- 16.1 The Council shall only use its rights as sole member of HFH to amend HFH's constitution or to issue directions to HFH or the HFH Board:
 - 16.1.1 if and then only for so long as HFH fails to comply with the terms hereof and the Council would therefore be entitled to terminate this Agreement in accordance with its terms; or
 - 16.1.2 (in relation to the Council's right as the sole member to issue directions to HFH) if the Council (acting reasonably) believes that HFH is undertaking an activity which is outside the scope of the Business Plan agreed pursuant to this agreement and/or where the Council believes that an activity being undertaken by HFH is detrimental to the Council's best interests and/or where required as part of a performance review under clause 4.6.
- 16.2 Wherever practicable, the Council will consult with HFH with a view to agreeing an amicable resolution to the matter at issue before exercising its powers under this clause 16.

17 **Council's financial support for HFH and staffing**

- 17.1 The Council shall provide and evidence such support for HFH as shall be required to enable HFH's auditors to confirm from time to time to the HFH Board that HFH is and will continue to be able to meet its debts as they fall due and is otherwise a 'going concern'.
- 17.2 [The Council agrees that whether through the Fee or otherwise it shall ensure that HFH is able to discharge its liabilities for the pensions costs attributable to HFH's past, present and future employees and the Council agrees to indemnify HFH against all costs, proceedings, liabilities and claims of whatever nature in respect of the 'employees'

membership of the Local Government Pension Scheme whilst in the service of the Council or HFH.]

17.3 HFH shall notify the Council's Representative of any material amendments in HFH's staffing structure during the term of this Agreement.

18 **Employees**

18.1 HFH undertakes to be a good employer and to be innovative

18.2 HFH shall adhere to its code of conduct in relation to employment matters and will have a recognition agreement in place with the appropriate trade unions (relevant to the Services).

18.3 HFH shall within six months before the expiry of this Agreement or within such other period as the Council may specify in the event of an earlier termination of this Agreement either in whole or in part and upon a continuing basis provide such information as the Council may require about the terms and conditions of employment of any employees employed by HFH in connection with the provision of the Services.

18.4 HFH will maintain a high standard of leadership and staffing in the organisation and within the HFH Board.

19 **The HRA ring-fence**

19.1 The parties acknowledge that HRA income and expenditure is and remains (following the implementation of self-financing) subject to the requirements of the statutory ring-fence and they will use all reasonable endeavours to maximise the benefits of the HRA.

19.2 HFH shall supply the Council with such assistance and information as the Council may reasonably require to enable it to identify income and expenditure.

20 **Section 151 duty**

20.1 It is acknowledged that the Council has nominated an Officer with statutory duties under Section 151 of the Local Government Act 1972 and nothing in this Agreement shall be construed as preventing that officer from doing such acts or things as are properly required for the discharge of such duties.

21 **Term and break clauses**

21.1 This Agreement shall expire on the 31 March 2026 unless it is terminated by the Council under clause 22.

21.2 The Council shall have a right to terminate this Agreement in part where it is required to enter into an agreement with a Tenant Management Organisation (TMO). If the Agreement is terminated under this clause 21.2 the Council and HFH shall within three months of such termination make all necessary arrangements for the transfer of the relevant functions from HFH to the TMO.

21.3 This Agreement shall be terminated if such requirement is imposed pursuant to Section 247(2) or 249(2) of the Housing and Regeneration Act 2008. If the Agreement is

terminated pursuant to this clause 21.3 the Council and HFH shall make all necessary arrangements for the transfer of the relevant functions from HFH.

22 Termination

22.1 Subject to clause 21.2 and notwithstanding clause 22.6, the Council shall be entitled to terminate this Agreement if HFH fails to comply with the terms hereof or if in the Council's reasonable opinion there is a serious and substantiated risk that HFH will shortly fail so to comply.

22.2 Unless HFH's actual or anticipated failure (and which would entitle the Council to terminate this Agreement under clause 22.1) cannot (in the Council's reasonable opinion) be remedied then HFH shall be afforded a reasonable opportunity (including where appropriate by devising a remedial plan) to comply or demonstrate that it will comply with the terms hereof.

22.3 For the purposes of clauses 22.1 and 22.2 a failure to comply with any remedial plan set under clause 22.2 or 4.6.1 shall be deemed by the Council incapable of being remedied.

22.4 If the Council becomes entitled to terminate this Agreement it may decide to terminate the whole or any part hereof and either provide the Services itself or procure that any third party do so and HFH will take such steps as may reasonably be required to give effect to the Council's decision.

22.5 The Council can terminate this Agreement if it decides on economic or for any other reasons (in its absolute discretion), to bring part or all of the services back in house or to transfer all or part of the Services to another provider. In this situation, it shall give as much notice as is reasonably practicable.

22.6 The Council shall be entitled (but not obliged) to terminate this agreement on 31 March 2021 by giving notice to this effect no later than (three) (3) months before such date.

23 Resident Involvement and Access information

23.1 HFH will prepare, maintain and comply with the Resident Engagement Strategy. The Resident Engagement Strategy will be submitted for approval by the Council at the same time as the annual draft Business Plan in accordance with the procedure set out in clause 6.

23.2 HFH will engage tenants and leaseholders in the management of their homes, through appropriate channels, commensurate with the scope of their involvement and in accordance with the Resident Engagement Strategy.

23.3 HFH will afford the Council and persons properly authorised by it (including the commissioning team) access to any information reasonably required.

24 Insurances etc

24.1 HFH shall at all times maintain in force policies of insurance with reputable insurers or underwriters as shall insure and indemnify HFH (on the usual terms available in the market) against HFH's liability to:

24.1.1 the Council and any employee of the Council;

24.1.2 the employees of HFH;

24.1.3 any other person

in the sum of at least £20,000,000 in respect of any one occurrence or series of occurrences arising out of one event.

24.2 The Council shall itself insure against all the usual risks associated with its housing stock and acknowledges that HFH has no liability therefor.

24.3 HFH shall procure adequate insurance in respect of ICT equipment either owned by it or provided by the Council to HFH.

24.4 HFH will establish and maintain policies and procedures designed to (a) maintain so far as practicable continuity of business during periods of disruption caused by abnormal circumstances and (b) manage so far as practicable the risks facing it.

24.5 The business continuity plan of HFH shall complement and support that of the Council, particularly in relation to the anticipated use of buildings and physical assets and the provision of emergency services.

25 **Data protection**

25.1 HFH must:

25.1.1 abide by the Council's data protection and information security policies that apply to the systems used by HFH; and

25.1.2 comply with its obligations under this Agreement in manner so as to comply with Data Protection Legislation.

26 **Dispute resolution**

26.1 Save as otherwise provided in this Agreement, in the event of any dispute between the parties arising out of or in connection with this Agreement the parties shall in the first instance use their reasonable endeavours to resolve it amicably between them in accordance with the procedure set out below. If stages 1 to 3 have not been completed within 30 days of the dispute first being notified to the other in writing, the dispute shall automatically move to stage 3:

26.1.1 **Stage 1:** Representatives of the parties (being the officers having day to day responsibility for or knowledge of the area which is the subject of the dispute) shall meet. If they are unable to agree a resolution at such meeting or if there shall be no appropriate officers of each of the parties available to attend such meeting then move to Stage 2.

26.1.2 **Stage 2:** The lead commissioning officer of the Council, shall meet with the managing director of HFH. If they are unable to agree a resolution at such meeting or if there shall be no appropriate officers of each of the parties available to attend such meeting then move to Stage 3.

26.1.3 **Stage 3:** The Council's Representative and the Chair of the HFH Board or their nominated deputies shall meet within ten working days.

26.1.4 In seeking to resolve any dispute considered under Stage 1, Stage 2 or Stage 3 the parties shall apply the following principles:

- (a) a spirit of mutual trust and co-operation
- (b) both parties shall bear their own costs
- (c) the parties shall extend the periods of negotiation if they both agree to do so
- (d) any unanimous decision shall be implemented.

26.2 Disputes remaining unresolved after following the procedure set out in clause 26.1 shall be referred to the Council's Representative for determination.

26.3 The result of any dispute resolution procedure under this clause 26 shall be final and binding on the parties (save in the event of fraud or a mistake in law or material fact) and shall where and to the extent necessary shall be communicated to the HFH Board and if appropriate be treated as a variation to the provisions of this Agreement.

26.4 Until such time as a dispute between the parties is resolved or concluded in accordance with this clause 26 the parties shall continue to comply with their respective obligations under this Agreement.

27 **Regulator and legislation**

27.1 This Agreement is subject to the Regulator's right to direct the variation or termination thereof and the parties will take all steps necessary to give effect to any such variation or termination.

27.2 HFH or the Council will not do or refrain from doing anything that might lead to action by the Regulator against the Council or HFH.

27.3 HFH will comply with all relevant legislation (including but not limited to legislation relating to health and safety, fire safety and equality and diversity) and with the Council's Equal Opportunities Policy.

28 **Variations to tenancy agreements**

HFH shall not vary or accept or acquiesce in any variation to any of the Council's occupancy agreements used with regard to Dwellings without the prior written consent of the Council.

29 **Freedom of Information Act**

29.1 In the event that, pursuant to a request which the Council or HFH has received under the Freedom of Information Act (**FOIA**) the Council or HFH (as the case may be) is required to disclose any information which is the subject of this Agreement, the Council or HFH (as the case may be) shall:

29.1.1 notify the other Party promptly of such request;

29.1.2 consult with the other Party prior to disclosing any such information;

- 29.1.3 pay due regard to any representations which the other Party may make in connection with such disclosure;
- 29.1.4 co-operate with the other Party in correlating the required information; and
- 29.1.5 apply any relevant exemptions which may exist under the FOIA to any request.

30 **Tenant Management Organisations**

30.1 In the event that in accordance with regulations made under Section 27AB of the Housing Act 1985 any tenants propose to form a Tenant Management Organisation (as defined in Section 27AB(8) of the said Act) the Council shall be legally responsible for dealing with all aspects of such proposal.

30.2 The Council may pursuant to such a proposal instruct HFH to provide such assistance as may be required to the Council and any tenants making such proposal which assistance shall include:

- 30.2.1 provision of information and records about the Services;
- 30.2.2 providing such reports or other documentation as the Council may reasonably require in a manner and timescale prescribed by the Council for consideration by the tenants or the Council; and
- 30.2.3 attendance at meetings of such tenants;
- 30.2.4 and such other help or advice as the Council may require to enable the Council to fulfil its statutory obligations.

30.3 At such time as a decision is made that a transfer of management responsibility for all or part of the Services is to take place in accordance with the provisions set out in clause 30.1 the Council may issue further instructions to HFH requiring HFH to make arrangements to transfer responsibility for the Services in respect of the Dwellings so affected to the Tenant Management Organisation in such manner and within such timescale as the Council may prescribe and HFH shall comply with such instructions which may include (but not be limited to):

- 30.3.1 transferring data, records, statistics, files and other information in a format and manner prescribed by the Council;
- 30.3.2 transferring to the Tenant Management Organisation in accordance with the Right to Manage Regulations any staff transfer wholly or mainly engaged in the provision of services to the Tenant Management Organisation;
- 30.3.3 transferring necessary equipment and materials as may reasonably be stipulated by the Council's Representative;
- 30.3.4 establishing working arrangements with the Tenant Management Organisation; and
- 30.3.5 providing any other assistance reasonably needed to enable such transfer to take place.

- 30.4 At such time as a transfer of management responsibility to a Tenant Management Organisation takes place the Council shall be entitled to vary this Agreement (giving three months' notice to HFH) and where such a variation is made the amendment to the annual Business Plan in accordance with clause 6 shall reflect the cost of providing such Services as remain to be carried out under this Agreement and if no such Services remain this Agreement shall terminate (and clause 21.2 shall apply).
- 30.5 HFH will assume all those responsibilities of the Council which are set out in any management agreement made between the Council and any Tenant Management Organisation whether such agreement exists at the date of this Agreement or arises during the currency of it.
- 30.6 In the event that a Tenant Management Organisation to which responsibility for managing the Services has been transferred in accordance with this clause 30 ceases to provide all or any part of those Services for all or any of the Dwellings the Council shall be entitled to vary further this Agreement so as to require HFH to provide such ceased Services and where such a variation is effected a variation may also be made in relation to the current annual Business Plan in accordance with clause 6 and Fee in accordance with clause 11.
- 30.7 The provisions of this clause shall apply, mutatis mutandis, to the transfer of additional management responsibilities to an existing Tenant Management Organisation as well as any other Tenant Management Organisations.
- 30.8 HFH shall in complying with its obligations under this clause 30 ensure that to the extent permitted by any existing agreement(s) with any Tenant Management Organisation the obligations to provide the Services at the level and standards required by the Agreement or otherwise prescribed by the Council are unaffected.
- 31 **Value added tax**
- 31.1 All payments by any party to another party pursuant to the terms of this Agreement shall be exclusive of any Value Added Tax chargeable in respect of the supply of goods or services for which the payment is consideration and in so far as such payments fall to be made under this Agreement such Value Added Tax shall be added to the amount thereof and paid in addition thereto upon production of a proper Value Added Tax invoice.
- 32 **No partnership**
- 32.1 Nothing in this Agreement shall be construed as creating or implying any partnership between the parties hereto and save as expressly provided nothing in this Agreement shall be deemed to make HFH the agent of the Council or authorise HFH to:
- 32.2 incur any expenses on behalf of the Council;
- 32.3 enter into any engagement or make any representation or warranty on behalf of the Council; or
- 32.4 commit or bind the Council in any way whatsoever without in each case obtaining the Council's Representative's prior written consent.

33 **Survival of this Agreement**

33.1 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.

33.2 Insofar as any of the obligations of HFH 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.

34 **Severance**

34.1 If any provision of this Agreement becomes or is declared invalid or unenforceable that shall not affect any other provisions which shall all remain in full force and effect.

35 **No assignment**

35.1 No Party shall be entitled to assign this Agreement or any of the rights hereunder to any other party.

36 **Notices etc**

36.1 Any notice or other communication under this Agreement shall be sufficiently served if served personally on the other Party or sent by prepaid first class post to the addresses given at the head of this Agreement or by electronic mail to the email addresses of the Council Representative or the HFH Representative or their deputy (as applicable) and, subject to proof to the contrary, shall be deemed to have been received on the second working day after the day of posting or on successful transmission, as the case may be.

37 **Third party rights**

37.1 No rights are conferred under this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

38 **Concurrent remedies**

38.1 No right or remedy for any Party under this Agreement is exclusive of any other right or remedy and each such right or remedy shall be cumulative and enforceable concurrently and shall be without prejudice to pre-existing obligations.

39 **Variation**

39.1 Except as otherwise expressly provided, no variation of this Agreement shall be valid unless it is in writing and executed and delivered as a deed by or on behalf of each of the parties.

40 **Confidentiality**

40.1 The parties agree to keep the subject matter of this Agreement confidential subject only to statutory duties and/or usual contractual obligations.

41 **Law**

41.1 This Agreement shall be governed and construed according to English law.

This Agreement has been entered into as a deed and is delivered on the date stated at the beginning

DRAFT

The **COMMON SEAL** of)
THE MAYOR AND)
BURGESSES OF THE LONDON)
BOROUGH OF HARINGEY)
was affixed)
in the presence of:)

The **COMMON SEAL** of)
HOMES FOR HARINGEY LIMITED)
was affixed)
in the presence of:)

Authorised Signatory

DRAFT

Schedule 1

HFH's Services

(Clause 2)

- 1) The following landlord and tenant services are provided by HfH to the Council:
 - Voids, allocations and lettings
 - Tenancy and leasehold management
 - Estate management
 - Rent, service charge and sundry account management
 - Repairs and maintenance
 - Major works
 - Housing advice, homelessness services and housing needs
 - Housing information

- 2) Discharge of all the Council's functions as to allocations and homelessness under Parts VI and VII of the Housing Act 1996 (as amended by the Homelessness Reduction Act 2017), excluding those set out at Schedules 1 and 2 of the Local Authorities (Contracting Out of Allocation of Housing and Homelessness Functions) Order 1996 or which the Council is otherwise prevented by law from so delegating.

Where there are services that rely on collaboration between the Council and HfH, an appropriate protocol will be devised as necessary.

Schedule 2

Services provided by the Council

The Council will provide a number of support services to HFH which will be more particularly described in a series of service level agreements or other protocols or arrangements agreed between the parties. Such services may include (but are not limited to):

- Customer services
- Single front line services
- HR and OD
- IT
- Procurement
- Property Services
- Insurance
- Parking services and CCTV
- Benefits
- Leisure
- Finance and accounting
- Legal services
- Communications
- Fraud investigation

DRAFT