

H.H.T.

Hornchurch Housing Trust

Almshouses established in 1586
Registered Charity No 247236

33 Skeales Court
Sunrise Avenue
Hornchurch
Essex
RM12 4YA



Telephone 01708 477799

hornchurchhousing@btconnect.com
www.hornchurchhousingtrust.org.uk

18/05/2021

Dear Rachel

Please find enclosed 2 signed copies of the Housing and Property Agreement.

Please do not hesitate to contact me for further assistance.

Yours sincerely

A handwritten signature in cursive script that reads "Dawn".

Dawn Lane
Operations Manager

enc. 2

19 MAY 2021



dated

2021

The Mayor and Burgesses of the London Borough of Havering

and

The Trustees for the time being of Hornchurch Housing Trust

Housing and Property Agreement

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28/4/21

trowers & hamlins

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Housing and Property Agreement

Dated 2021

Parties

- (1) **The Trustees for the time being of Hornchurch Housing Trust (the Trust)** of 33 Skeales Court, Sunrise Avenue, Hornchurch, Essex, RM12 4YA (Charity Registration Number **247236**) - the current Trustees being listed at Schedule 7;
- (2) **The Mayor and Burgesses of the London Borough of Havering (the Council)** of Town Hall, Main Road, Romford, RM1 3BB

(together, the **Parties**).

Introduction

- (A) The Trust is the owner of the Properties.
- (B) The Trust agrees to appoint the Council for the purpose of providing the Services and the Council has agreed to provide the Services on the terms of this Agreement.
- (C) The Trustees shall retain overall control of the Trust and be responsible for overseeing its strategic direction.

Agreed terms

1 Definitions and interpretations

- 1.1 In this Agreement, the following words and expressions have the following meanings unless inconsistent with the context:

Annual Reporting Date means 31 March in each year (or such other date as the Trust may determine and notify to the Council) and, in the case of the final Annual Reporting Date, the date when this Agreement is terminated;

Beneficiary means an occupier or other user of any Charity Property under the terms of a Letter of Appointment;

Business Day means any day that is not a Saturday, Sunday or public or bank holiday in England;

Charity Property means a residential dwelling owned by the Trust which is occupied by a Beneficiary under a Letter of Appointment. A list of current Charity Properties is set out at Schedule 4;

Commencement Date means the date of this Agreement;

Commercial Occupation Agreement means any arrangement between the Trust and a Commercial Occupier in respect of any Commercial Property;

Commercial Occupier means a lessor, tenant, licensee, occupier or other user of any Commercial Property;

Commercial Property means any commercial property owned by the Trust from time to time. A list of current Commercial Property is set out at Schedule 5;

Commercial Property Occupation Agreement means the agreement between the Trust and any Commercial Occupier;

Compliance means the health and safety, fire safety, asbestos management and other matters covered by Schedule 2;

Cyclical Maintenance Fund means the fund described in paragraph 27 of the Scheme for the purpose of providing for those items of ordinary maintenance and repair of the Charity Properties which recur;

Data Controller, Data Processor, Data Subject, shall have the meaning prescribed under the Data Protection Legislation;

Data Protection Legislation means the Data Protection Act 2018, and the General Data Protection Regulation (EU) 2016/679 (**GDPR**) or such other domestic legislation that supplements, implements and/or replaces the GDPR along with any associated guidelines and Codes of Practice issued by the Information Commissioner's Office applicable in the UK as issued from time to time;

Data Protection Policy means the data protection policy of the Trust as notified to the Council from time to time;

Data Subject's Rights means any request exercising rights of a Data Subject pursuant to the Data Protection Legislation;

Dispute Notice has the meaning given to it in clause 8.2

Extraordinary Repair Fund means the fund described in paragraph 28 of the Scheme for the purpose of providing for the extraordinary repair, improvement or rebuilding of the Charity Properties;

Independent Person has the meaning ascribed to it in clause 8;

Initial Term has the meaning ascribed to it in clause 9.1;

Letter of Appointment means any arrangement between the Trust and a Beneficiary in respect of any Charity Property;

Needs means the Trust's needs relating to general housing and property matters as set out in Schedule 1 and **General Housing and Property Needs** shall be construed accordingly;

Occupancy Agreements mean any or all of the Letter of Appointment, Other Property Occupation Agreement or relevant Commercial Property Occupation Agreement

Other Property means any residential property owned by the Trust from time to time which is occupied under an Other Property Occupation Agreement and not occupied by a Beneficiary under a Letter of Appointment. A list of current Other Property is set out at Schedule 6;

Other Property Occupation Agreement means any arrangement between the Trust and an Other Property Occupier in respect of any Other Property;

Other Property Occupier means a lessor, tenant, licensee, occupier or other user of any Other Property;

PAYG means 'Pay as You Go' by reference to Schedule 3;

Personal Data shall have the meaning prescribed under the Data Protection Legislation;

Policies means the Trust's policies relating to or affecting the Services as notified by the Trust to the Council from time to time;

Processing has the meaning given in the Data Protection Legislation, and **Process** or **Processed** shall be construed accordingly.

Property means the Charity Property, Commercial Property and the Other Property and **Properties** shall be construed accordingly;

Requirements means the Trust's requirements relating to Compliance matters as set out in Schedule 2 and **Compliance Requirements** shall be construed accordingly;

Scheme means the governing Scheme of the Trust made by the Charity Commission on 15 February 1991 and amended by special resolution on 18 May 1995;

Services means the services which are described in Schedule 3 by reference to Schedules 1 and 2;

Services Fee or Fees means the fee or fees paid in accordance with clause 6 on the basis of the rates or amounts set out in Schedule 3 and **Fee or Fees** shall be construed accordingly;

Services Employees means all persons from time to time employed or engaged by the Council, any Associated Employer or any appointed subcontractors or agent of the Council in connection with the provision of the Services or any part thereof;

Shared Personal Data means the Personal Data processed under this Agreement or in connection with providing the Services under this Agreement;

Termination Date means the date on which this Agreement terminates in accordance with clause 9;

Third Party Contractor means a contractor which is procured by the Council in the name of and on behalf of the Trust to deliver some of the Services and **Third Party Contracts** shall be construed accordingly; and

VAT means any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112) or any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax.

1.2 In this Agreement:

- 1.2.1 the clause headings do not affect its interpretation;
 - 1.2.2 unless otherwise indicated, references to clauses and Schedules are to clauses of and Schedules to this Agreement and references in a Schedule to a Part or paragraph are to a Part or paragraph of that Schedule;
 - 1.2.3 references to any **statute** or **other legislation** include references to any subsequent statute or legislation directly or indirectly amending, consolidating, extending, replacing or re-enacting that statute or other legislation;
 - 1.2.4 references to a **Property** include any part of that Property unless specific reference is made to the whole of that Property;
 - 1.2.5 references to this Agreement include any deed or document which is supplemental to, varies or is ancillary to this Agreement from time to time;
 - 1.2.6 **including** means including, without limitation;
 - 1.2.7 **relevant Property** means, unless the context requires otherwise, the Property to which the relevant provision relates;
 - 1.2.8 references to the Council include, and the Council's covenants bind any person under the Council's control, including its employees and agents;
 - 1.2.9 an obligation on the Council not to do an act or thing includes an obligation not to permit or knowingly allow the doing of that act or thing; and
 - 1.2.10 if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of this Agreement is to be unaffected.
- 1.3 The Introduction and Schedules to this Agreement form part of this Agreement and words and expressions set out in the Recitals are to be treated as defined terms in this Agreement.
- 2 The Services**
- 2.1 It is agreed and acknowledged that subject to clause 2.2 the provision of Services hereunder is subject to the agreement of both the Trust and the Council.
- 2.2 If commissioned to do so by the Trust the Council shall use its best endeavours to provide Services relating to the Trust's Compliance Requirements in accordance with the terms of this Agreement.
- 2.3 The Trust and the Council may agree that the Council will provide other services from time to time and the fees relating to such services shall be agreed at the time.
- 2.4 Changes to any commissioned Services shall not be effective or binding unless agreed in writing by the Trust and the Council.
- 2.5 The Council agrees with the Trust that it shall:

- 2.5.1 provide the Services to the Trust on the terms of this Agreement and in providing the Services use its reasonable endeavours to comply or ensure compliance with the Policies of the Trust;
 - 2.5.2 provide the Services to the Trust as relate to the Charity Properties having due regard to the policies and best practice published by the Almshouse Association (or any replacement body) from time to time;
 - 2.5.3 exercise the professional skill, care and diligence that would be expected of professionals providing services similar to the Services;
 - 2.5.4 owe a duty of care to the Trust in respect of the performance of its obligations under this Agreement; and
 - 2.5.5 carry out the Services in line with the Trust's reasonable instructions
- 2.6 In providing the Services the Council shall:
- 2.6.1 not knowingly do anything which could reasonably be expected to threaten the financial viability or reputation of the Trust;
 - 2.6.2 endeavour to ensure that the Trust's Policies and procedures are observed at all times;
 - 2.6.3 ensure that it shall itself comply, and shall require that any sub-contractors and suppliers (including Third Party Contractors) shall themselves comply, with the Modern Slavery Act 2015, Bribery Act 2015 and Equality Act 2010 including (so far as is reasonable) the relevant Policies under this Agreement relating to such legislation;
 - 2.6.4 from time to time, at the reasonable request of the Trust, confirm in writing that it has complied and will continue to comply with clause 2.6.3 and will provide any information reasonably requested by the Trust in support of such compliance; and
- 2.7 In providing any Services the Council shall itself comply with and require that all Third Party Contractors comply with all applicable legal and regulatory requirements, the Trust's obligations under the Occupancy Agreements and all relevant elements of the Trust's policies (including those which relate to health and safety).
- 2.8 The Council shall:
- 2.8.1 report to the Trust on such basis and in such format as the Parties shall agree (each acting reasonably) but in any case at least on each Annual Reporting Date in relation to the Services provided under this Agreement; and
 - 2.8.2 meet with the Trust to review the provision of the Services on a quarterly basis and participate in a formal review at least once a year.
- 2.9 In providing the Services the Council shall not knowingly:
- 2.9.1 require or cause the Trust to carry out any action or activity which would be contrary to its charitable status and objects;

2.9.2 take or fail to take any action which would materially prevent or impact upon the Trust's ability to comply with charity law or which would in any way be materially prejudicial to the Trust's registration with the Charity Commission.

2.10 Nothing in this Agreement constitutes a partnership or a joint venture between the Trust and the Council.

3 The provision of the Services

3.1 Where Services are commissioned from the Council under clause 2 they shall be provided in accordance with this clause 3 but subject always to the express terms of such commission.

3.2 The Trust reserves the right to stipulate that some or all of the Services stipulated in a commission shall only be provided or continue to be provided if the Trust so requires.

3.3 The Trust reserves the right to stipulate that the Services shall be provided by the Council itself or by the Council procuring that Third Party Contractors do so in the name of the Trust.

3.4 The Council, in procuring work or services in the name of the Trust (or in advising on such procurement), shall endeavour to ensure that any Third Party Contractor delivers value for money and has been procured in a manner which is compliant with any procurement legislation or rules applicable to the Trust from time to time.

3.5 In discharging its obligations under clause 3.4 the Council shall liaise with the Trust to demonstrate how the procurement of Third Party Contractors will satisfy legislative requirements

3.6 It is acknowledged that the Trust may decide to meet its Needs or Requirements by providing or carrying out or commissioning the provision of or the carrying out of work or services together with or instead of the Council.

3.7 For the avoidance of doubt no work shall be carried out or services shall be provided by the Council for the Trust without the Trust's prior written approval of the scope and cost thereof.

3.8 It is acknowledged that save where expressly agreed there is and shall be no contractual; relationship between the Council and Third Party Contractors and accordingly where the Council agrees herein to require compliance or other acts by Third Party Contractors this shall be construed as meaning (where appropriate):

3.8.1 specifying such compliance or other acts in the Third Party Contracts; and /or

3.8.2 advising on and supporting the Trust in the enforcement of such specified requirements against the Third Party Contractors.

3.9 In providing any Services the Council shall itself comply with and require that all Third Party Contractors comply with all applicable legal requirements, the Trust's obligations under the relevant Letter of Appointment / Other Property Occupation Agreement / Commercial Occupation Agreement and those elements of the Trust's policies which relate to health and safety.

3.10 In carrying out its responsibilities under this Agreement the Council will not knowingly expose any person to risk and require that all relevant Third Party Contractors covenant with the Trust in the same terms.

4 Trust's obligations

4.1 The Trust grants a non-exclusive licence to the Council and any nominated Third Party Contractors to enter the Properties for the purpose of carrying out any agreed Services on such reasonable terms as the Trust may stipulate.

4.2 The Trust shall pay the Services Fee to the Council in accordance with clause 6 and Schedule 3 (subject always to the express terms of the relevant commission).

4.3 The Trust will cooperate with the Council and respond promptly to the reasonable requests of the Council for approvals, instructions, information, authorisations and assistance.

5 Relationship

5.1 The Council will consult with the Trust as often as may be necessary to enable it to carry out the Services on the terms of this Agreement. The main point of contact for the Trust shall be Dawn Lane and the main point of contact for the Council shall be Patrick Odling-Smee.

5.2 Except for the Services Fee or Fees, any income received by the Council in the course of carrying out the Services shall be for the account of the Trust.

5.3 The Council will comply with all reasonable and lawful instructions received from the Trust in connection with the performance of the Services.

5.4 The Council will attend all meetings reasonably required by the Trust and contribute to minutes of those meetings.

5.5 If any consent or approval of the Trust is required under this Agreement, it must be obtained in writing before the act or event to which it applies.

5.6 The Council shall ensure that all personnel providing the Services are properly qualified, competent, trained and have appropriate experience to carry out their respective obligations.

5.7 Without prejudice to clause 5.6 the Council confirms to the Trust that it possesses and shall continue to possess the skills, experience and resources to enable it to provide the Services in accordance with this Agreement.

5.8 No delay, neglect or forbearance on the part of the Trust in enforcing any term or condition of this Agreement against the Council will be or be deemed to be a waiver or in any way prejudice any right of the Trust under this Agreement.

5.9 The Council and the Trust shall review the provisions of this Agreement not less than annually to take account of changes in or to all relevant legislation (including that relating to Compliance) and they shall implement such changes as may be necessary.

6 Services Fees

- 6.1 Subject to clause 6.2 the Council and the Trust shall agree a fixed or discrete Fee or Fees for any commissioned Services or failing such agreement the Fee shall be based on the hourly rates set out in Schedule 3.
- 6.2 The Fee or Fees for the Trust's Compliance Requirements shall be determined as follows
- 6.2.1 The Council shall reasonably assess the time properly involved in providing the Services as specified by the Trust and calculate the Fee therefor in accordance with the hourly rates set out in Schedule 3;
- 6.2.2 The Council will explain the basis of its calculation with the Trust which will either accept a PAYG Fee or seek to agree a fixed or discrete Fee in lieu thereof;
- 6.2.3 Both parties will liaise and negotiate in good faith to agree as soon as practicable a mutually acceptable Fee or method for calculating it;
- 6.2.4 Any Fee or method for calculating it agreed under this clause 6.4 will be without prejudice to the warranty in clause 6.4.
- 6.3 As soon as reasonably practicable following the end of each month or such other period as may be agreed when the Services are commissioned the Council shall prepare an invoice for those Services which shall be payable in respect of the preceding month or period. The invoice shall include a description of the Services and a calculation of the Services Fee based on either the rates set out in Schedule 3 or as otherwise previously agreed.
- 6.4 The Council warrants that the Services Fees set out in Schedule 3 and any fixed or other Fee or Fees agreed with or otherwise charged to the Trust are and shall be set and charged on a cost recovery basis.
- 6.5 The final date for payment shall be 15 Business Days after the date on which any undisputed invoice is issued in accordance with this clause 6.
- 6.6 Any dispute in relation to the subject matter of this clause 6 shall be dealt with in accordance with clause 8.

7 Non-Exclusivity etc.

- 7.1 It is agreed that the Services to be provided by the Council under this Agreement shall be provided on a non-exclusive basis
- 7.2 Nothing shall prevent the Trust from employing other organisations to provide services or parts thereof similar to or the same as the Services.
- 7.3 The Council shall be free to render similar services for others and, without limitation, may act in a similar capacity for other housing charities or organisations.
- 7.4 The Council acknowledges that 6 of the Trust's trustees are nominated by it and that its nominees (and in particular those who are members of the Council) have responsibilities to exercise due care with respect to the disclosure and avoidance of conflicts of interest.

8 Disputes

- 8.1 It is the declared intention of the Parties that all matters of disagreement should be resolved by negotiation and discussion between the Parties and they will use all reasonable endeavours to apply the terms of this Agreement without the necessity for recourse to the next following provisions of this clause.
- 8.2 Either Party may serve upon the other a notice (the **Dispute Notice**) which shall state the subject matter of the dispute and shall specify the proposals of the Party serving the notice for the resolution of the dispute.
- 8.3 No later than 14 days after the date of service of a Dispute Notice the party upon whom such notice shall have been served shall serve a counter notice (the **Counter Notice**) specifying its proposals for the resolution of the dispute, and specifying a date (which shall be not less than 14 nor more than 28 days after the service of the Counter Notice) for a meeting to resolve the dispute.
- 8.4 The meeting referred to in clause 8.3 shall be attended by two nominated representatives of the Council and two nominated representatives of the Trust and shall be held at the main office of the Party serving the counter notice or at some other place to be agreed.
- 8.5 The persons present at such meeting shall use their reasonable endeavours to resolve the dispute.
- 8.6 If notwithstanding any steps taken by the Parties pursuant to clauses 8.3 to 8.5 the dispute between them remains unresolved then at the request of either Party it shall be referred for resolution (in the absence of any express agreement to the contrary) by an independent person appointed jointly by the Parties (the **Independent Person**).
- 8.7 The Independent Person is to have at least 10 years relevant post qualification experience and his or her identity shall be agreed between the Parties.
- 8.8 If the parties cannot agree on the Independent Person's identity the Independent Person is to be appointed at the request of any of the Parties by the president or chairman for the time being of whichever of the following bodies is most appropriate having regard to the nature of the dispute:
- 8.8.1 The Chartered Institute of Housing;
 - 8.8.2 The Royal Institution of Chartered Surveyors;
 - 8.8.3 The Institute of Chartered Accountants in England & Wales, or
 - 8.8.4 The Law Society of England and Wales.
- 8.9 Unless expressly agreed between the parties the Independent Person shall act as an expert and not as an arbitrator.
- 8.10 If the Independent Person is to act as expert then the following provisions shall apply:
- 8.10.1 the Independent Person shall be instructed to allow each Party to make representations and counter-representations as to the matters in dispute and to

give them due consideration (but the Independent Person is not to be bound by them),

8.10.2 the Independent Person shall be instructed to give his decision as quickly as possible in writing with copies being sent simultaneously to the Parties and to give reasons for his decision,

8.10.3 the Independent Person's determination shall be final and binding on the Parties (except in cases of manifest error),

8.10.4 if the Independent Person dies, delays for a period of 4 weeks or more or becomes unwilling or incapable of acting, the Parties shall appoint a new Independent Person in accordance with this clause 8.10, and

8.10.5 the costs of the appointment of the Independent Person shall be paid by the Parties in the proportions that the Independent Person decides or in the absence of any such decision from the Independent Person in equal shares.

8.11 Where costs of the Independent Person remain unpaid by the Party liable to pay them pursuant to this clause, the other Party may discharge those costs and recover the sum so paid from the defaulting Party as a debt on written demand.

8.12 The Independent Person's decision shall be final and binding upon the Parties.

9 Termination

9.1 This Agreement shall continue in full force and effect for a term of 3 years from the date hereof unless terminated earlier pursuant to this clause 9 (the **Initial Term**).

9.2 Upon the Trust giving notice at least 6 months prior to the end of the Initial Term of its wish to extend the term of this Agreement by a further 2 years, the Council shall consider such request and shall confirm in writing whether it agrees to extend the term of the Agreement and, if so, what changes to the Needs as set out in Schedule 1, the Requirements as set out in Schedule 2 and the Services and fees as set out in Schedule 3 shall apply to the extension. The Parties shall work together in good faith to agree any proposed changes by no later than 3 months prior to the end of the Initial Term. If the Parties agree on terms for extension, the Agreement shall be extended and the Agreement shall be varied accordingly.

9.3 The Parties may by agreement further extend the term of this Agreement and the process for extension set out in clause 9.2 shall apply.

9.4 This Agreement shall terminate in whole or in part by notice if:

9.4.1 a material breach has occurred in respect of this Agreement and such breach is capable of remedy and the Party in breach has been given notice of such breach and has failed to remedy it within 30 days of notification; or

9.4.2 a material breach has occurred in respect of this Agreement and such breach is not capable of being remedied.

9.5 This Agreement shall terminate automatically in relation to any particular Property upon that Property no longer being owned or controlled by the Trust.

9.6 Without prejudice to the other provisions of this clause 9, the Council shall co-operate with the Trust in the appointment of any successor provider and help facilitate the transfer of services and work to that provider

9.7 Upon termination of this Agreement for any reason, the Council shall be entitled to receive the relevant element of the Services Fee *pro rata* up to the date of termination.

9.8 On termination of this Agreement all rights and obligations of the parties under and in connection with it shall end except for clauses 9-11, 13-14, 16-19 and 22-255.

10 **Liability**

10.1 Nothing in this Agreement shall limit or exclude either party's liability for anything which cannot be limited or excluded by applicable Law.

10.2 Subject to Clause 10.1, neither party shall have any liability to the other party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise for any indirect or consequential loss arising under or in connection with this Agreement.

10.3 Subject to Clause 10.1, the total aggregate liability of either party to the other, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Agreement shall in no event exceed £10,000,000 (ten million pounds).

10.4 Nothing in this Agreement shall be taken as in any way reducing or affecting a general duty to mitigate loss suffered by a party.

11 **Continuing obligations**

11.1 On the ending of this Agreement, the Council is to supply to the Trust or to such person as the Trust may direct all documents and records relating to the subject matter of the Services (including the Properties) under the control of the Council including a copy of all computer records.

11.2 Within 21 days of the ending of this Agreement, the Council shall provide to the Trust a statement of account showing, in respect of the subject matter of the Services (including the Properties), all receipts and expenditure since the preceding sets of accounts were prepared.

11.3 Within 21 days after the production of the statements of account under clause 11.2, the Trust is to pay to the Council any sums due to the Council pursuant to clause 9 up to the date of the ending of this Agreement in respect of the Services Fee (apportioned on a daily basis).

11.4 If and to the extent that after the ending of this Agreement the Council receives any sums from a Beneficiary, Other Property Occupier or Commercial Occupier it shall immediately hold all such sums received on trust for the Trust subject to any right of retention the Council may have and shall then account to the Trust for such sums received within 5 days of receipt.

12 **Value Added Tax**

Sums payable under this Agreement are exclusive of VAT (if applicable). If, under the terms of this Agreement, a supply is made that is subject to VAT, the person receiving the supply will pay the VAT in addition to any other consideration for that supply to the person making the supply on receipt of a valid VAT invoice.

13 **Data Protection**

13.1 For the purposes of this clause 13.1, defined terms have the meaning prescribed under this Agreement or pursuant to the Data Protection Legislation.

13.2 Each Party shall ensure that, to the extent that it stores and processes the Shared Personal Data, it shall comply with the provisions and obligations imposed on it by the Data Protection Legislation and the Data Protection Policy and maintain the appropriate registration with the Information Commissioner's Office.

13.3 Both Parties shall, upon request, co-operate and provide reasonable assistance to the other in relation to any matters arising from the data sharing arrangements in this Agreement, including (but not limited to) any proceedings, investigation or inquiry by the Parties, any subsequent actions arising therefrom and any measure reasonably necessary to ensure compliance with the Data Protection Legislation.

13.4 The Trust and the Council shall agree (acting reasonably) on and then comply with their respective responsibilities for:

13.4.1 providing clear and sufficient information to the relevant Data Subjects in accordance with the transparency requirements of the Data Protection Legislation, including the purposes and legal basis for which the Shared Personal Data will be processed by the Parties;

13.4.2 responding to all requests from relevant individuals to exercise the Data Subject's Rights in respect of the Shared Personal Data; and

13.4.3 responding to all complaints from individuals relating to its processing of the Shared Personal Data under this Agreement.

13.5 In the event that the Council becomes aware of any unlawful Processing or a Personal Data Breach in relation to the Shared Personal Data, the Council shall notify the Trust without delay and assist the Trust to take all appropriate steps to manage the same, mitigate any risks to the Shared Personal Data, and make notifications to both the Information Commissioner's Office and the Data Subjects as appropriate.

13.6 Subject to clause 3 of this Agreement, the Council shall only share the Shared Personal Data with any approved Third Party Contractors in the event that the Council confirms that such third parties can comply with the standards of the Data Protection Legislation and the Council or the Trust (as appropriate) executes an agreement with the relevant Third Party Contractor which includes any such terms required by the Data Protection Legislation.

13.7 The Council may only transfer the Shared Personal Data to a third party located outside the UK if it complies with the provisions of Data Protection Legislation.

13.8 The Council will on the determination or expiry of this Agreement and at the request of the Trust provide a copy of the Shared Personal Data in the Council's possession to the Trust.

14 **Confidentiality**

14.1 The terms of this Agreement shall remain confidential between the Parties and, save as required by any law, regulation of any relevant jurisdiction, any other regulatory authority or as expressly provided in this Agreement, neither Party shall without the consent of the other make any public announcement or disclosure of such terms or of any information concerning the Trust, the Beneficiaries or the Properties.

14.2 Each Party shall keep confidential any information relating to the other which it acquires as a result of entering into this Agreement and the matters provided for in this Agreement which shall not be disclosed to any third party, save as required by any law or regulation of any relevant jurisdiction, any other regulatory authority.

14.3 The obligations provided in clauses 14.1 and 14.2 shall not apply to any such information which:

14.3.1 is in the public domain at the date of this Agreement;

14.3.2 becomes public knowledge or is readily accessible by publication, other than by breach of clauses 14.1 and 14.2;

14.3.3 is received from third parties without any obligation of confidence on the part of that third party;

14.3.4 is disclosed by that person to its *bona fide* professional legal, accounting or other advisers provided that such advisers are bound by terms and conditions substantially similar to those set out in clauses 14.1 and 14.2;

14.3.5 is disclosed to providers (or prospective providers) of finance and insurance to the Trust or for other *bona fide* reasons; or

14.3.6 was already known by the other party prior to the date of disclosure by the disclosing party.

14.4 Neither of the Parties shall knowingly do or suffer any act or matter or thing which would or might reasonably be expected materially to prejudice or bring into disrepute the activities or reputation of the other Party.

15 **Assignment and variation**

15.1 Neither party shall, without the prior written consent of the other, assign, transfer, charge, subcontract or delegate or deal in any other manner with this Agreement or any of its rights or obligations under it.

15.2 This Agreement may not be amended in whole or in part without the written consent of the Council and the Trust.

16 **Notices**

16.1 Any notice to be served in connection with this Agreement shall be in writing (which, for the avoidance of doubt, shall include email (with a copy sent to the recipient's address by pre-paid first class post)) and any notice or other correspondence under or in connection with this Agreement shall be delivered to the relevant Party at the physical or electronic address given in this Agreement or to such other address as may be notified in writing for the purposes of this Agreement to the Party serving the document.

16.2 Any such notice or correspondence shall be deemed to have been served as follows:

16.2.1 in the case of delivery, on delivery if delivered between 9 a.m. and 5 p.m. on a Business Day and, if delivered outside such hours, at the time when such hours recommence on the first Business Day following delivery;

16.2.2 in the case of service by registered mail, on the fifth Business Day after the day on which it was posted; and

16.2.3 in the case of email, on the day it is transmitted provided that if that day is not a Business Day or, being a Business Day, transmission takes place after 5 p.m., then at 9 a.m. on the first Business Day following transmission of the notice.

16.3 In proving such service (other than service by email), it shall be sufficient to prove that the notice or correspondence was properly addressed and left at or posted by registered mail to the place to which it was so addressed.

17 **Agreement binding upon successors and assigns**

Except as otherwise specified in this Agreement, this Agreement shall be for the benefit of, and shall be binding upon, the heirs, executors, administrators or other representatives, successors and assigns of the respective Parties.

18 **Waiver**

No failure to exercise and no delay in exercising on the part of either Party any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies otherwise provided by law.

19 **Entire Agreement**

This Agreement constitutes the entire agreement between the Parties and supersedes any prior agreement or understanding between them with respect to such subject matter.

20 **Governing law and jurisdiction**

20.1 This Agreement and the rights, obligations and relationships of the Parties under this Agreement (including non contractual obligations) shall be governed by and construed in accordance with the laws of England.

20.2 Subject to Clause 8 the Parties irrevocably agree that the courts of England shall have exclusive jurisdiction to hear and decide any suit, action or proceedings, and to settle any disputes which may arise out of or in connection with this Agreement (including non contractual disputes or claims) and, for these purposes, each Party irrevocably submits to the exclusive jurisdiction of the courts of England.

21 Severability

If any clause or provision of this Agreement shall be held to be invalid or unlawful, such clause or provision shall only be ineffective to the extent of such invalidity or unenforceability. The remainder of this Agreement shall not be affected thereby and shall remain in full force and effect.

22 Contracts (Rights Of Third Parties) Act 1999 etc.

22.1 Nothing in this Agreement confers any right on any person who is not a party to it. This Agreement may be rescinded or varied without the consent of any person who is not a party to this Agreement.

22.2 For the avoidance of doubt the Council shall not commit or purport to commit the Trust to any legal arrangements with any Third Party Contractor without the prior written consent of the Trust

23 Audit

23.1 The Council shall keep and maintain until six years after the Agreement has been terminated, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Services provided under it, all expenditure reimbursed by the Trust, and all payments made by the Trust, whether to the Council or third parties (including Third Party Contractors).

23.2 The Council shall at all times (including following the termination of this Agreement) give any auditor or other person nominated by the Trust:

23.2.1 immediate access to;

23.2.2 permission to copy and remove any copies of; and

23.2.3 permission to remove the originals of,

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

23.3 The Council will provide all co-operation and afford all access to personnel and records in order to assist the Trust in carrying out any audits or investigations which are already under way at the Commencement Date and any audits or investigations which are carried out after the termination or expiry of this Agreement.

24 **Regulatory Documentation**

The Council shall provide the Trust with any information reasonably required to complete any returns required by a competent regulatory authority (including but not limited to the Charity Commission) or any other returns which may already or in the future be required as a matter of good governance.

25 **Information sharing**

25.1 Without prejudice to the Council's obligations elsewhere in this Agreement the Council will:

25.1.1 advise the Trust of any complaints received about the management of the Properties as soon as they are received;

25.1.2 report all health and safety concerns and issues arising at any Property to the Trust as soon as observed; and

25.1.3 immediately notify the Trust in writing of any matter which may in the reasonable opinion of the Council impact on the Trust's compliance with charity law, its regulatory requirements or any other applicable legal duty or obligation..

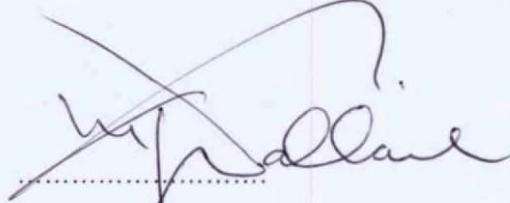
26 **Counterparts**

This Agreement may be executed in counterparts, which taken together shall be deemed to constitute one and the same agreement and each of which individually shall be deemed to be an original of this Agreement.

EXECUTED as a DEED on behalf of the Trustees)
of Hornchurch Housing Trust by two of their)
number, under an authority conferred pursuant to)
section 333 of the Charities Act 2011 in the)
presence of:)

MELVIN JOHN WALLACE

(Please print Trustee name)



Authorised Signatory
(Trustee Signature)

witness signature:



name: JOHN EDWARD PALMER

address: 5 THE BOWERS, AYLOFFS WALK, HORNCHURCH RM11 2RE

occupation: RETIRED.

EXECUTED as a DEED on behalf of the Trustees)
of Hornchurch Housing Trust by two of their)
number, under an authority conferred pursuant to)
section 333 of the Charities Act 2011 in the)
presence of:)

CAROL M SMITH

(Please print Trustee name)



Authorised Signatory

(Trustee Signature)

witness signature:



name:

DAVID VICTOR HAM

address:

11 HILL FOOT AVENUE RINGFORD
RS5 3LJ

occupation:

RETIRED
(INSURANCE BROKER)

Schedule 1

The Trust's Needs – General Housing and Property matters

Part 1

Rents and management charges and other support

- 1 Advice on the management charge to be set by the Trust and collected by the Trust for the Charity Properties
- 2 Advice on rent and service charge levels to be set by the Trust and collected by the Trust for the Other Properties
- 3 Advice on Cyclical Maintenance Fund and Extraordinary Repair Fund requirements to be set aside – including audits thereof
- 4 Advice and support on such other related matters and policies as may be required by the Trust from time to time.

Part 2

Supported housing advice and support

Advice and support on supported housing which (a) is not provided by the Trust's own employees on a 'day to day' basis and (b) draws on specialist expertise and experience in the provision of supported housing.

Part 3

Property management

- 1 Advice and support on (including the provision of):
 - 1.1 premises and site inspections and condition surveys
 - 1.2 responsive repairs
 - 1.3 cyclical repairs / maintenance
 - 1.4 extraordinary repairs / improvements / rebuilding
 - 1.5 repairs / maintenance when Charity Properties become void

and, where these services are to be provided by Third Party Contractors, specifying the advice, support and work to be provided, so as to ensure that the Trust can rely on the Third Party Contractors to discharge the Trust's legal obligations, including those which relate to or could affect the well being and safety of Beneficiaries/ Commercial Occupiers/ Other Property Occupiers.

- 2 Services in connection with the management of the Properties as follows:
- 2.1 devising for the Trust and, subject to approval, implementing a procurement legislation compliant procurement approach which ensures value for money and best practice delivery from the chosen contractors
 - 2.2 generally advising and on the instruction of the Trust taking steps necessary to ensure the Trust complies with all legal and regulatory requirements
 - 2.3 such other Services (whether via or in relation to Third Party Contractors or otherwise) as the parties may agree

Schedule 2

The Trust's Requirements – Compliance

The overall Requirement is for the Council to provide advice and support on health and safety and other Compliance issues

In particular the Council will provide advice and support or arrange for Third Party Contractors to provide advice, support and/ or carry out work covering but not limited to:

- Fire Safety;
- Gas Safety including communal heating systems with gas powered boilers;
- Electrical Safety;
- Water Hygiene and Water Testing;
- Fire Equipment Testing;
- Lift Inspections;
- Stair-lift inspections;
- Emergency lighting;
- Fall arrest system inspection;
- Door entry inspections;
- Gates and Barriers;
- Lightning Conductors;
- PAT testing of any electrical items (including those used by the Council); and
- CCTV and security systems;
- Asbestos management.

The Council must ensure or require that Third Party Contractors ensure that all gas, electrical, water and mechanical equipment provided by the Trust and serving the Properties complies with all relevant statutory provisions and safety regulations and that it is serviced at appropriate intervals, tested regularly and repaired as soon as practicable.

The Council shall support the Trust in the performance of its duties as Responsible Person under the Regulatory Reform (Fire Safety) Order 2005 (the **2005 Order**) by (inter alia) procuring in the name of the Trust the carrying out of suitable and sufficient fire risk assessments (**FRAs**), and the implementation, as soon as practicable and in any event within the timescales recommended in the FRA, of any fire risk actions identified within those FRAs. Copies of all FRAs, if not provided directly to the Trust, are to be provided to it within 5 days of their receipt by the Council, together with evidence of all fire risk actions duly completed within 14 days of their completion.

The Council will also:

- comply or require that any relevant Third Party Contractor complies with the 2005 Order and any relevant fire safety guidance relating to the Properties;
- provide or procure on behalf of the Trust the completion of a fire safety maintenance checklist in accordance with good Industry practice at appropriate intervals and then record these for inspection;
- report to the Trust any deficiencies in the fire-fighting equipment, fire stopping, fire doors, emergency lighting, signage or fire or smoke alarm systems and (following agreement with the Trust) ensure that any necessary remedial works are completed as soon as practicable;
- procure or require that all Third Party Contractors procure that all escape routes, walkways and stairwells are kept clear of obstructions at all times and the Council in conjunction with Trust officers shall address any issues with Beneficiaries / Commercial Occupiers / Other Property Occupiers who fail to comply with these requirements in accordance with the Trust's Policies; and
- maintain, or require that Third Party Contractors maintain, for the purposes of an emergency, a full record of all relevant information regarding each Property and its layout and the Beneficiaries / Commercial Occupiers / Other Property Occupiers with highlighted details of any Beneficiaries of Charity Properties with a known vulnerability.

Schedule 3

Services, Fees and Charges

Service	Service Leads	Service Description	Rates	Frequency
Pay As You Go Service	Garry Knights/Katri Wilson/Evonne Hudson	<i>Technical advice and guidance</i> in relation to the Trust's Needs and Requirements in (respectively) Schedules 1 and 2	£60	Hourly
Pay As You Go Service	Garry Knights/Katri Wilson/Evonne Hudson/	<i>Strategic advice and guidance</i> in relation to the Trust's Needs and Requirements in (respectively) Schedules 1 and 2	£70	Hourly
Pay As You Go Service	Patrick Odling-Smee	<i>Strategic advice and guidance</i> in relation to the Trust's Needs and Requirements in (respectively) Schedules 1 and 2	£90	Hourly

NB In instances where reasonable Housing and Property advice provided is not followed, then subject to prior agreement by the Trust any additional work generated as a consequence of this will be charged at the above rates.

- *Technical advice and guidance*: this relates to technical advice on housing and property management and maintenance including, but not limited to, development of an operational plan, management of assets and compliance with health and safety and other such or related legislation.
- *Strategic advice and guidance*: this relates to strategic advice on areas of housing and property management including, but not limited to, housing rents and service charge policy (including management charges for almshouse residents), supported housing policy, safeguarding and asset management strategy.

For the avoidance of doubt, there is no charge for providing nominations for vacant properties.

Where both Parties agree, fixed or discrete fees or charges will apply to discrete work or tasks instead of PAYG.

The key contacts for the Services will be:

Strategic advice: Patrick Odling-Smee, patrick.odling-smee@havering.gov.uk

Property Services: Garry Knights, garry.knights@havering.gov.uk

Supported housing: Katri Wilson, katri.wilson@havering.gov.uk

Housing management: Evonne Hudson, evonne.hudson@havering.gov.uk

The identity of the officers providing the above Services and their rates will be agreed with the Trust before the Services are commissioned in accordance with clauses 2, 3 and 6. When officers arrange

(with the Trust's consent) for Third Party Contractors to meet either the Trust's Needs as set out in Schedule 1 or the Trust's Requirements as set in Schedule 2 they shall do so on the basis of charges agreed in advance by the Trust, whether by reference to a schedule of rates, fixed fees or other cost arrangements, all in accordance with clauses 2, 3 and 6.

Schedule 4

Charity Property

Skeales Court, Sunrise Avenue, Hornchurch – 30 units of accommodation

The Trust, Hacton Lane, Hornchurch – 5 units

Wolseley Road, Romford – 4 of the 10 units are Charity Property

Schedule 5

Commercial Property

170-180 (evens), High Street, Hornchurch

Schedule 6

Other Property

Wolseley Road, Romford – 6 of the 10 units are Other Property

Schedule 7

List of Current Trustees

Melvin Wallace

Roger Evans

Peter Salisbury

Louis Nicol Dodin

Carol Margaret Smith

John Mylod

Rev. Ken Wylie



dated

2021

The Mayor and Burgesses of the London Borough of Havering

and

The Trustees for the time being of Hornchurch Housing Trust

Housing and Property Agreement

Trowers & Hamblins LLP
3 Bunhill Row
London
EC1Y 8YZ
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www.trowers.com

28/4/21

trowers & hamblins

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Housing and Property Agreement

Dated 2021

Parties

- (1) **The Trustees for the time being of Hornchurch Housing Trust (the Trust)** of 33 Skeales Court, Sunrise Avenue, Hornchurch, Essex, RM12 4YA (Charity Registration Number **247236**) - the current Trustees being listed at Schedule 7;
- (2) **The Mayor and Burgesses of the London Borough of Havering (the Council)** of Town Hall, Main Road, Romford, RM1 3BB

(together, the **Parties**).

Introduction

- (A) The Trust is the owner of the Properties.
- (B) The Trust agrees to appoint the Council for the purpose of providing the Services and the Council has agreed to provide the Services on the terms of this Agreement.
- (C) The Trustees shall retain overall control of the Trust and be responsible for overseeing its strategic direction.

Agreed terms

1 Definitions and interpretations

- 1.1 In this Agreement, the following words and expressions have the following meanings unless inconsistent with the context:

Annual Reporting Date means 31 March in each year (or such other date as the Trust may determine and notify to the Council) and, in the case of the final Annual Reporting Date, the date when this Agreement is terminated;

Beneficiary means an occupier or other user of any Charity Property under the terms of a Letter of Appointment;

Business Day means any day that is not a Saturday, Sunday or public or bank holiday in England;

Charity Property means a residential dwelling owned by the Trust which is occupied by a Beneficiary under a Letter of Appointment. A list of current Charity Properties is set out at Schedule 4;

Commencement Date means the date of this Agreement;

Commercial Occupation Agreement means any arrangement between the Trust and a Commercial Occupier in respect of any Commercial Property;

Commercial Occupier means a lessor, tenant, licensee, occupier or other user of any Commercial Property;

Commercial Property means any commercial property owned by the Trust from time to time. A list of current Commercial Property is set out at Schedule 5;

Commercial Property Occupation Agreement means the agreement between the Trust and any Commercial Occupier;

Compliance means the health and safety, fire safety, asbestos management and other matters covered by Schedule 2;

Cyclical Maintenance Fund means the fund described in paragraph 27 of the Scheme for the purpose of providing for those items of ordinary maintenance and repair of the Charity Properties which recur;

Data Controller, Data Processor, Data Subject, shall have the meaning prescribed under the Data Protection Legislation;

Data Protection Legislation means the Data Protection Act 2018, and the General Data Protection Regulation (EU) 2016/679 (**GDPR**) or such other domestic legislation that supplements, implements and/or replaces the GDPR along with any associated guidelines and Codes of Practice issued by the Information Commissioner's Office applicable in the UK as issued from time to time;

Data Protection Policy means the data protection policy of the Trust as notified to the Council from time to time;

Data Subject's Rights means any request exercising rights of a Data Subject pursuant to the Data Protection Legislation;

Dispute Notice has the meaning given to it in clause 8.2

Extraordinary Repair Fund means the fund described in paragraph 28 of the Scheme for the purpose of providing for the extraordinary repair, improvement or rebuilding of the Charity Properties;

Independent Person has the meaning ascribed to it in clause 8;

Initial Term has the meaning ascribed to it in clause 9.1;

Letter of Appointment means any arrangement between the Trust and a Beneficiary in respect of any Charity Property;

Needs means the Trust's needs relating to general housing and property matters as set out in Schedule 1 and **General Housing and Property Needs** shall be construed accordingly;

Occupancy Agreements mean any or all of the Letter of Appointment, Other Property Occupation Agreement or relevant Commercial Property Occupation Agreement

Other Property means any residential property owned by the Trust from time to time which is occupied under an Other Property Occupation Agreement and not occupied by a Beneficiary under a Letter of Appointment. A list of current Other Property is set out at Schedule 6;

Other Property Occupation Agreement means any arrangement between the Trust and an Other Property Occupier in respect of any Other Property;

Other Property Occupier means a lessor, tenant, licensee, occupier or other user of any Other Property;

PAYG means 'Pay as You Go' by reference to Schedule 3;

Personal Data shall have the meaning prescribed under the Data Protection Legislation;

Policies means the Trust's policies relating to or affecting the Services as notified by the Trust to the Council from time to time;

Processing has the meaning given in the Data Protection Legislation, and **Process** or **Processed** shall be construed accordingly.

Property means the Charity Property, Commercial Property and the Other Property and **Properties** shall be construed accordingly;

Requirements means the Trust's requirements relating to Compliance matters as set out in Schedule 2 and **Compliance Requirements** shall be construed accordingly;

Scheme means the governing Scheme of the Trust made by the Charity Commission on 15 February 1991 and amended by special resolution on 18 May 1995;

Services means the services which are described in Schedule 3 by reference to Schedules 1 and 2;

Services Fee or Fees means the fee or fees paid in accordance with clause 6 on the basis of the rates or amounts set out in Schedule 3 and **Fee or Fees** shall be construed accordingly;

Services Employees means all persons from time to time employed or engaged by the Council, any Associated Employer or any appointed subcontractors or agent of the Council in connection with the provision of the Services or any part thereof;

Shared Personal Data means the Personal Data processed under this Agreement or in connection with providing the Services under this Agreement;

Termination Date means the date on which this Agreement terminates in accordance with clause 9;

Third Party Contractor means a contractor which is procured by the Council in the name of and on behalf of the Trust to deliver some of the Services and **Third Party Contracts** shall be construed accordingly; and

VAT means any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112) or any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax.

1.2 In this Agreement:

- 1.2.1 the clause headings do not affect its interpretation;
 - 1.2.2 unless otherwise indicated, references to clauses and Schedules are to clauses of and Schedules to this Agreement and references in a Schedule to a Part or paragraph are to a Part or paragraph of that Schedule;
 - 1.2.3 references to any **statute** or **other legislation** include references to any subsequent statute or legislation directly or indirectly amending, consolidating, extending, replacing or re-enacting that statute or other legislation;
 - 1.2.4 references to a **Property** include any part of that Property unless specific reference is made to the whole of that Property;
 - 1.2.5 references to this Agreement include any deed or document which is supplemental to, varies or is ancillary to this Agreement from time to time;
 - 1.2.6 **including** means including, without limitation;
 - 1.2.7 **relevant Property** means, unless the context requires otherwise, the Property to which the relevant provision relates;
 - 1.2.8 references to the Council include, and the Council's covenants bind any person under the Council's control, including its employees and agents;
 - 1.2.9 an obligation on the Council not to do an act or thing includes an obligation not to permit or knowingly allow the doing of that act or thing; and
 - 1.2.10 if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of this Agreement is to be unaffected.
- 1.3 The Introduction and Schedules to this Agreement form part of this Agreement and words and expressions set out in the Recitals are to be treated as defined terms in this Agreement.
- 2 The Services**
- 2.1 It is agreed and acknowledged that subject to clause 2.2 the provision of Services hereunder is subject to the agreement of both the Trust and the Council.
- 2.2 If commissioned to do so by the Trust the Council shall use its best endeavours to provide Services relating to the Trust's Compliance Requirements in accordance with the terms of this Agreement.
- 2.3 The Trust and the Council may agree that the Council will provide other services from time to time and the fees relating to such services shall be agreed at the time.
- 2.4 Changes to any commissioned Services shall not be effective or binding unless agreed in writing by the Trust and the Council.
- 2.5 The Council agrees with the Trust that it shall:

- 2.5.1 provide the Services to the Trust on the terms of this Agreement and in providing the Services use its reasonable endeavours to comply or ensure compliance with the Policies of the Trust;
 - 2.5.2 provide the Services to the Trust as relate to the Charity Properties having due regard to the policies and best practice published by the Almshouse Association (or any replacement body) from time to time;
 - 2.5.3 exercise the professional skill, care and diligence that would be expected of professionals providing services similar to the Services;
 - 2.5.4 owe a duty of care to the Trust in respect of the performance of its obligations under this Agreement; and
 - 2.5.5 carry out the Services in line with the Trust's reasonable instructions
- 2.6 In providing the Services the Council shall:
- 2.6.1 not knowingly do anything which could reasonably be expected to threaten the financial viability or reputation of the Trust;
 - 2.6.2 endeavour to ensure that the Trust's Policies and procedures are observed at all times;
 - 2.6.3 ensure that it shall itself comply, and shall require that any sub-contractors and suppliers (including Third Party Contractors) shall themselves comply, with the Modern Slavery Act 2015, Bribery Act 2015 and Equality Act 2010 including (so far is reasonable) the relevant Policies under this Agreement relating to such legislation;
 - 2.6.4 from time to time, at the reasonable request of the Trust, confirm in writing that it has complied and will continue to comply with clause 2.6.3 and will provide any information reasonably requested by the Trust in support of such compliance; and
- 2.7 In providing any Services the Council shall itself comply with and require that all Third Party Contractors comply with all applicable legal and regulatory requirements, the Trust's obligations under the Occupancy Agreements and all relevant elements of the Trust's policies (including those which relate to health and safety).
- 2.8 The Council shall:
- 2.8.1 report to the Trust on such basis and in such format as the Parties shall agree (each acting reasonably) but in any case at least on each Annual Reporting Date in relation to the Services provided under this Agreement; and
 - 2.8.2 meet with the Trust to review the provision of the Services on a quarterly basis and participate in a formal review at least once a year.
- 2.9 In providing the Services the Council shall not knowingly:
- 2.9.1 require or cause the Trust to carry out any action or activity which would be contrary to its charitable status and objects;

2.9.2 take or fail to take any action which would materially prevent or impact upon the Trust's ability to comply with charity law or which would in any way be materially prejudicial to the Trust's registration with the Charity Commission.

2.10 Nothing in this Agreement constitutes a partnership or a joint venture between the Trust and the Council.

3 The provision of the Services

3.1 Where Services are commissioned from the Council under clause 2 they shall be provided in accordance with this clause 3 but subject always to the express terms of such commission.

3.2 The Trust reserves the right to stipulate that some or all of the Services stipulated in a commission shall only be provided or continue to be provided if the Trust so requires.

3.3 The Trust reserves the right to stipulate that the Services shall be provided by the Council itself or by the Council procuring that Third Party Contractors do so in the name of the Trust.

3.4 The Council, in procuring work or services in the name of the Trust (or in advising on such procurement), shall endeavour to ensure that any Third Party Contractor delivers value for money and has been procured in a manner which is compliant with any procurement legislation or rules applicable to the Trust from time to time.

3.5 In discharging its obligations under clause 3.4 the Council shall liaise with the Trust to demonstrate how the procurement of Third Party Contractors will satisfy legislative requirements

3.6 It is acknowledged that the Trust may decide to meet its Needs or Requirements by providing or carrying out or commissioning the provision of or the carrying out of work or services together with or instead of the Council.

3.7 For the avoidance of doubt no work shall be carried out or services shall be provided by the Council for the Trust without the Trust's prior written approval of the scope and cost thereof.

3.8 It is acknowledged that save where expressly agreed there is and shall be no contractual relationship between the Council and Third Party Contractors and accordingly where the Council agrees herein to require compliance or other acts by Third Party Contractors this shall be construed as meaning (where appropriate):

3.8.1 specifying such compliance or other acts in the Third Party Contracts; and /or

3.8.2 advising on and supporting the Trust in the enforcement of such specified requirements against the Third Party Contractors.

3.9 In providing any Services the Council shall itself comply with and require that all Third Party Contractors comply with all applicable legal requirements, the Trust's obligations under the relevant Letter of Appointment / Other Property Occupation Agreement / Commercial Occupation Agreement and those elements of the Trust's policies which relate to health and safety.

3.10 In carrying out its responsibilities under this Agreement the Council will not knowingly expose any person to risk and require that all relevant Third Party Contractors covenant with the Trust in the same terms.

4 Trust's obligations

4.1 The Trust grants a non-exclusive licence to the Council and any nominated Third Party Contractors to enter the Properties for the purpose of carrying out any agreed Services on such reasonable terms as the Trust may stipulate.

4.2 The Trust shall pay the Services Fee to the Council in accordance with clause 6 and Schedule 3 (subject always to the express terms of the relevant commission).

4.3 The Trust will cooperate with the Council and respond promptly to the reasonable requests of the Council for approvals, instructions, information, authorisations and assistance.

5 Relationship

5.1 The Council will consult with the Trust as often as may be necessary to enable it to carry out the Services on the terms of this Agreement. The main point of contact for the Trust shall be Dawn Lane and the main point of contact for the Council shall be Patrick Odling-Smee.

5.2 Except for the Services Fee or Fees, any income received by the Council in the course of carrying out the Services shall be for the account of the Trust.

5.3 The Council will comply with all reasonable and lawful instructions received from the Trust in connection with the performance of the Services.

5.4 The Council will attend all meetings reasonably required by the Trust and contribute to minutes of those meetings.

5.5 If any consent or approval of the Trust is required under this Agreement, it must be obtained in writing before the act or event to which it applies.

5.6 The Council shall ensure that all personnel providing the Services are properly qualified, competent, trained and have appropriate experience to carry out their respective obligations.

5.7 Without prejudice to clause 5.6 the Council confirms to the Trust that it possesses and shall continue to possess the skills, experience and resources to enable it to provide the Services in accordance with this Agreement.

5.8 No delay, neglect or forbearance on the part of the Trust in enforcing any term or condition of this Agreement against the Council will be or be deemed to be a waiver or in any way prejudice any right of the Trust under this Agreement.

5.9 The Council and the Trust shall review the provisions of this Agreement not less than annually to take account of changes in or to all relevant legislation (including that relating to Compliance) and they shall implement such changes as may be necessary.

6 **Services Fees**

- 6.1 Subject to clause 6.2 the Council and the Trust shall agree a fixed or discrete Fee or Fees for any commissioned Services or failing such agreement the Fee shall be based on the hourly rates set out in Schedule 3.
- 6.2 The Fee or Fees for the Trust's Compliance Requirements shall be determined as follows
- 6.2.1 The Council shall reasonably assess the time properly involved in providing the Services as specified by the Trust and calculate the Fee therefor in accordance with the hourly rates set out in Schedule 3;
- 6.2.2 The Council will explain the basis of its calculation with the Trust which will either accept a PAYG Fee or seek to agree a fixed or discrete Fee in lieu thereof;
- 6.2.3 Both parties will liaise and negotiate in good faith to agree as soon as practicable a mutually acceptable Fee or method for calculating it;
- 6.2.4 Any Fee or method for calculating it agreed under this clause 6.4 will be without prejudice to the warranty in clause 6.4.
- 6.3 As soon as reasonably practicable following the end of each month or such other period as may be agreed when the Services are commissioned the Council shall prepare an invoice for those Services which shall be payable in respect of the preceding month or period. The invoice shall include a description of the Services and a calculation of the Services Fee based on either the rates set out in Schedule 3 or as otherwise previously agreed.
- 6.4 The Council warrants that the Services Fees set out in Schedule 3 and any fixed or other Fee or Fees agreed with or otherwise charged to the Trust are and shall be set and charged on a cost recovery basis.
- 6.5 The final date for payment shall be 15 Business Days after the date on which any undisputed invoice is issued in accordance with this clause 6.
- 6.6 Any dispute in relation to the subject matter of this clause 6 shall be dealt with in accordance with clause 8.

7 **Non-Exclusivity etc.**

- 7.1 It is agreed that the Services to be provided by the Council under this Agreement shall be provided on a non-exclusive basis
- 7.2 Nothing shall prevent the Trust from employing other organisations to provide services or parts thereof similar to or the same as the Services.
- 7.3 The Council shall be free to render similar services for others and, without limitation, may act in a similar capacity for other housing charities or organisations.
- 7.4 The Council acknowledges that 6 of the Trust's trustees are nominated by it and that its nominees (and in particular those who are members of the Council) have responsibilities to exercise due care with respect to the disclosure and avoidance of conflicts of interest.

8 Disputes

- 8.1 It is the declared intention of the Parties that all matters of disagreement should be resolved by negotiation and discussion between the Parties and they will use all reasonable endeavours to apply the terms of this Agreement without the necessity for recourse to the next following provisions of this clause.
- 8.2 Either Party may serve upon the other a notice (the **Dispute Notice**) which shall state the subject matter of the dispute and shall specify the proposals of the Party serving the notice for the resolution of the dispute.
- 8.3 No later than 14 days after the date of service of a Dispute Notice the party upon whom such notice shall have been served shall serve a counter notice (the **Counter Notice**) specifying its proposals for the resolution of the dispute, and specifying a date (which shall be not less than 14 nor more than 28 days after the service of the Counter Notice) for a meeting to resolve the dispute.
- 8.4 The meeting referred to in clause 8.3 shall be attended by two nominated representatives of the Council and two nominated representatives of the Trust and shall be held at the main office of the Party serving the counter notice or at some other place to be agreed.
- 8.5 The persons present at such meeting shall use their reasonable endeavours to resolve the dispute.
- 8.6 If notwithstanding any steps taken by the Parties pursuant to clauses 8.3 to 8.5 the dispute between them remains unresolved then at the request of either Party it shall be referred for resolution (in the absence of any express agreement to the contrary) by an independent person appointed jointly by the Parties (the **Independent Person**).
- 8.7 The Independent Person is to have at least 10 years relevant post qualification experience and his or her identity shall be agreed between the Parties.
- 8.8 If the parties cannot agree on the Independent Person's identity the Independent Person is to be appointed at the request of any of the Parties by the president or chairman for the time being of whichever of the following bodies is most appropriate having regard to the nature of the dispute:
- 8.8.1 The Chartered Institute of Housing;
 - 8.8.2 The Royal Institution of Chartered Surveyors;
 - 8.8.3 The Institute of Chartered Accountants in England & Wales, or
 - 8.8.4 The Law Society of England and Wales.
- 8.9 Unless expressly agreed between the parties the Independent Person shall act as an expert and not as an arbitrator.
- 8.10 If the Independent Person is to act as expert then the following provisions shall apply:
- 8.10.1 the Independent Person shall be instructed to allow each Party to make representations and counter-representations as to the matters in dispute and to

give them due consideration (but the Independent Person is not to be bound by them),

8.10.2 the Independent Person shall be instructed to give his decision as quickly as possible in writing with copies being sent simultaneously to the Parties and to give reasons for his decision,

8.10.3 the Independent Person's determination shall be final and binding on the Parties (except in cases of manifest error),

8.10.4 if the Independent Person dies, delays for a period of 4 weeks or more or becomes unwilling or incapable of acting, the Parties shall appoint a new Independent Person in accordance with this clause 8.10, and

8.10.5 the costs of the appointment of the Independent Person shall be paid by the Parties in the proportions that the Independent Person decides or in the absence of any such decision from the Independent Person in equal shares.

8.11 Where costs of the Independent Person remain unpaid by the Party liable to pay them pursuant to this clause, the other Party may discharge those costs and recover the sum so paid from the defaulting Party as a debt on written demand.

8.12 The Independent Person's decision shall be final and binding upon the Parties.

9 Termination

9.1 This Agreement shall continue in full force and effect for a term of 3 years from the date hereof unless terminated earlier pursuant to this clause 9 (the **Initial Term**).

9.2 Upon the Trust giving notice at least 6 months prior to the end of the Initial Term of its wish to extend the term of this Agreement by a further 2 years, the Council shall consider such request and shall confirm in writing whether it agrees to extend the term of the Agreement and, if so, what changes to the Needs as set out in Schedule 1, the Requirements as set out in Schedule 2 and the Services and fees as set out in Schedule 3 shall apply to the extension. The Parties shall work together in good faith to agree any proposed changes by no later than 3 months prior to the end of the Initial Term. If the Parties agree on terms for extension, the Agreement shall be extended and the Agreement shall be varied accordingly.

9.3 The Parties may by agreement further extend the term of this Agreement and the process for extension set out in clause 9.2 shall apply.

9.4 This Agreement shall terminate in whole or in part by notice if:

9.4.1 a material breach has occurred in respect of this Agreement and such breach is capable of remedy and the Party in breach has been given notice of such breach and has failed to remedy it within 30 days of notification; or

9.4.2 a material breach has occurred in respect of this Agreement and such breach is not capable of being remedied.

9.5 This Agreement shall terminate automatically in relation to any particular Property upon that Property no longer being owned or controlled by the Trust.

9.6 Without prejudice to the other provisions of this clause 9, the Council shall co-operate with the Trust in the appointment of any successor provider and help facilitate the transfer of services and work to that provider

9.7 Upon termination of this Agreement for any reason, the Council shall be entitled to receive the relevant element of the Services Fee *pro rata* up to the date of termination.

9.8 On termination of this Agreement all rights and obligations of the parties under and in connection with it shall end except for clauses 9-11, 13-14, 16-19 and 22-255.

10 **Liability**

10.1 Nothing in this Agreement shall limit or exclude either party's liability for anything which cannot be limited or excluded by applicable Law.

10.2 Subject to Clause 10.1, neither party shall have any liability to the other party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise for any indirect or consequential loss arising under or in connection with this Agreement.

10.3 Subject to Clause 10.1, the total aggregate liability of either party to the other, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Agreement shall in no event exceed £10,000,000 (ten million pounds).

10.4 Nothing in this Agreement shall be taken as in any way reducing or affecting a general duty to mitigate loss suffered by a party.

11 **Continuing obligations**

11.1 On the ending of this Agreement, the Council is to supply to the Trust or to such person as the Trust may direct all documents and records relating to the subject matter of the Services (including the Properties) under the control of the Council including a copy of all computer records.

11.2 Within 21 days of the ending of this Agreement, the Council shall provide to the Trust a statement of account showing, in respect of the subject matter of the Services (including the Properties), all receipts and expenditure since the preceding sets of accounts were prepared.

11.3 Within 21 days after the production of the statements of account under clause 11.2, the Trust is to pay to the Council any sums due to the Council pursuant to clause 9 up to the date of the ending of this Agreement in respect of the Services Fee (apportioned on a daily basis).

11.4 If and to the extent that after the ending of this Agreement the Council receives any sums from a Beneficiary, Other Property Occupier or Commercial Occupier it shall immediately hold all such sums received on trust for the Trust subject to any right of retention the Council may have and shall then account to the Trust for such sums received within 5 days of receipt.

12 **Value Added Tax**

Sums payable under this Agreement are exclusive of VAT (if applicable). If, under the terms of this Agreement, a supply is made that is subject to VAT, the person receiving the supply will pay the VAT in addition to any other consideration for that supply to the person making the supply on receipt of a valid VAT invoice.

13 **Data Protection**

13.1 For the purposes of this clause 13.1, defined terms have the meaning prescribed under this Agreement or pursuant to the Data Protection Legislation.

13.2 Each Party shall ensure that, to the extent that it stores and processes the Shared Personal Data, it shall comply with the provisions and obligations imposed on it by the Data Protection Legislation and the Data Protection Policy and maintain the appropriate registration with the Information Commissioner's Office.

13.3 Both Parties shall, upon request, co-operate and provide reasonable assistance to the other in relation to any matters arising from the data sharing arrangements in this Agreement, including (but not limited to) any proceedings, investigation or inquiry by the Parties, any subsequent actions arising therefrom and any measure reasonably necessary to ensure compliance with the Data Protection Legislation.

13.4 The Trust and the Council shall agree (acting reasonably) on and then comply with their respective responsibilities for:

13.4.1 providing clear and sufficient information to the relevant Data Subjects in accordance with the transparency requirements of the Data Protection Legislation, including the purposes and legal basis for which the Shared Personal Data will be processed by the Parties;

13.4.2 responding to all requests from relevant individuals to exercise the Data Subject's Rights in respect of the Shared Personal Data; and

13.4.3 responding to all complaints from individuals relating to its processing of the Shared Personal Data under this Agreement.

13.5 In the event that the Council becomes aware of any unlawful Processing or a Personal Data Breach in relation to the Shared Personal Data, the Council shall notify the Trust without delay and assist the Trust to take all appropriate steps to manage the same, mitigate any risks to the Shared Personal Data, and make notifications to both the Information Commissioner's Office and the Data Subjects as appropriate.

13.6 Subject to clause 3 of this Agreement, the Council shall only share the Shared Personal Data with any approved Third Party Contractors in the event that the Council confirms that such third parties can comply with the standards of the Data Protection Legislation and the Council or the Trust (as appropriate) executes an agreement with the relevant Third Party Contractor which includes any such terms required by the Data Protection Legislation.

13.7 The Council may only transfer the Shared Personal Data to a third party located outside the UK if it complies with the provisions of Data Protection Legislation.

13.8 The Council will on the determination or expiry of this Agreement and at the request of the Trust provide a copy of the Shared Personal Data in the Council's possession to the Trust.

14 **Confidentiality**

14.1 The terms of this Agreement shall remain confidential between the Parties and, save as required by any law, regulation of any relevant jurisdiction, any other regulatory authority or as expressly provided in this Agreement, neither Party shall without the consent of the other make any public announcement or disclosure of such terms or of any information concerning the Trust, the Beneficiaries or the Properties.

14.2 Each Party shall keep confidential any information relating to the other which it acquires as a result of entering into this Agreement and the matters provided for in this Agreement which shall not be disclosed to any third party, save as required by any law or regulation of any relevant jurisdiction, any other regulatory authority.

14.3 The obligations provided in clauses 14.1 and 14.2 shall not apply to any such information which:

14.3.1 is in the public domain at the date of this Agreement;

14.3.2 becomes public knowledge or is readily accessible by publication, other than by breach of clauses 14.1 and 14.2;

14.3.3 is received from third parties without any obligation of confidence on the part of that third party;

14.3.4 is disclosed by that person to its *bona fide* professional legal, accounting or other advisers provided that such advisers are bound by terms and conditions substantially similar to those set out in clauses 14.1 and 14.2;

14.3.5 is disclosed to providers (or prospective providers) of finance and insurance to the Trust or for other *bona fide* reasons; or

14.3.6 was already known by the other party prior to the date of disclosure by the disclosing party.

14.4 Neither of the Parties shall knowingly do or suffer any act or matter or thing which would or might reasonably be expected materially to prejudice or bring into disrepute the activities or reputation of the other Party.

15 **Assignment and variation**

15.1 Neither party shall, without the prior written consent of the other, assign, transfer, charge, subcontract or delegate or deal in any other manner with this Agreement or any of its rights or obligations under it.

15.2 This Agreement may not be amended in whole or in part without the written consent of the Council and the Trust.

16 **Notices**

16.1 Any notice to be served in connection with this Agreement shall be in writing (which, for the avoidance of doubt, shall include email (with a copy sent to the recipient's address by pre-paid first class post)) and any notice or other correspondence under or in connection with this Agreement shall be delivered to the relevant Party at the physical or electronic address given in this Agreement or to such other address as may be notified in writing for the purposes of this Agreement to the Party serving the document.

16.2 Any such notice or correspondence shall be deemed to have been served as follows:

16.2.1 in the case of delivery, on delivery if delivered between 9 a.m. and 5 p.m. on a Business Day and, if delivered outside such hours, at the time when such hours recommence on the first Business Day following delivery;

16.2.2 in the case of service by registered mail, on the fifth Business Day after the day on which it was posted; and

16.2.3 in the case of email, on the day it is transmitted provided that if that day is not a Business Day or, being a Business Day, transmission takes place after 5 p.m., then at 9 a.m. on the first Business Day following transmission of the notice.

16.3 In proving such service (other than service by email), it shall be sufficient to prove that the notice or correspondence was properly addressed and left at or posted by registered mail to the place to which it was so addressed.

17 **Agreement binding upon successors and assigns**

Except as otherwise specified in this Agreement, this Agreement shall be for the benefit of, and shall be binding upon, the heirs, executors, administrators or other representatives, successors and assigns of the respective Parties.

18 **Waiver**

No failure to exercise and no delay in exercising on the part of either Party any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies otherwise provided by law.

19 **Entire Agreement**

This Agreement constitutes the entire agreement between the Parties and supersedes any prior agreement or understanding between them with respect to such subject matter.

20 **Governing law and jurisdiction**

20.1 This Agreement and the rights, obligations and relationships of the Parties under this Agreement (including non contractual obligations) shall be governed by and construed in accordance with the laws of England.

20.2 Subject to Clause 8 the Parties irrevocably agree that the courts of England shall have exclusive jurisdiction to hear and decide any suit, action or proceedings, and to settle any disputes which may arise out of or in connection with this Agreement (including non contractual disputes or claims) and, for these purposes, each Party irrevocably submits to the exclusive jurisdiction of the courts of England.

21 **Severability**

If any clause or provision of this Agreement shall be held to be invalid or unlawful, such clause or provision shall only be ineffective to the extent of such invalidity or unenforceability. The remainder of this Agreement shall not be affected thereby and shall remain in full force and effect.

22 **Contracts (Rights Of Third Parties) Act 1999 etc.**

22.1 Nothing in this Agreement confers any right on any person who is not a party to it. This Agreement may be rescinded or varied without the consent of any person who is not a party to this Agreement.

22.2 For the avoidance of doubt the Council shall not commit or purport to commit the Trust to any legal arrangements with any Third Party Contractor without the prior written consent of the Trust

23 **Audit**

23.1 The Council shall keep and maintain until six years after the Agreement has been terminated, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Services provided under it, all expenditure reimbursed by the Trust, and all payments made by the Trust, whether to the Council or third parties (including Third Party Contractors).

23.2 The Council shall at all times (including following the termination of this Agreement) give any auditor or other person nominated by the Trust:

23.2.1 immediate access to;

23.2.2 permission to copy and remove any copies of; and

23.2.3 permission to remove the originals of,

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

23.3 The Council will provide all co-operation and afford all access to personnel and records in order to assist the Trust in carrying out any audits or investigations which are already under way at the Commencement Date and any audits or investigations which are carried out after the termination or expiry of this Agreement.

24 **Regulatory Documentation**

The Council shall provide the Trust with any information reasonably required to complete any returns required by a competent regulatory authority (including but not limited to the Charity Commission) or any other returns which may already or in the future be required as a matter of good governance.

25 **Information sharing**

25.1 Without prejudice to the Council's obligations elsewhere in this Agreement the Council will:

25.1.1 advise the Trust of any complaints received about the management of the Properties as soon as they are received;

25.1.2 report all health and safety concerns and issues arising at any Property to the Trust as soon as observed; and

25.1.3 immediately notify the Trust in writing of any matter which may in the reasonable opinion of the Council impact on the Trust's compliance with charity law, its regulatory requirements or any other applicable legal duty or obligation..

26 **Counterparts**

This Agreement may be executed in counterparts, which taken together shall be deemed to constitute one and the same agreement and each of which individually shall be deemed to be an original of this Agreement.

This Agreement has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

EXECUTED as a DEED by affixing the)
common seal of The Mayor and Burgesses of)
the London Borough of Havering)
)

in the presence of:

Authorised Signatory

EXECUTED as a DEED on behalf of the Trustees)
of Hornchurch Housing Trust by two of their)
number, under an authority conferred pursuant to)
section 333 of the Charities Act 2011 in the)
presence of:)

MELVIN JOHN WALLACE

(Please print Trustee name)



Authorised Signatory
(Trustee Signature)

witness signature:



name: JOHN EDWARD PALMER

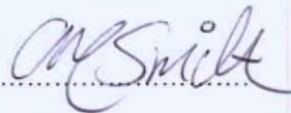
address: 5 THE BOWERS, ANLOFFS WALK, HORNCHURCH RM11 2RE

occupation: RETIRED.

EXECUTED as a DEED on behalf of the Trustees)
of Hornchurch Housing Trust by two of their)
number, under an authority conferred pursuant to)
section 333 of the Charities Act 2011 in the)
presence of:)

CAROL M SMITH

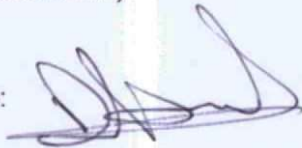
(Please print Trustee name)



Authorised Signatory

(Trustee Signature)

witness signature:



name: VICTOR DAVID H. HALL

address: 11 HILLFOOT AVENUE RONFORD RM53W

occupation: RETIRED
(INSURANCE BROKER)

Schedule 1

The Trust's Needs – General Housing and Property matters

Part 1

Rents and management charges and other support

- 1 Advice on the management charge to be set by the Trust and collected by the Trust for the Charity Properties
- 2 Advice on rent and service charge levels to be set by the Trust and collected by the Trust for the Other Properties
- 3 Advice on Cyclical Maintenance Fund and Extraordinary Repair Fund requirements to be set aside – including audits thereof
- 4 Advice and support on such other related matters and policies as may be required by the Trust from time to time.

Part 2

Supported housing advice and support

Advice and support on supported housing which (a) is not provided by the Trust's own employees on a 'day to day' basis and (b) draws on specialist expertise and experience in the provision of supported housing.

Part 3

Property management

- 1 Advice and support on (including the provision of):
 - 1.1 premises and site inspections and condition surveys
 - 1.2 responsive repairs
 - 1.3 cyclical repairs / maintenance
 - 1.4 extraordinary repairs / improvements / rebuilding
 - 1.5 repairs / maintenance when Charity Properties become void

and, where these services are to be provided by Third Party Contractors, specifying the advice, support and work to be provided, so as to ensure that the Trust can rely on the Third Party Contractors to discharge the Trust's legal obligations, including those which relate to or could affect the well being and safety of Beneficiaries/ Commercial Occupiers/ Other Property Occupiers.

- 2 Services in connection with the management of the Properties as follows:
- 2.1 devising for the Trust and, subject to approval, implementing a procurement legislation compliant procurement approach which ensures value for money and best practice delivery from the chosen contractors
 - 2.2 generally advising and on the instruction of the Trust taking steps necessary to ensure the Trust complies with all legal and regulatory requirements
 - 2.3 such other Services (whether via or in relation to Third Party Contractors or otherwise) as the parties may agree

Schedule 2

The Trust's Requirements – Compliance

The overall Requirement is for the Council to provide advice and support on health and safety and other Compliance issues

In particular the Council will provide advice and support or arrange for Third Party Contractors to provide advice, support and/ or carry out work covering but not limited to:

- Fire Safety;
- Gas Safety including communal heating systems with gas powered boilers;
- Electrical Safety;
- Water Hygiene and Water Testing;
- Fire Equipment Testing;
- Lift Inspections;
- Stair-lift inspections;
- Emergency lighting;
- Fall arrest system inspection;
- Door entry inspections;
- Gates and Barriers;
- Lightning Conductors;
- PAT testing of any electrical items (including those used by the Council); and
- CCTV and security systems;
- Asbestos management.

The Council must ensure or require that Third Party Contractors ensure that all gas, electrical, water and mechanical equipment provided by the Trust and serving the Properties complies with all relevant statutory provisions and safety regulations and that it is serviced at appropriate intervals, tested regularly and repaired as soon as practicable.

The Council shall support the Trust in the performance of its duties as Responsible Person under the Regulatory Reform (Fire Safety) Order 2005 (the **2005 Order**) by (inter alia) procuring in the name of the Trust the carrying out of suitable and sufficient fire risk assessments (**FRAs**), and the implementation, as soon as practicable and in any event within the timescales recommended in the FRA, of any fire risk actions identified within those FRAs. Copies of all FRAs, if not provided directly to the Trust, are to be provided to it within 5 days of their receipt by the Council, together with evidence of all fire risk actions duly completed within 14 days of their completion.

The Council will also:

- comply or require that any relevant Third Party Contractor complies with the 2005 Order and any relevant fire safety guidance relating to the Properties;
- provide or procure on behalf of the Trust the completion of a fire safety maintenance checklist in accordance with good Industry practice at appropriate intervals and then record these for inspection;
- report to the Trust any deficiencies in the fire-fighting equipment, fire stopping, fire doors, emergency lighting, signage or fire or smoke alarm systems and (following agreement with the Trust) ensure that any necessary remedial works are completed as soon as practicable;
- procure or require that all Third Party Contractors procure that all escape routes, walkways and stairwells are kept clear of obstructions at all times and the Council in conjunction with Trust officers shall address any issues with Beneficiaries / Commercial Occupiers / Other Property Occupiers who fail to comply with these requirements in accordance with the Trust's Policies; and
- maintain, or require that Third Party Contractors maintain, for the purposes of an emergency, a full record of all relevant information regarding each Property and its layout and the Beneficiaries / Commercial Occupiers / Other Property Occupiers with highlighted details of any Beneficiaries of Charity Properties with a known vulnerability.

Schedule 3

Services, Fees and Charges

Service	Service Leads	Service Description	Rates	Frequency
Pay As You Go Service	Garry Knights/Katri Wilson/Evonne Hudson	<i>Technical advice and guidance</i> in relation to the Trust's Needs and Requirements in (respectively) Schedules 1 and 2	£60	Hourly
Pay As You Go Service	Garry Knights/Katri Wilson/Evonne Hudson/	<i>Strategic advice and guidance</i> in relation to the Trust's Needs and Requirements in (respectively) Schedules 1 and 2	£70	Hourly
Pay As You Go Service	Patrick Odling-Smee	<i>Strategic advice and guidance</i> in relation to the Trust's Needs and Requirements in (respectively) Schedules 1 and 2	£90	Hourly

NB In instances where reasonable Housing and Property advice provided is not followed, then subject to prior agreement by the Trust any additional work generated as a consequence of this will be charged at the above rates.

- *Technical advice and guidance*: this relates to technical advice on housing and property management and maintenance including, but not limited to, development of an operational plan, management of assets and compliance with health and safety and other such or related legislation.
- *Strategic advice and guidance*: this relates to strategic advice on areas of housing and property management including, but not limited to, housing rents and service charge policy (including management charges for almshouse residents), supported housing policy, safeguarding and asset management strategy.

For the avoidance of doubt, there is no charge for providing nominations for vacant properties.

Where both Parties agree, fixed or discrete fees or charges will apply to discrete work or tasks instead of PAYG.

The key contacts for the Services will be:

Strategic advice: Patrick Odling-Smee, patrick.odling-smee@havering.gov.uk

Property Services: Garry Knights, garry.knights@havering.gov.uk

Supported housing: Katri Wilson, katri.wilson@havering.gov.uk

Housing management: Evonne Hudson, evonne.hudson@havering.gov.uk

The identity of the officers providing the above Services and their rates will be agreed with the Trust before the Services are commissioned in accordance with clauses 2, 3 and 6. When officers arrange

(with the Trust's consent) for Third Party Contractors to meet either the Trust's Needs as set out in Schedule 1 or the Trust's Requirements as set in Schedule 2 they shall do so on the basis of charges agreed in advance by the Trust, whether by reference to a schedule of rates, fixed fees or other cost arrangements, all in accordance with clauses 2, 3 and 6.

Schedule 4

Charity Property

Skeales Court, Sunrise Avenue, Hornchurch – 30 units of accommodation

The Trust, Hacton Lane, Hornchurch – 5 units

Wolseley Road, Romford – 4 of the 10 units are Charity Property

Schedule 5

Commercial Property

170-180 (evens), High Street, Hornchurch

Schedule 6

Other Property

Wolseley Road, Romford – 6 of the 10 units are Other Property

Schedule 7

List of Current Trustees

Melvin Wallace

Roger Evans

Peter Salisbury

Louis Nicol Dodin

Carol Margaret Smith

John Mylod

Rev. Ken Wylie