

DATED _____ ~~2015~~ 2019

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(1) THE METROPOLITAN BOROUGH OF SOLIHULL

and

(2) SOLIHULL COMMUNITY HOUSING LIMITED

HOUSING MANAGEMENT AGREEMENT

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THIS AGREEMENT is made the day of 2019

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BETWEEN:-

- (1) **THE METROPOLITAN BOROUGH OF SOLIHULL** of Council House, Manor Square Solihull, West Midlands, B91 9QS (the "**Council**"); and
- (2) **SOLIHULL COMMUNITY HOUSING LIMITED** (company registration No. 4462630 whose registered office is situate at Endeavour House, Meriden Drive, Solihull, B37 6BX ("**SCH**").

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 the 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 2 of the Local Government Act 2000 and all other enabling powers, the Council and SCH entered into an Agreement on 31st March 2004 setting out the terms on which SCH exercises such of the Council's management and other functions ("the First Agreement").
- (C) The Parties have reviewed the First Agreement and agreed to enter into this revised agreement to reflect the revised arrangements between the parties.

IT IS AGREED as follows:-

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following words and phrases shall have the following meanings:

"Agreement"	means this Agreement (including the Schedules and Annexes) as it may be amended or varied in the future;
"Contract Standards"	means the standards to which the Functions are to be provided as set out in the Delivery Plan;
"Council's Representative"	means the person nominated by the Council as its principal contact for the purposes of this Agreement;
"Council Services"	means the ancillary and support services supplied by the Council to SCH to assist it to perform its obligations hereunder as set out in Schedule 1 hereto;
"Delivery Plan"	means the document so entitled which describes how SCH will deliver the outputs to be achieved by means of the Functions;
"Dwelling"	means any leasehold or tenanted dwelling house to be managed by SCH pursuant to this Agreement and includes (a) any part of a building occupied or intended to be occupied as a separate dwellinghouse (in particular but without limitation a flat and the communal area of blocks of flats save that any flat let together with a shop unit as part of the same demise or otherwise as set out in the Third Schedule shall be excluded), (b) any land,

gardens, outhouses, private paths or driveways usually enjoyed with any such dwelling house and (c) group homes for sheltered accommodation provided under the Enabling Acts together with any land, gardens or driveways usually enjoyed with any such sheltered accommodation;

"Enabling Acts"

means all those Acts which enable the Council to enter into this Agreement, including (but not limited to) the Housing Act 1985, the Local Government Act 1972, the Local Government Act 2000, ~~and the Localism Act 2011~~;

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"End Date"

means the date on which this Agreement comes to an end either pursuant to Clause 32 or termination, and in the case of a partial termination, the date that partial termination takes effect;

"Functions"

means the housing management functions to be carried out by SCH by itself or in conjunction with the Council as set out in Clauses 2 and 3 of this Agreement and more particularly described in the Delivery Plan;

"HRA"

means the Council's Housing Revenue Account as created and maintained pursuant to Section 74 of the Local Government and Housing Act 1989;

"Guidance"

means the guidance entitled "Guidance on Arms Length Management of Local Authority Housing 2003" and any subsequent guidance which modifies or replaces the same;

"Know-how"

means all information (including that comprised in or derived from data, disks, tapes, manuals, source codes, flow-charts, catalogues and instructions) relating to the Undertaking and the Functions;

"Licences"

means the licences of Premises to be granted to SCH pursuant to clause 14 of this Agreement;

"Management Fee"

means the fee which shall be calculated based on the reasonable expenditure and income required to carry out the functions and at a level which would not cause the HRA to go into deficit in any year. The Management Fee will be scrutinised and approved by the Councils Cabinet prior to the Commencement of each financial year;

"Monitoring Meeting"

Means the meetings held pursuant to clause 7.1 of this agreement.

"Customer Contact"

means the Council's strategy to enable its customers to access all Council functions at their first point of contact.

"Premises"

means the offices and other premises licensed to SCH in pursuance of their obligations under this agreement;

Deleted: "Protocols" means the Protocols identified in Schedule 2

"Regulations"	means the Transfer of Undertakings Protection of Employment) Regulations 1981;
"SCH's Representative"	means the person nominated by SCH as its principal contact for the purposes of this Agreement;
"SCH Services"	means the ancillary and support services supplied by SCH to the Council to assist it to perform its functions as set out in Schedule 3 hereto;
"Secretary of State"	means the relevant Secretary of State or any body to which the Department for Communities & Local Government have delegated authority with regard to regulation of housing matters;
"Start Date"	means 1 April 2015;
"Tenancy Conditions"	means the conditions on the basis of which the Council's tenants occupy the Dwellings;
"Tenant Management Organisation"	means a Tenant Management Organisation as defined in Section 27AB(8) of the Housing Act 1985;
"Term"	means the period commencing on 1 April 2015 and initially expiring on the End Date unless extended in accordance with Clause 32.1;
"Undertaking"	means the Council's undertaking relating to the provision of the Functions;
"Working Day"	means the hours of 8.45am and 5.20pm Monday to Thursday and 8.45am to 4.30pm on Fridays excluding public holidays and other non-statutory holidays taken as public holidays by the Council.

- 1.2 Reference to SCH's personnel shall be deemed to include SCH's employed directors and employees, but not its board members.
- 1.3 The Agreement shall be governed by and construed in accordance with English Law, and the English courts shall have jurisdiction over any dispute or difference which shall arise between the Council and SCH out of or in connection with the Agreement
- 1.4 A reference to the Enabling Acts or any other Act of Parliament, or to any Order, Regulation, Statutory Instrument, or the like, shall be deemed to include a reference to any amendment, re-enactment, consolidation, variation, replacement or extension of the same respectively from time to time and for the time being in force.
- 1.5 Words denoting the singular shall include the plural and vice versa and words denoting the masculine gender shall include the feminine gender and vice versa and words denoting persons shall include firms and corporations.

- 1.6 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.
- 1.7 References to organisations shall be deemed to be references to such organisations or to successor bodies to whom their powers, rights, responsibilities and obligations have been transferred.
- 1.8 Where a term of this Agreement provides for a list of items following the word "including" or "includes" then such list is not to be interpreted as being an exhaustive list. Any such list shall not be treated as excluding any item which might have been included in such list having regard to the context of the contractual term in question. The *ejusdem generis* principle is not to be applied when interpreting this Agreement.
- 1.9 In this Agreement headings are included for ease of reference only and shall not affect this Agreement or the interpretation thereof.

2. FUNCTIONS DELEGATED TO SCH

The Council delegates to SCH and SCH agrees to carry out the following housing management and otheir functions as agent for the Council in accordance with the terms of this Agreement:

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- 2.1 rent collection (including control of the rent debit and accounting therefor), dealing with arrears and associated debt counselling;
- 2.2 tenant information and consultation on housing matters;
- 2.3 tenant participation, including involvement in monitoring and review of service standards and wider housing policy;
- 2.4 enforcement and review of tenancy conditions;
- 2.5 managing allocations of Council Houses and management of temporary accommodation;
- 2.6 estate management, caretaking;
- 2.7 support functions to vulnerable and older tenants including those under the wellbeing service;
- 2.8 leaseholders management including the items 2.1 to 2.6 above (as applicable) and recharging administration (service charges);
- 2.9 repairs, maintenance, improvements and modernisation of the housing stock including contractor management and administration;
- 2.10 transfers and exchanges; and

Deleted: lettings, voids and under-occupation, overcrowding

Deleted: independent living scheme

2.11 such reception functions, call handling and associated customer functions relating to housing matters as agreed from time to time.

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2.12 The Home Options Service

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2.13 Dealing with anti-social behavior

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The details of how these Functions will be carried out and the Key Performance Indicators

are set out in the Delivery Plan. These Functions are imposed upon the Council by the provisions of the Housing Act 1985 and delegated to SCH with the consent of the Secretary of State pursuant to Section 27 of that Act.

3. FUNCTIONS SHARED BETWEEN THE PARTIES

The Council and SCH agree that the following housing management functions shall be shared between the parties as set out herein:

- 3.1 reviews of the effectiveness of the overall housing function;
- 3.2 RTB sales;
- 3.3 Housing Benefit and welfare reform advice;
- 3.4 bidding for capital resources for housing;
- 3.5 environmental protection and improvement of the areas in which the stock is situate;
- 3.6 provision of housing advice;
- 3.7 development of allocations and tenancy policy;
- 3.8 small area improvement (strategy and implementation);
- 3.9 working together to increase the supply of social housing in Solihull;
- 3.10 working together to develop Solihull's response to the climate change agenda;
- 3.11 management of the Wellbeing Service including meeting the statutory demand for Disabled Facilities Grants;
- 3.12 working to alleviate worklessness and increase skills including promotion or apprenticeships and other forms of training;
- 3.13 digital inclusion work in relation to tenants;
- 3.14 bidding for resources for new housing development; and
- 3.15 management of the Housing Revenue Account.

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Deleted: <#>tenant participation in developing housing policy, strategy and wider views on other services in their area;¶

Deleted: <#>homelessness;¶

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Deleted: (development and implementation)

Deleted: regeneration

Deleted: Solihull Independent Living

Deleted: (Home Improvement Agency)

The details of how these Functions will be shared and the Key Performance Indicators are set out in the Delivery Plan. The Functions are imposed upon the Council by the provisions of the Housing Act 1985 and shared with SCH with the consent of the Secretary of State pursuant to Section 27 of that Act.

4. FUNCTIONS RETAINED BY THE COUNCIL

The following housing functions are the sole responsibility of the Council and, for the avoidance of doubt, unless a function is specifically stated as being delegated under Clause 2 or shared under Clause 3, then it is reserved completely to the Council (it being recognised that SCH will need to input into these matters):

4.1 strategic Housing matters contained in the Statutory Housing Framework;

4.2 policy on dealing with anti-social behaviour in the area;

4.3 policies covering grant assistance;

4.4 housing benefit administration;

4.5 rent setting;

Deleted: strategic housing matters including liaison with other social housing providers, housing needs assessments, cross-tenure stock condition surveys, the Council's overall housing strategy and associated, related and sub-strategies

Deleted: owner-occupation strategies and

4.6 such other Council strategies that may relate to Housing and or to any statutory partnerships that the Council may be involved in.

Deleted: implementation of strategy on independent living, including functions formally funded by the Better Care Fund and other sources, including those formally funded by Supporting People; and¶

5. FUNCTION OUTPUTS

SCH shall provide the Functions in accordance with the Contract Standards and in compliance with:

5.1 the Delivery Plan and the Key Performance Indicators;

5.2 all agreed outputs stemming from the Reviews;

5.3 all legislation including the Data Protection Acts, the Equality Act 2010, and the Freedom of Information Act 2002 including all subsequent revisions to this legislation; and

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5.4 having due regard to the following:

5.4.1 the Council's vision for Solihull and its objectives and priorities;

5.4.2 the Council's strategies for improving the quality of life for all those who live and work in Solihull (to the extent that such strategies are connected with the Functions), including and Functional or other review undertaken by the Council;

5.4.3 the Council's values in delivering its functions;

5.4.4 the Council's Customer Contact strategy;

5.4.5 the Council's Equality and Diversity policies;

5.4.6 the Council's other policies (to the extent that such policies impact on the Functions);

5.4.7 The needs of the residents of Solihull and in particular, the tenants and service users of SCH;

Deleted: SCH's desire to generate additional income from non-core housing functions with a view to creating new jobs, wealth and adding to the overall improvement of well-being for the residents of Solihull; and¶

5.4.8 To meet the requirements of the Public Services (Social Value) Act.

5.4.9 any strategies and partnerships arising from strategic partnerships

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6. DELIVERY PLAN

6.1 The parties shall agree annually a Delivery Plan setting out SCH's objectives and targets regarding the performance of the Functions. ~~These objectives and targets will reflect the Council's objectives as regards the functions.~~

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6.2 SCH will produce a Delivery Plan for approval by the Council in March before the start of each year setting out:

6.2.1 How SCH intend to improve services for residents;

6.2.2 How SCH intend to contribute to Council objectives;

6.2.3 How SCH proposes to contribute to the review criteria set out in Schedule 4;

6.2.4 Performance indicators to be monitored and agreed targets;

6.2.5 Significant policy developments planned in the forthcoming year;

6.2.6 Significant investment plans for the forthcoming year;

6.2.7 Details of activities that may span multiple years, together with any future changes required to comply with financial and other expectations of the Council.

6.3 SCH will ensure the Delivery Plan is made available to the Council in sufficient time to enable the Council to approve the same prior to the start of the financial year.

7. MONITORING AND LIAISON

The Council shall be entitled to monitor SCH's performance of its obligations under this Agreement as follows:

7.1 ~~There shall be~~ a Quarterly Monitoring Board ("Monitoring Board"), for the purpose of monitoring SCH performance under this Agreement against the Delivery Plan and the monitoring and review criteria contained in Schedule 4. The Board shall meet regularly and no less than 4 times per year. The Council acting reasonably shall determine who should attend the Board. The Board shall invite representatives from SCH the Council and partners as and when necessary to help support the Board. The meetings shall, amongst other things, review SCH's performance against the Delivery Plan and the Key Performance Indicators. If SCH's performance fails to meet ~~that identified in the~~ Delivery Plan, the Board will agree an action plan and timescale to remedy the situation. If agreement cannot be reached, the matter shall be referred to Dispute Resolution in Clause 26.

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7.2 SCH will provide the Council with all of the information it may reasonably require to monitor SCH's performance under this agreement. In particular, SCH shall provide in writing:

7.2.1 KPIs and any relevant benchmarking information;

7.2.2 Analysis of performance against the delivery plan;

7.2.3 Details of capital expenditure against the agreed programme and a projected full year outturn;

7.2.4 Summary of revenue expenditure compared with management fee and an update on any areas of concern.

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7.2.5 progress against savings targets

7.3 Either party may suggest changes to the Functions, Delivery Plan, Key Performance Indicators, Reviews or any other matter, the subject of this Agreement, at any meeting. Any changes shall be dealt with as a Variation under Clause 30.

7.4 The Council may, on reasonable notice, require SCH's Chief Executive Officer to attend meetings of the Council's scrutiny or other meetings identified from time to time to answer such questions as appear to scrutiny to be necessary for discharging its functions regarding the operation of this Agreement.

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7.5 Both parties will keep the other informed about their respective activities in connection with this Agreement and will liaise as appropriate to ensure that the Council and SCH present a "seamless service" to tenants and other customers.

7.6 Both parties agree to share information as may be necessary for the fulfillment of their obligations under this agreement.

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8. PAYMENTS AND ACCOUNTING

8.1 In consideration of SCH carrying out the Functions, the Council will pay the Management Fee.

8.2 In addition to the Management Fee, the Council will pass on to SCH:

8.2.1 an amount equivalent to the sum of all grants made by any other body which were granted to the Council for the benefit of SCH;

Deleted: <#>an amount equivalent to the sum of all grants made available by the Government to the Council as a result of its setting up SCH;¶

8.2.2 sufficient funding for SCH to deliver the Council approved HRA capital programme

Deleted: <#>an amount equivalent to the sum of all supplementary credit approvals awarded to the Council as a result of its setting up SCH; and¶

8.2.3 any underspend on the capital programme for Council housing carried over from the previous year

Deleted: <#>any other monies received by the Council and an amount equivalent to any other credit awarded to the Council which it received as a result of its setting up SCH.¶

8.3 All sums payable to SCH pursuant to Clause 8.2 shall be paid by the Council within 28 days of receipt of the same and in the case of any credit approvals or awards, the Council shall use all reasonable endeavours to raise finance equivalent to the amount of such credit approval or award and thereafter will pay such monies to SCH within 28 days of having raised such finance.

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Deleted: Any capital grants or income relating to Council Housing

8.4 SCH shall keep proper accounting records of all its financial transactions and comply with the Council's financial regulations and all statutory and regulatory requirements in the management thereof.

9. **USE OF SURPLUSES**

9.1 If, as a result of SCH's successful operation of the Functions, the Council received more rent and/or other income from the Dwellings than was envisaged in the Delivery Plan, then the Monitoring Board shall agree how the surpluses should be applied.

10. **ADDITIONAL FINANCE**

If during the course of this Agreement additional means of funding SCH become available, whether by means of the implementation of the Government's prudential borrowing regime, access by SCH to social housing or other grants, SCH becoming entitled to raise private finance or otherwise, SCH generating new business from the Growth Area Services then the parties shall work together in good faith to amend this Agreement and SCH's memorandum and articles of association to enable SCH to access such additional means of funding **PROVIDED THAT** the Council shall not be required to agree any changes which would prejudice its overall financial position in a manner which was unreasonable.

11. **NOT USED**

12. **NOT USED**

13. **NOT USED**

14. **PREMISES**

The Council shall grants SCH licences to occupy and use the properties on terms to be agreed between SCH and the Councils Strategic Land & Property Team.

15. **ASSETS**

15.1 If SCH acquires other assets during the course of this Agreement on hire purchase, finance, lease or similar terms (a "**Lease Arrangement**"), SCH shall ensure that on the End Date such Lease Arrangement is capable of assignment to the Council (if it so requests) or termination by SCH unless the Council (acting reasonably) agrees otherwise.

15.2 SCH shall, upon receiving not less than 14 days prior written notice permit the Council to inspect any Assets or materials used in the provision of the Functions and SCH shall use all reasonable endeavours to facilitate such inspections.

15.3 On the End Date SCH shall transfer all Assets and materials owned by it to the Council and assign the benefit of all Lease Arrangements to the Council for nil consideration.

16. **NOT USED**

17. **NOT USED**

18. **SCH'S OBLIGATIONS**

18.1 SCH shall throughout the term of this Agreement:

18.1.1 not vary or accept any variation to the Council's form of secure tenancy agreement or tenancy conditions without the Council's prior written consent (not to be unreasonably withheld or delayed).

18.1.2 co-operate with the Homes [England](#) or any successor bodies in respect of the inspection of (a) the operation of this Agreement and SCH's performance of its obligations herein, (b) the Council's retained housing functions, and (c) any inspections of cross-cutting functions.

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18.1.3 implement a Customer involvement Strategy to ensure that tenants and customers are able to be involved in decision making regarding housing services. taking into account the Council's [equality commitments and duties under the Equality Act 2010](#),

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18.1.4 SCH shall inform the Council's Representative as soon as is reasonably practicable of any or all of the following matters:

Deleted: To develop Equality and Diversity policies and practices which meet legislative requirements and which work to assist the delivery of the Council's Equality and Diversity scheme.

(a) any failure by the Council or its employees or agents or other persons providing functions to the Council to meet obligations under this Agreement.

(b) any acts or omissions by the Council or such other persons as are referred to in (a) above which prevent or hinder or are likely to prevent or hinder SCH from complying with its obligations under this Agreement.

(c) any points of contention or other difficulties with any local tenants, groups or comparable organisations which might prevent or hinder SCH from complying with its obligations under this Agreement.

18.1.5 As soon as SCH becomes aware of any fraudulent action in the provision of the Functions or which otherwise affects it shall notify the Council's Representative.

18.1.6 SCH shall ensure that it has a complaints policy in place and provide the Council with details of complaints and outcomes on request. SCH shall notify the Council's Representative immediately upon becoming aware of the same of any accident, damage or breach of any statutory provision which materially and adversely affects its ability to comply with the Delivery Plan or deliver the Functions in accordance with this Agreement.

18.1.7 If requested to do so by the Council's Representative and to the extent allowed by law, SCH shall provide the Council's Representative with any relevant information reasonably required by the Council in connection with any relevant enquiries from the Local Government Ombudsman, elected members of the Council or the public. SCH shall use all reasonable endeavours to ensure that (where required) its officers or employees give evidence in any relevant legal inquiries or court proceedings or hearings.

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18.1.8 Develop a risk management policy which it shall apply in the performance of the Functions and use all reasonable endeavours to ensure that such risk management policy does not conflict with the Council's risk management policy issued from time to time.

18.1.9 Consult with the Council, and where necessary seek elected member approval to the introduction of any new SCH policies or any changes to existing SCH policies

where, in each case such introduction or changes would have a material effect on the Council.

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18.1.10 Be a member of and contribute to the Council's local strategic partnership and work with the Council to ensure that the Functions delegated to SCH, accord with the priorities of the Council Plan and contribute to the Council's strategy for the wellbeing of the Borough.

18.1.11 Co-operate with the Council and any other relevant body that the Council may identify from time to time, to align the Delivery Plan and priorities for investment with those of the NSP business plan

Deleted: the North Solihull Regeneration Partnership (or

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18.2 SCH shall keep and maintain all necessary information and shall provide all reasonable assistance to enable the Council to complete all its statutory returns of housing statistics and other information relating to the Functions including:

18.2.1 returns to all relevant Government departments;

18.2.2 information required under the Report to Tenants Determination (as revised from time to time); and

18.2.3 CIPFA returns.

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18.3 SCH shall collect the rent and other sums from tenants and leaseholders on the Council's behalf. All rent or sums collected shall be paid direct into the Council's bank account and the Council will ensure that SCH has all the necessary details and authorisations to do this. If for some reason any rent or similar sum is not paid direct into the Council's bank account, it shall be held by SCH on trust for the Council and paid to it as soon as practicable.

Deleted: <#>Housing Investment Programme submissions including contributions to the Housing Strategy and associated issues.¶

18.4 SCH shall supply to the Council the SCH services to be agreed annually through the Monitoring meeting. The terms under which these services are to be provided shall be agreed between the relevant parties together with the performance monitoring arrangements to be implemented and monitored.

18.5 SCH shall use all reasonable endeavours to answer queries raised by the Council's Representative on behalf of elected members concerning SCH's performance of the Functions.

SCH shall where required publish equality information reports in line with the public sector equality duties of the Council under the Equality Act 2010 and any other assistance or information necessary to ensure compliance with equalities legislation.

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19. COUNCIL'S OBLIGATIONS

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19.1 The Council shall (subject to any legally binding constraints) provide SCH with such information as SCH properly requires to comply with its obligations under this Agreement.

19.2 If the Council is unable to provide SCH with the information it requires because of legally binding constraints, then the Council will inform SCH and use all reasonable endeavours to obtain any necessary consents to enable it to provide the information to SCH.

19.3 The Council shall supply to SCH the Council services to be agreed annually. The terms under which these services are to be provided shall be agreed between the relevant parties together with the performance monitoring arrangements to be implemented and monitored.

19.4 The Council warrants to SCH as follows:

19.4.1 all information supplied by the Council to SCH and to the [Ministry of Housing, Communities & Local Government](#) ("MHCLG") relating to the matters referred to in this Agreement and/or the creation of SCH was correct when made.

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19.4.2 the Council is the beneficial owner of the Premises and has full right and power to licence the same to SCH.

19.4.3 The Council has obtained and as at the date hereof there continues to subsist in full force and effect all authorisations, consents, approvals, licences, registrations and declarations from all legislative bodies, government ministries, agencies, other authorities or otherwise necessary for the Council to enter into and perform its obligations under this Agreement.

19.5 The Council will grant SCH licenses of the dwellings occupied by service tenants in such form as may be agreed between the parties (both acting reasonably) within one month of the date hereof.

20. SHARED OBLIGATIONS

20.1 SCH and the Council shall establish such mutual arrangements as may be necessary (whether in writing, by telephone or electronic means) to ensure that the liaison arrangements stipulated in this Agreement can be achieved.

20.2 The parties shall in fulfilling their respective obligations under this agreement have regard to the Public Sector Equality Duty as set out in the Equality Act 2010. ~~The~~ Parties shall operate equality and diversity policies and procedures in all their work, and by implementing these policies and procedures each party shall ensure that it complies with its obligations contained in the Equality Act 2010.

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20.3 The parties will consult and work together in the production and changes to their equality and diversity policies with the aim of harmonising them.

20.4 Both Parties shall at all times comply with all relevant legislation enacted including (i) the requirements of the Health and Safety at Work, etc Act 1974, the Management of Health and Safety at Work Regulations 1992 and of all other Acts, Regulations, Orders or rules of law pertaining to health and safety, and (ii) their obligations under the Freedom of Information Act 2000 and Data Protection Act 1998 and all Acts, Regulations, Orders or rules of law pertaining to access and protection of information.

20.5 The Parties will work together on the following issues, including the review criteria set out in the ~~Schedule 4~~ and as more particularly set out in the Delivery Plan:-

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20.5.1 Protection of children and vulnerable adults;

20.5.2 Joint anti-poverty initiatives;

Deleted: <#>Independent Living;¶

20.5.3 Neighbourhood Management;

¶ <#>Housing Benefit;¶

20.5.4 Thematic groups of the local strategic partnership including the crime and disorder partnership, the drug action team and the children/young people group; and

20.5.5 Regeneration issues throughout the borough including involvement in the early stages of the development plans.

20.6 If the Council decides as part of its housing strategy that certain housing units which are the subject of the Functions will be demolished, the Council will consult with SCH prior to any such demolition. The parties shall co-operate with each other during the demolition process and comply with any Variation that may be required.

21. **INSURANCES**

21.1 The Council shall during the Term of this Agreement be responsible for insuring the Dwellings and all premises licensed to SCH against fire, lighting and explosion to the same extent and with the same cover as the Council insured prior to the date hereof.

21.2 The Council shall continue to self-insure the Dwellings and the Premises licensed to SCH against storm, damage and such other risks as is usual for a prudent Landlord to insure against to the same extent as the Council self-insured prior to the date hereof.

21.3 The Council shall, upon reasonable request from SCH produce copies of its insurance policies relating to the Dwellings and all premises and the latest cover notes showing such policies are in force.

21.4 If a claim arises under any insurance policy taken out by the Council which affects the Property or Premises, the Council will at the request and expense of SCH pursue such claims with all diligence and dispatch and (if SCH so requests in writing) take such action against the insurers as SCH may request, all such action to be at SCH's expense.

21.5 SCH shall at all times maintain policies on insurance with reputable insurers or underwriters against its public and employers liabilities and maintain such other insurances as it deems necessary or appropriate.

21.6 SCH shall at the Start Date and thereafter at such other times as the Council may reasonably require supply the Council will certified copies of all its insurance policies with any cover notes, necessary to show that such policies are in force.

21.7 ~~NOT USED.~~

22. **DATA PROTECTION & FREEDOM OF INFORMATION**

23(A) Freedom of Information Act

23(A).1 SCH acknowledges that the Council is subject to the requirements of the Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations and shall assist and cooperate with the Council to ensure that the Council complies with its Information disclosure obligations.

23(A).2 SCH shall ensure that it responds to all Requests for Information on matters within the remit of this Agreement within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

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¶ There will be an annual assessment of the SCH performance report via the monitoring arrangements provided in Clause 7 and an Annual Service Improvement Plan which will include performance targets which have been agreed as part of the Annual Delivery Plan. It will be monitored throughout the year at formal Monitoring meetings.

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23(A).3 SCH shall work with the Council where necessary to determine, notwithstanding any other provision in this Agreement or any other agreement, whether any Request relates to Commercially Sensitive Information or is in any other way exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

23(A).4 SCH will forward any Requests for Information that relate to matters outside the remit of this Agreement to the Council as soon as practicable and in any event within two Working Days of receiving the Request.

Insofar as the Data Protection Act 2018 (in this Clause the "Act") shall apply to the provisions of this Agreement (including the Schedules hereto) from time to time:

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22.1 SCH warrants to the Council that it has applied for or will when necessary apply for and thereafter maintain for as long as is reasonably necessary registration as a data controller and as a processor under the Act.

22.2 The Council warrants to SCH it has applied for and will maintain for as long as is reasonably necessary registration as a data controller under the Act.

22.3 The Council and SCH shall use information provided by the other only for the purposes which (a) are permitted by the provisions of this Agreement and the Schedules hereto and (b) are permitted for the purpose of the Act, and not further or otherwise.

22.4 SCH shall provide the Council with all reasonable help to enable the Council to comply with its obligations under the Data Protection Act 2018.

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22.5 Each party shall keep the other party fully and sufficiently indemnified against any liability arising from any breach of their respective warranties contained in this Clause 23.

23. CONFIDENTIALITY

Neither party (including their respective agents, employees or representatives) shall, without the prior written consent of the other disclose or suffer to be disclosed any parts of this Agreement except and to the extent that disclosure may be necessary to comply with the law.

24. ASSIGNMENT

Neither party may assign its benefits and obligations under this Agreement unless directed so to do by the Secretary of State.

25. DISPUTE RESOLUTION

25.1 In the event that any dispute arises between the Council and SCH 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:-

25.1.1 Stage 1:

representatives of the parties in dispute (being the officers having day to day conduct of the area the subject of the dispute) shall meet within 3 Working Days; if they are unable to agree a unanimous resolution at such meeting or subsequent meeting as may be agreed to be held or if there shall be no appropriate officers of each of the parties available to attend such meetings - then move to stage 2.

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25.1.2 **Stage 2:** the matter shall be referred for determination by the Chief Executives of the Council and of SCH. Such persons to meet within 5 Working Days of the referral of the dispute by any of the parties in dispute.

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25.1.3 In seeking to resolve any dispute considered under Stage 1 or Stage 2 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) Any unanimous decision shall be implemented.

25.2 Disputes remaining unresolved after following the procedure set out above shall be referred:

25.2.1 if the parties to the dispute so agree, to an expert or otherwise

25.2.2 to the exclusive jurisdiction of the Courts of England and Wales.

25.3 Any matter or dispute to be determined by an expert under this Agreement shall be referred to determination to a person suitably qualified to determine such matter or dispute and who shall be nominated jointly by the parties to the dispute or failing such agreement within seven days to such person as may be appointed, on the application of any of the parties to the dispute by the President for the time being of the Chartered Institute of Housing.

25.4 The Council and SCH shall on request promptly supply to the expert all such assistance, documents and information as he may require for the purpose of his determination and both the Council and SCH shall use all reasonable endeavours to procure the prompt determination of such reference.

25.5 The expert shall be deemed to act as an expert and not as an arbitrator and his determination shall (in the absence of manifest error) be conclusive and binding upon the parties.

25.6 The costs of the expert appointed under this Clause shall be borne equally by SCH and the Council save as may be otherwise directed by the expert.

25.7 Any reference that may be proposed to be made by any of the parties to the dispute of any matter to be determined by the expert shall be made in the manner provided in this Clause.

26. **RIGHTS OF THIRD PARTIES**

Save as where otherwise expressly stated, no express third party right and no purported third party right is conferred or intended to be conferred by this Agreement or any contract, deed or instrument entered into under or in connection herewith pursuant to the Contracts (Rights of Third Parties) Act 1999.

27. **WAIVER**

No delay or omission by either party hereunder to exercise any right, power or remedy shall operate as a waiver thereof and any single or partial exercise thereof shall not preclude any other or further exercise thereof or the exercise of any right power or other

remedy. The rights and remedies provided in this Agreement are cumulative and save where expressly stated not exclusive of any right or remedy provided by law.

28. **SEVERANCE**

If any provision of this Agreement or its application to any person or circumstances is void or unenforceable then such provision or application shall be severed from this Agreement so that the validity of the remainder of this Agreement and the application of such provision to such other person or circumstances shall not be affected by such severance.

29. **VARIATIONS**

29.1 The Council may from time to time require changes (hereinafter referred to as "Variations" and each a "Variation") to be made to this Agreement and may upon giving reasonable written notice thereof to SCH add to, delete from or otherwise amend in any way this Agreement as set out in this Clause.

29.2 Reasonable notice for the purpose of Clause 30.1 shall be either:

29.2.1 three months' notice for changes which the Council has determined will require consultation under Section 105 of the Housing Act 1985 or which will result in more or fewer staff being required by SCH or more cost being incurred by SCH;
or

29.2.2 one month's notice in any other case.

29.3 The notice shall contain sufficient details of the proposed Variation to enable the parties to identify the cost implications arising out of such Variation and any other implications thereof.

29.4 Within one month of receipt of a notice of Variation from the Council, SCH shall provide the Council with the following details in writing:

29.4.1 the changes needed to the current Delivery Plan to implement the Variation;

29.4.2 the costs to SCH of such Variation;

29.4.3 whether SCH will need to make any staffing changes in order to implement the Variation;

29.4.4 whether SCH may require any additional assets (including premises) in order to implement the Variation; and

29.4.5 any other information SCH considers relevant.

29.5 The parties shall work together in good faith to agree the necessary changes to:

29.5.1 the Functions;

29.5.2 the Delivery Plan;

29.5.3 the Agreement including any changes to the Management Fee to enable SCH to implement the Variation.

29.6 If the parties cannot agree the necessary changes within one month of SCH providing the Council with the information listed in Clause 30.4, then the Council may unilaterally impose the Variation subject to indemnifying SCH against all its costs associated

therewith. Such costs shall be agreed between the parties, but in default of agreement shall be decided by an expert in accordance with Clause 26.3.

29.7 No Variation shall take effect until the Council obtains the consent of the relevant Secretary of State to such change or his confirmation that no such Consent is necessary.

30. **VARIATIONS TO BE IN WRITING**

No deletion from, addition to or variation of any Function or of this Agreement shall be valid or have any effect unless agreed in writing and signed by the parties or decided by an expert in accordance with Clause 26.3.

31. **TERM**

31.1 This is a 5 year rolling agreement, with an initial end date of 31st March 2024. On each and every anniversary of this agreement subject to the satisfactory performance by SCH of its obligations under this agreement and the principles of this agreement being consistent with the Council's rolled forward medium term financial strategy then this agreement shall be rolled forward as part of the Council's annual budget setting process. The final decision on whether the agreement is rolled forward rests with the Cabinet Member.

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31.2 In the event that this agreement is no longer consistent with the Council's Medium Term Financial Strategy then the remainder of the 5 year term shall continue to run. Upon the expiry of this 5 year term this agreement shall automatically end.

32. **INTELLECTUAL PROPERTY RIGHTS**

32.1 The Council licenses SCH to use for the purposes of this Agreement those intellectual property rights which the Council's Housing Department used prior to the Start Date and warrants that it has obtained all necessary permissions to do so. SCH shall use these intellectual property rights for the purposes of fulfilling its obligations under this Agreement and shall not, without the Council's prior written consent, sell, transfer or license any of them to any other person.

32.2 At the End Date, SCH shall transfer to the Council all documents, material, data and other information (in whatever form) in its possession relating to the Agreement, together with any relevant computer software processing facilities.

32.3 At the End Date, any and all intellectual property rights in any matter or thing developed under this Agreement or arising from the provision of the Functions by SCH (including any software) other than intellectual property rights belonging to a third party shall belong to the Council and SCH shall execute or cause to be executed all deeds, documents and acts required to vest such intellectual property rights in the Council.

33. **RIGHTS AND DUTIES RESERVED**

Save as set out herein, all rights, duties and powers which the Council has as a local authority or which the Council's officers have as local authority officers are expressly reserved.

34. **TENANT MANAGEMENT ORGANISATIONS**

34.1 If 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 will have a legal obligation to deal with such proposal in accordance with the legislation.

- 34.2 The Council may (at the Council's cost) instruct SCH to provide such assistance as may be required to the Council and any tenants making such proposal which assistance shall include:
- 34.2.1 provision of information and records about the Functions;
 - 34.2.2 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;
 - 34.2.3 attendance at meetings of such tenants
- and other such help or advice as the Council may reasonably require to enable the Council to fulfil its statutory obligations.
- 34.3 At such time as a decision is made that a transfer of management responsibility for all or part of the Functions is to take place to a Tenant Management Organisation the Council (at its own cost) may issue further instructions to SCH requiring SCH to make arrangements to transfer responsibility for the Functions and the Dwellings so affected to the Tenant Management Organisation in such manner and within such timescale as the Council may prescribe and SCH shall comply with such instructions which may include:
- 34.3.1 transferring data, records, statistics, files and other information in a format and manner prescribed by the Council;
 - 34.3.2 transferring to the Tenant Management Organisation in accordance with the Regulations any staff transfer wholly or mainly engaged in the provision of Functions to the Tenant Management Organisation;
 - 34.3.3 transferring necessary equipment and materials as may reasonably be stipulated by the Council's Representative;
 - 34.3.4 establishing working arrangements with the Tenant Management Organisation;
 - 34.3.5 providing any other assistance reasonably needed to enable such transfer to take place.
- 34.4 At such time as a transfer of management responsibility to a Tenant Management Organisation takes place, the Council shall be entitled to vary this Agreement in accordance with Clause 29 (giving three months' notice to SCH) and where such a Variation is made the amendment to the Delivery Plan shall reflect the cost of providing such Functions as remain to be carried out under this Agreement and if no such Functions remain, this Agreement shall terminate.
- 34.5 The Council may require SCH to assume some or all those responsibilities of the Council which are set out in any management agreement made between the Council and any Tenant Management Organisation and the Council shall be entitled to vary this Agreement to reflect such agreement in accordance with Clause 29 **PROVIDED THAT** the increased costs to SCH of compliance with this Clause are included in the Variation.
- 34.6 If a Tenant Management Organisation to which responsibility for managing the Functions has been transferred ceases to provide all or any part of those Functions for all or any of the Dwellings, the Council shall be entitled to further vary this Agreement so as to require SCH to provide such ceased Functions and such Variation shall also include the increased costs to SCH of compliance with this Clause.

34.7 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.

35. **INTERVENTION**

35.1 If SCH:

35.1.1 commits a breach of any of SCH's obligations under the Agreement (including breach of any Data Protection or other Statutory Duty or any failure in the provision of the Functions) which is not remedied or rectified as set out below;

35.1.2 has any board member director or senior manager of it convicted of dishonesty;

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

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

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

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

35.1.7 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

35.1.8 has failed to have regard to any reasonable requests of the Council relating to the performance of any SCH Obligation

then, subject to Clauses 36.2 and 36.3 below, the Council may (if it so decides) exercise the rights described in Clause 36.4.

35.2 If SCH is in breach of Clause 36.1.1 and the breach is capable of remedy, then provided that SCH remedies the breach to the Council's satisfaction (acting reasonably) within 30 days, or such longer period as is reasonable in the circumstances, then the Council shall not be entitled to take any action under Clause 36.4.

35.3 If SCH is in breach of Clause 36.1.1 and the breach is not capable of remedy, then provided that SCH produces an alternative proposal which is acceptable to the Council (acting reasonably) within 30 days or such longer period as is reasonable in the circumstances, then the Council shall not be entitled to take action under Clause 36.4.

35.4 If one or more of the circumstances described in Clause 36.1 occurs the Council may take any or all of the following actions;

35.4.1 either provide itself or procure the provision of the whole or the relevant part of the Functions until such time as (if at all) SCH shall demonstrate to the satisfaction of the Council that the whole or such part of the Functions will be once more provided by SCH in accordance with the provisions hereof;

35.4.2 without determining the whole of this Agreement terminate forthwith the relevant part of the Functions only and thereafter itself provide or procure a third party to provide such part of the Functions;

35.4.3 determine the whole of this Agreement

and if the Council acts pursuant to Clauses 36.4.1 or 36.4.2 a corresponding variation to the Delivery Plan shall be made.

35.5 If the Agreement is terminated in whole the Council shall be entitled to:

35.5.1 reoccupy any premises and repossess any other physical resources or assets licensed, loaned or hired to SCH and to exercise a lien over any of the physical resources or any other thing belonging to SCH and shall have full and unfettered licence over all documents for use in connection with the Functions;

35.5.2 employ and pay other persons to provide and complete the provision of the Functions or any part thereof and to use all SCH's physical resources or other things, and all such documents for the purpose thereof.

35.6 If the Agreement is terminated in part by the termination of one or more Functions then the provisions of Clause 36.5 shall apply *mutatis mutandis* to the relevant premises, assets, staff and other documents and assets relating thereto with the object that after termination of the relevant Function or Functions SCH shall be able to continue to perform its remaining obligations under this Agreement and the Council shall have sufficient assets, staff, equipment and know-how to be able to carry out the terminated Function(s) itself or let them to a third party.

35.7 The Council undertakes to exercise its power to appoint and remove board members pursuant to the articles of association of SCH only in any of the circumstances described in Clause 36.1 and then only for so long as (in the Council's reasonable opinion) the relevant circumstances subsist.

36. **INTEREST ON OVERDUE PAYMENTS**

If and whenever any payment due by either party in accordance with this Agreement shall at any time remain unpaid for a space of twenty one (21) days next after becoming payable a further and additional sum by way of interest on the same calculated on a day-to-day basis at an annual rate higher by nought point five (0.5) per cent than the Barclays Bank Plc Base Rate in force from time to time from the date upon which such sum first became payable shall be paid by the defaulting party to the other party.

37. **VALUE ADDED TAX**

All payments by either party hereto to the other party pursuant to the terms of this Agreement shall be exclusive of any Value Added Tax chargeable in respect of the supply of goods or functions 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.

38. **NOTICES**

Any notice to be given under this Agreement shall be in writing and shall be sufficiently served if delivered by hand and receipted for by the recipient, or sent by the Recorded Delivery Service addressed to the Chief Executive or any other officer nominated by the Chief Executive (for the Council) or the Chief Executive (for SCH) at the address listed at the beginning of this Agreement or to such other address as either party may from time to time notify to the other in accordance with the provisions of this Clause.

39. **COMPLETE AGREEMENT**

This Agreement constitutes the entire agreement between the parties and this Agreement may only be varied or modified in writing under seal of both parties. SCH acknowledges that there are and have been no representations on the faith of which SCH is entering into this Agreement made by or on behalf of the Council other than such (if any) as are set out in this Agreement.

SCHEDULE 1
COUNCIL SERVICES

1. THE COUNCIL SERVICES

The Council will provide the agreed services to SCH for the duration of the agreement. The specific services will be agreed by the Monitoring meeting at the start of each financial year. The Council will provide the Council Services to SCH to the standard as agreed between the parties annually.

2. PAYMENT FOR THE SERVICES

SCH will pay to the Council the fees for the Council Services as agreed between the parties annually. The fees shall be invoiced by the Council to SCH monthly in arrears and on the termination of any Council Service. SCH will pay such invoices within 28 days of receipt.

3. INFORMATION FROM SCH

SCH will provide the Council with all information that the Council may reasonably require to provide the Council Services.

4. TERMINATION

4.1 The Council may terminate any Council Service:

4.1.1 if any payment for that Council Service is not paid within 28 days of receipt of any invoice therefore; or

4.1.2 if there is a material breach by SCH of the terms under which an Council Service is provided and either the breach is not capable of remedy, or is not remedied within 28 days of written notice to remedy the breach being served on SCH by the Council;

4.1.3 by giving SCH three months prior written notice; or

4.1.4 this Agreement is terminated.

4.2 SCH may terminate any Council Service if:

4.2.1 there is a material breach by the Council of the terms under which the Council Service is provided and either the breach is not capable of being remedied, or is not remedied within 28 days of written notice to remedy the breach being served on the Council by SCH; or

4.2.2 by giving the Council three months prior written notice

SCHEDULE 2

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The following list of protocols is required to be agreed annually. Each protocol is to be agreed between the relevant parties together with any performance monitoring arrangements. Some policies may change. The Quarterly Monitoring meeting will maintain an overall watching brief.¶

¶
Nuisance and
Public Health
Children and
Families
Vulnerable
Adults¶
Strategic
Relationship
Customer
Services¶
Media and
Communication
s Data
Protection¶
Community Safety
and Anti-Social
Behaviour Service
Level Agreements¶
Emergency
Preparation and
Response Open
access and
Sharing of
Information
Harmonisation of
Terms and
Conditions
Voluntary Sector
Compact¶

**Gypsy
and
Traveller
protocol**

SCHEDULE 3

SCH SERVICES

1. THE SCH SERVICES

SCH will provide the agreed services to the Council for the duration of the Agreement. The specific services are to be agreed by the Monitoring meeting at the start of each financial year. SCH will provide the SCH services to the Council to the standard as agreed between the parties annually. The list of agreements is required to be agreed annually. The term and services for each agreement is to be agreed between the relevant parties together with the performance monitoring arrangements to be implemented and monitored. The Quarterly Monitoring meeting will maintain an overall watching brief.

2. PAYMENT FOR THE SERVICES

The Council will pay to SCH the fees for the SCH Services as agreed between the parties annually. The fees shall be invoiced by SCH to the Council monthly in arrears and on the termination of any SCH Service. The Council will pay such invoices within 28 days of receipt.

3. INFORMATION FROM THE COUNCIL

The Council will provide SCH with all information that SCH may reasonably require to provide the SCH Services.

4. TERMINATION

4.1 SCH may terminate any SCH Service:

4.1.1 if any payment for that SCH Service is not paid within 28 days of receipt of any invoice therefore;

4.1.2 if there is a material breach by the Council of the terms under which a SCH Service is provided and either the breach is not capable of remedy, or is not remedied within 28 days of written notice to remedy the breach being served on the Council by SCH;

4.1.3 by giving the Council three months prior written notice; or

4.1.4 this Agreement is terminated.

4.2 The Council may terminate any SCH Service if:

4.2.1 there is a material breach by SCH of the terms under which the SCH Service is provided and either the breach is not capable of being remedied, or is not remedied within 28 days of written notice to remedy the breach being served on SCH by the Council; or

4.2.2 by giving SCH three months prior written notice

SCHEDULE 4

MONITORING AND REVIEW CRITERIA

The Review Criteria referred to in Clause 7.1 and 32.1 and elsewhere in the Agreement are:

1. The objectives of SCH (and the delivery vehicle for housing landlord functions) remaining consistent with the Council's Corporate Plan and Medium Term Financial Strategy.

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2. SCH to achieve a level of performance against agreed priorities and indicators as set out in the annual Delivery Plan, approved by the Council and monitored through the Quarterly Monitoring Board meetings.

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3. SCH to have in place a balanced and sustainable 3 year budget, which contributes to the Council's Medium Term Financial Strategy and savings targets and is approved by the Council's Cabinet in February each year.

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Deleted: <#>SCH to identify and deliver cashable efficiency savings as agreed by the Company and the Council's Director of Communities and Adult Social Care.¶

¶ <#>SCH to achieve a level of performance against agreed indicators which is set out in the annual Delivery Plan and approved by the Council¶

¶ <#>The parties to work collaboratively to develop optimum arrangements for customer contact and work with communities as agreed by the Company and the Council's Director of Resources.¶

¶ <#>The level and quality of SCH's support to the Council generally, including its commitment to developing shared services as assessed by the Council's Chief Executive.¶

¶ <#>The services and income brought in by SCH through its commercial Activities¶

¶ <#>The objectives of SCH remaining consistent with the Council's Corporate Plan and Medium Term Financial Strategy¶

SIGNATORIES TO THE AGREEMENT

IN WITNESS whereof this Agreement has been executed as a Deed and delivered on the date set out on page 1 hereof.

THE COMMON SEAL of THE)
METROPOLITAN BOROUGH OF)
SOLIHULL was hereunto affixed to this)
Deed in the presence of:)

THE COMMON SEAL of SOLIHULL)
COMMUNITY HOUSING LIMITED was)
hereunto affixed to this Deed)
in the presence of:)

Board Member

Secretary