

**Sheffield City Council**

**The Guinness Partnership Limited**

**Agreement for Supported  
Living Accommodation**



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## FORM OF AGREEMENT

This Agreement is made on

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### **BETWEEN THE PARTIES:**

'The Local Authority'            **Sheffield City Council**  
Town Hall  
Pinstone Street  
Sheffield  
S1 2HH.

and

'The Association'            **The Guinness Partnership Limited** a charitable  
Industrial and Provident Society (No. IP31693R) and  
Registered Provider of Social Housing (No. 4729) whose  
registered office is at 30 Brock Street, Regent's Place,  
London NW1 3FG

### **RECITALS:**

- (A)     The Local Authority and the Association have agreed that the Association shall provide the Service in accordance with this Agreement.
- (B)     The Association is a Registered Provider of Social Housing and is registered under the Housing and Regeneration Act 2008 (Registration Number 4729).
- (C)     Both Parties agree that the Association is assisting the Local Authority, in its capacity as a Local Housing Authority, in carrying out its functions pursuant to Part 6 of the Housing Act 1996.
- (D)     In making the Properties available to Occupants, the Association has had regard to the special housing needs of Occupants and potential Occupants and to the particular expertise and resources of the Support Provider(s) (where applicable).
- (E)     The purpose of this Agreement is to:
  - ensure effective joint working between the parties;
  - clarify their respective roles and responsibilities;
  - ensure good liaison between all parties to ensure the effective provision of housing and support services to Occupants.

## OPERATIVE PROVISIONS:

### 1 Definitions and Interpretation

1.1 This Agreement shall be interpreted in accordance with the following definitions, unless the context otherwise requires:

<b>‘Agreement’</b>	shall mean this Agreement including the Schedules and all documents referred to herein;
<b>‘Choice Based Lettings’</b>	shall mean the Lettings Policy and procedures incorporating the advertising scheme as described in the Allocation of Accommodation: Choice Based Lettings – Code of Guidance for Local Authorities issued by the Department for Communities and Local Government in August 2008;
<b>‘Commencement Date’</b>	shall mean the date as detailed in Clause 4 of this Agreement;
<b>‘Contract Payment Arrangements’</b>	shall mean the payment arrangements detailed in Schedule 1;
<b>‘Contract Manager’</b>	shall mean the Officer duly authorised by the Local Authority and notified to the Association in accordance with Clause 10;
<b>‘Contract Period’</b>	shall mean the Agreement duration referred to in Clause 4;
<b>‘Default’</b>	shall mean a breach of the obligations of either Party as described in Clause 24;
<b>‘Disclosure and Barring Service’</b>	shall mean the Disclosure and Barring Service established pursuant to the Protection of Freedoms Act 2012;
<b>‘DPA’</b>	shall mean the Data Protection Act 1998 as the same may be amended from time to time;
<b>‘Due Date’</b>	shall mean a date 40 days from receipt of a valid invoice;

<b>‘EIR 2004’</b>	shall mean the Environmental Information Regulations 2004 as the same may be amended from time to time;
<b>‘Fire Risk Management Strategy’</b>	shall mean the document jointly agreed by the Association, Lead Support Provider (and other Support Providers, if applicable) and Fire Officer;
<b>‘FOIA’</b>	shall mean the Freedom of Information Act 2000 as the same may be amended from time to time;
<b>‘Lead Support Provider’</b>	shall mean the Support Provider nominated for each Property to act as the general contact point and the main point of liaison and responsibility in relation to Health and Safety and Fire. The nomination of the Lead Support Provider will be agreed between the Association and the Support Providers at each Property but will normally be the Support Provider providing the majority of support at a Property;
<b>‘Lettings Policy’</b>	shall mean the allocation scheme made in pursuance of the obligation of the Council under section 166A Housing Act 1996 of which the Lettings Criteria for Supported Accommodation, which applies to the Property, and which is attached as Schedule 4 forms part;
<b>‘Local Housing Authority’</b>	shall mean a local housing authority as defined by Section 1, Housing Act 1985, which has the powers and duties specified in legislation;
<b>‘Notice’</b>	shall mean any Notice served under the Agreement and as detailed in Clause 23;
<b>‘Occupancy Agreement’</b>	shall mean the form of Assured Shorthold Tenancy Agreement provided by the Association that each Occupant must enter into. Such Assured Shorthold Tenancy Agreement shall be the Association’s standard Assured Shorthold Tenancy Agreement;

<b>'Occupant'</b>	shall mean a person accommodated at a Property who has entered into an Occupancy Agreement;
<b>'Payment Period'</b>	shall mean a period of a calendar month;
<b>'Personal Data'</b>	shall mean personal data within the meaning given to the phrase 'Personal Data' by the DPA which is acquired by or communicated to the Association in connection with the Service;
<b>'Property'</b>	shall mean any of the properties more particularly described in Schedule 2, as updated from time to time, and ' <b>Properties</b> ' shall be defined accordingly;
<b>'Regulatory Body'</b>	shall mean a regulatory body established by statute which has powers to regulate either Party;
<b>'RIDDOR'</b>	shall mean the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995;
<b>'Safeguarding Adults'</b>	shall have the same meaning as "safeguarding vulnerable adults" in the Local Authority's Safeguarding Vulnerable Adults Policy;
<b>'Service'</b>	shall mean granting the Local Authority sole nomination rights for each Unit at the Properties and carrying out the obligations of the Association that are set out in Schedule 3 in accordance with this Agreement;
<b>'Supported Accommodation'</b>	shall mean accommodation for an Occupant who is receiving care and support to enable them to live independently;
<b>'Support Provider'</b>	shall mean the person or organisation providing support to an Occupant;

<b>'TUPE'</b>	shall mean the Transfer of Undertakings (Protection of Employment) Regulations 2006 as the same may be amended from time to time;
<b>'Unit'</b>	shall mean a room, set of rooms or bed-space at any of the Properties capable of being the subject of an Occupancy Agreement;
<b>'Variation'</b>	shall mean an amendment to the Agreement made in accordance with the Agreement;
<b>'Void Period'</b>	shall mean any period (being not less than one week) during which any Units are unlet or unoccupied (other than any period when the Association is carrying out works of repair, renovations or improvement or the Unit is uninhabitable, with the exception of standard stock improvement, which should be undertaken as early as possible following a vacancy arising);
<b>'Worker'</b>	shall mean any person, paid or unpaid, who is engaged in delivering the Service on behalf of the Association, whether formally employed by the Association, or as a volunteer accredited by the Association or as an agent or sub-contractor;
<b>'Working Day'</b>	shall mean any day on which the Local Authority's principal offices at the Town Hall, Sheffield are open to the public for business;
<b>'Year'</b>	shall mean 12 calendar months from April to March.

1.2 References to any Act of Parliament or to any Order, Regulation, Statutory Instrument, or the like, shall be deemed to include a reference to any amendments or re-enactment of the same.

1.3 In the interpretation of this Agreement unless the contrary intention appears; the following provision shall apply:

- words importing the masculine gender include the feminine gender;
- words in the singular include the plural and vice versa;

- words implying individuals shall be treated as implying corporations and vice versa.
- 1.4 References to numbered Clauses in this Agreement shall, except where the context requires otherwise, be read as references to the appropriate Clauses in this Agreement.
- 1.5 In the event of any ambiguity or inconsistency amongst the Schedules and the Agreement, their precedence shall be ranked as follows:
- the Clauses of the Agreement;
  - the Schedules.
- 1.6 The Association warrants and undertakes to the Local Authority that it has full power and authority to execute this Agreement and enter into the Agreement and that the person signing this Agreement on behalf of the Association is duly authorised to do so.

## **2 Entire Agreement**

- 2.1 This Agreement sets out all the terms and conditions agreed between the Parties regarding the provision of the Service. This means that it supersedes any representations, documents, negotiations or understandings, whether oral or written, made, carried out or entered into before the date of this Agreement.

## **3 Provision of Service**

- 3.1 From the Commencement Date until the expiry of the Contract Period the Association shall provide the Service in accordance with the Agreement.
- 3.2 Without affecting a higher standard required by the Agreement, the Association shall at all times provide the Service with all reasonable skill, care and diligence.
- 3.3 The Association shall not, in providing the Service, unlawfully discriminate against any individual or group for any reason whatsoever.
- 3.4 In the event of the Association being unable to comply with the Agreement, the Association shall immediately inform the Contract Manager, giving details in writing of the circumstances, reasons and likely duration of the inability to comply. The Contract Manager will then decide if Clause 24 (Default) applies.
- 3.5 The Agreement and/or the Schedules may be amended or added to at any time by the Local Authority under the following circumstances:
- 3.5.1 by agreement in writing between the Contract Manager and the Association; or
  - 3.5.2 where a statutory obligation requires a Variation to the Service. Such Variation shall be notified in writing by the Contract Manager



detailing the nature of the Variation, and the date from which it will be effective; and

in both such cases the Contract Manager shall, after consulting with the Local Authority and the Association, determine whether the Variation has a financial impact on the Parties and, if it has, act reasonably to assess that financial impact. Any such assessment shall be given effect by the Contract Manager making a fair and reasonable adjustment to the prices referred to in this Agreement with effect from the date which the Variation concerned is effective.

3.6 The Association shall maintain registration with the applicable Regulatory Body. Failure to comply may result in Termination of the Agreement in accordance with Clause 26.

3.7 The Association shall comply with all legislation in force from time to time and shall notify the Contract Manager in the event of a conflict between such compliance and any provision of the Agreement.

3.8 The Association and Local Authority shall adhere to the responsibilities as detailed in Schedule 3.

#### **4 Contract Period**

4.1 The Agreement shall commence on the date hereof and shall remain in place until termination in accordance with Clause 26 and/or any other termination provisions within the Agreement.

#### **5 Occupants' Rights**

5.1 The Association shall at all times in the performance of the Service and its treatment of Occupants, without limitation, have regards to and abide by the principles of the Human Rights Act 1998 and the European Convention on Human Rights.

5.2 The Association shall have a clear policy and established procedures in relation to the rights of Occupants that comply with relevant regulation and regulatory bodies.

5.3 The Association shall communicate all such policy and procedures to all Workers via, without limitation, induction, training and development, team meetings and supervision.

5.4 The Association shall ensure that, where appropriate, all information in respect of the Service is developed and designed with the participation of Occupants and is produced and communicated in a fully inclusive manner at all times addressing the needs of Occupants.

#### **6 Safeguarding Vulnerable Adults**

- 6.1 The Association shall have in place its own Safeguarding Vulnerable Adults Policy and associated procedures which shall accord with the requirements and procedures detailed in the Local Authority's Safeguarding Vulnerable Adults Policy, a copy of which shall be provided on request.
- 6.2 The Association's Safeguarding Vulnerable Adults Policy and associated procedures shall include (without limitation):
  - 6.2.1 documentation and record keeping and actions in respect of all safeguarding issues;
  - 6.2.2 training and how training requirements will be met (including refresher training);
  - 6.2.3 details of arrangements for liaison and co-operation with the Local Authority and other appropriate agencies and individuals.
- 6.3 Any complaint or allegations against Workers of abusive behaviour towards Occupants shall be reported immediately to the Local Authority's designated officer in accordance with South Yorkshire's Adult Protection Procedures for the investigation of such complaints or allegations.
- 6.4 Without prejudice to any other rights the Local Authority may have under the Agreement, in the event of a complaint or allegation being made against the Association or its Worker which results in the initiation of an investigation, the Local Authority shall consider all of the circumstances regarding the complaint/allegation and shall determine whether to suspend further referral to the Service.
- 6.5 Where referrals to the Service have been suspended in accordance with clause 6.4, the Local Authority shall not recommence referrals to the Service until a period of investigation and monitoring has been undertaken to determine that the Association is able to meet the requirements of the Agreement.
- 6.6 The Association shall give consideration to the suspension of the Worker involved in the allegation pending the outcome of any investigation where the Local Authority believes any such action is necessary to protect Occupants or the investigation itself.
- 6.7 The Association shall be required to fully cooperate with the Local Authority's investigation process throughout.
- 6.8 The Parties shall meet to review the outcome of any such investigation and the Contract Manager shall determine the impact on the Service and any further action required to be taken under the terms of this Agreement.
- 6.9 Subject to Clause 6.10, any personal information regarding any Occupant in relation to its tenancy arrangements at the request of the Association shall be determined by SCC on a case by case basis. The Association shall take all reasonable steps to ensure that it is aware of and will comply with this obligation of confidence.

- 6.10 In particular and subject to Clause 16.2.5.1, Clause 16.2.5.2, Clause 16.3 and Clause 41, and throughout the entirety of this Agreement, information relating to personal data regarding any Occupant shall not be disclosed by SCC or any other person without the permission of SCC unless a duty to disclose to the Association is imposed under statute or by Court Order.

## **7 Quality**

- 7.1 The Service shall be provided to the standards and requirements in all respects, to achieve the outcomes detailed in the Agreement.
- 7.2 The Association shall seek to continuously improve the Service through its quality assurance and monitoring systems and shall report in writing on this from time to time in accordance with clause 11 of the Agreement and also at the request of the Local Authority.

## **8 Health and Safety**

- 8.1 The Association shall at all times:
- 8.1.1 comply with the requirements set out in this Agreement;
  - 8.1.2 carry out its responsibility for repairs and maintenance as specified in the Landlord and Tenant Acts and in compliance with all relevant Health and Safety requirements for domestic properties; and
  - 8.1.3 be responsible for any office space or equipment that it provides for its Workers and for the health and safety of its Workers in accordance with all relevant legislation and guidance.
- 8.2 The Support Provider(s) shall be responsible for any office space, equipment and sleep-in facilities provided as part of the scheme and for compliance with all Health and Safety requirements for a workplace.
- 8.3 The Association shall inform the Local Authority's Health and Safety Team immediately (e.g. by telephone) if there is an accident that:
- 8.3.1 is connected to the performance of the Agreement; and
  - 8.3.2 must be reported under RIDDOR.
- 8.4 The same shall also apply to the diseases and dangerous occurrences that fall under RIDDOR. A copy of the relevant statutory report form must then be sent by the Association to Local Authority's Health and Safety Team within ten days of the above telephone call or sooner if requested.
- 8.5 If the said Local Authority's Health and Safety Team is of the opinion that the Association is in breach of the requirements of Clause 8.1 they:
- 8.5.1 shall notify the Association and the Contract Manager forthwith, giving particulars of the breach;
  - 8.5.2 shall, in the event of potential or imminent danger, take whatever action is deemed necessary to render a situation safe;

- 8.5.3 may present a report on the breach to the Local Authority's Director of Commissioning with such recommendation as they consider appropriate;
  - 8.5.4 may inform the Health and Safety Executive.
- 8.6 Where it is the responsibility of the Association, they shall ensure that all accidents, occupational diseases and dangerous occurrences are recorded and investigated and that reports of such investigations are submitted to the Local Authority if so requested. Non-accidental occurrences shall also be investigated if they result in injury to an Occupant during the performance of the Agreement.

## **9 Payment**

- 9.1 The Association shall submit a fully detailed invoice for the respective Payment Period to the Local Authority in accordance with Clause 9.3 and the Contract Payment Arrangements.
- 9.2 For each Payment Period the Local Authority shall pay to the Association the sum due under the Agreement taking account of:
  - 9.2.1 the prices and the provisions detailed in the Contract Payment Arrangements;
  - 9.2.2 any additions and deductions in accordance with the Agreement, including under this Clause 9 or Clause 24.2.
- 9.3 The Association shall submit its invoice within five working days of the end of each Payment Period. The Local Authority shall pay the Association for the relevant Payment Period within thirty Working Days of receipt of a valid invoice from the Association. For an invoice to be valid, the Association shall ensure that it contains the information specified at Clauses 9.1 and 9.2. Invoices which are not submitted in accordance with these requirements shall not be valid invoices and the Local Authority shall be under no obligation to make any payment to the Association until a valid invoice is received by the Local Authority.
- 9.4 The Local Authority shall have no obligation to pay additional charges in excess of those set out in the Contract Payment Arrangements unless the amount in question has first been agreed in writing by the Local Authority in accordance with Clause 9.5.
- 9.5 The Association shall submit details of any proposed changes (e.g. increase in rent) which would result in a potential increase in liability for the Local Authority.
- 9.6 Whenever under the Agreement or upon the termination thereof, any sum of money is due from, or payable by, the Association to the Local Authority, the same may be deducted from any sum then due, or which at any time thereafter may become due to the Association from the Local Authority under the Agreement, or under any other contract with the Local Authority.

- 9.7 Interest on sums due but not paid under the Agreement shall be payable in accordance with this Clause 9.7:
- 9.7.1 for sums due from the Local Authority to the Association if the Agreement is a contract in relation to which the Late Payment of Commercial Debts (Interest) Act 1998 applies, at the rate of 6% above the base lending rate per annum, (as published from time to time), of Barclays Bank plc, from the Due Date until the date of payment and for other sums due from the Local Authority to the Association at the rate of 2% above the base lending rate per annum (as published from time to time) of Barclays Bank plc, from the Due Date until the date of payment, which rates the Association acknowledges provides the Association with a substantial remedy for late payment by the Local Authority, in that it is sufficient to compensate the Association for late payment;
- 9.7.2 for sums due from the Association to the Local Authority at the rate of 2% above the base lending rate per annum (as published from time to time) of Barclays Bank plc, from the date when such payment is due until the date of payment.
- 9.8 The Association shall set and collect a reasonable weekly rent and service charge in compliance with the requirements of the applicable Regulatory Body and the Occupancy Agreement. The Association shall inform the Local Authority and Occupants of any proposed changes to the rent or service charge policy.
- 9.9 The Association will review the charges annually in accordance with its rent and service charge setting policy and inform the Occupant about any proposed changes to rent or service charges. The Association shall submit details of any proposed changes (e.g. increase in rent) which would result in a potential increase liability for the Local Authority.
- 9.10 The liability of lost income owing to Void Periods shall be attributed as specified in the Contract Payment Arrangements.

## **10 Contract Management**

- 10.1 The Local Authority shall notify the Association of the name of the Contract Manager, who shall perform the functions allocated to them under the Agreement and who shall be the representative of the Local Authority for all purposes and matters connected with the Agreement.
- 10.2 The Contract Manager may appoint a duly authorised representative and shall notify the Association immediately in writing of the replacement and of the identity of the new Contract Manager.
- 10.3 The Local Authority shall ensure that the Contract Manager, or duly authorised representative, is available for consultation with the Association at all reasonable times during the Agreement.

- 10.4 The Association shall appoint a named individual who shall be empowered to act on behalf of the Association for all purposes connected with the Agreement and the Association shall notify the Local Authority of the name of the said individual. Any information, instruction or other communication given, or made to the Contract Manager, by this individual shall be deemed to have been given or made by the Association.
- 10.5 The Association shall ensure that the individual referred to in Clause 10.4 or a competent individual, duly authorised, is available to meet the Contract Manager at any reasonable time.

## **11 Monitoring and Review**

- 11.1 The Association shall co-operate in the monitoring and evaluation activities undertaken by the Local Authority in respect of the Agreement and this shall be in addition to any monitoring as may be required by any applicable Regulatory Body.
- 11.2 Schedule 2 shall be reviewed annually in April and shall be updated to reflect any changes to rent levels (which will usually take effect from the 1<sup>st</sup> Monday in April each Year) and to remove properties or add further properties. Such amendment must be by a Variation. However, neither Party shall unreasonably withhold or delay their consent to a Variation for this purpose.
- 11.3 The Parties may also add or remove properties from the Properties at any time during the subsistence of the Agreement. Such amendment must be by a Variation. However, neither Party shall unreasonably withhold or delay their consent to a Variation that seeks to remove any of the Properties.
- 11.4 The Local Authority shall convene a Service review meeting with the Association (and Support Providers, as appropriate) each Year. At the Service review meeting the Association shall be required to demonstrate that the Service is being provided in accordance with the Agreement.
- 11.5 Should the Local Authority require any alterations to the Service as a result of monitoring or the Service review meetings, such alterations shall be made by Variation agreed in writing by the parties, and the Association shall not unreasonably withhold or delay its consent to any such Variation.

## **12 Employment**

- 12.1 The Association shall discharge its responsibility to Workers for payment of all amounts due for work performed and be fully responsible for the administration of all income tax, national insurance contributions or levies of any kind relating to or arising out of the employment of its Workers under this Agreement.
- 12.2 The Association shall ensure that all Workers know of and understand the requirements of the Agreement.

- 12.3 The Association shall have a comprehensive recruitment and selection policy and process which will take account of all relevant legislation in force from time to time. The Association's policy shall also take into account all equal opportunities legislation in force from time to time. The policy shall cover, without limitation, recruitment, advertising and interviewing. It shall also establish the competencies and qualifications of Workers.
- 12.4 A Job Description, Person Specification and Standard Application Form shall be used throughout the recruitment process to recruit Workers.
- 12.5 A minimum of two written references shall be obtained and checks made to confirm the status of referees of each job applicant. At least one reference shall be obtained from the most recent employer of each job applicant.
- 12.6 Any gaps in employment history of a job applicant shall be checked and records kept demonstrating these checks have been made together with any corroborating evidence.
- 12.7 It is the responsibility of the Association to ensure that all Workers, whether paid or unpaid, that meet the eligibility criteria for an enhanced disclosure check undertaken through the Disclosure and Barring Service or any successor body), are subject from time to time to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service (or any successor body) including a check against the adults' barred list to assist in determining their suitability to have contact with the Occupants and to monitor the level and validity of checks for each member of staff.
- 12.8 It shall be the responsibility of the Association to meet any costs associated with the need to undertake such enhanced disclosure checks via the Disclosure and Barring Service or any other successor body. It shall be the responsibility of the Association to meet any costs incurred in meeting the requirements of all relevant legislation in force from time to time, establishing continuity of employment, investigating gaps in employment history and any costs arising from obtaining references to screen out those unsuitable to have contact with Occupants or to be involved in the provision of this Service.
- 12.9 The Association shall ensure that where Workers are employed through an employment agency, the employment agency has undertaken all required vetting in accordance with the requirements of all relevant legislation in force from time to time and has concluded enhanced Disclosure and Barring Service checks, verified continuity of employment, investigated gaps in employment history and obtained references to screen out those unsuitable to have contact with Occupants or to be involved in the provision of this Service.
- 12.10 The Association shall ensure that where Workers who do not have the relevant checks are likely to have contact with Occupants the Workers should be accompanied by other Workers or Support Provider staff who do have the relevant checks.

- 12.11 The Association shall ensure that all its Workers are properly inducted, trained and instructed with regard to all aspects of the provision of the Service and in particular (without limitation) with regards to:-
- the particular tasks that a Worker has to perform;
  - the required skills, experience and knowledge required to deliver the Service;
  - all of the relevant provisions and requirements under this Agreement.
- 12.12 The Local Authority shall not act as arbitrator between the Association and its Workers under any circumstances.
- 12.13 The Association shall ensure that it employs at all times an adequate number of sufficiently qualified and experienced Workers to provide the Service and shall ensure that a strategy is in place to identify ongoing training and development needs of Workers.
- 12.14 The Association shall ensure that Workers receive planned and regular supervision sessions at frequencies not less than every eight weeks.
- 12.15 The Association shall comply with its statutory obligations under the Equality Act 2010 and to that end shall adopt a policy to comply with those obligations. Without limitation to the foregoing, the Association shall not treat one group of people less favourably than others because of their colour, race, nationality or ethnic origin or other protected characteristics, in relation to decisions to recruit, train or promote Workers.
- 12.16 In the event of any finding of unlawful discrimination being made against the Association in the three years prior to the Contract Period or during the Contract Period by any Court or Industrial Tribunal, or any adverse findings in any formal investigation by the Commission for Racial Equality over the same period, the Association shall notify the Local Authority in writing and take appropriate steps to prevent repetition of unlawful discrimination.
- 12.17 The Association shall set out its policy on race relations:
- 12.17.1 in instructions to those concerned with recruitment, training and promotion; and
  - 12.17.2 in documentation available to Workers, other representative groups of employees; and
  - 12.17.3 in recruitment advertisements and other associated literature.
- 12.18 The Association shall observe as far as possible the Commission for Racial Equality's Code of Practice on Racial Equality in Employment 2005, the Equal Opportunity Commission's Code of Practice – Sex Discrimination, the Disability Rights Commission's Code of Practice on Employment and Occupation 2004, and any other Codes of Practice issued by the Equality and Human Rights Commission, which give practical guidance to employers and others on the elimination of discrimination in respect of protected characteristics and the promotion of equality of opportunity in employment, including but not limited to steps that can be taken to encourage members of ethnic minorities to apply for jobs or to take up training opportunities.



**13 Not used**

**14 Not used**

**15 Confidentiality**

15.1 The Association shall, subject to clauses 16 to 18:

15.1.1 treat as confidential all information obtained or received by it in connection with the Agreement and only use such information for the purposes of the Agreement;

15.1.2 comply with the provisions of the DPA and that any Personal Data shall not be disclosed to any third party, unless expressly provided herein and subject in all respects to the Local Authority's prior written consent;

15.1.3 ensure that the Association's Workers, agents and sub-contractors observe the confidentiality of such information and comply with the provisions of this Clause 15.1;

15.1.4 indemnify the Local Authority against any actions, damages, claims, loss or proceedings or costs arising from any breach of this Clause 15 by the Association.

15.2 Notwithstanding the provisions of clause 15.1, the Association may disclose:

15.2.1 any information about an Occupant to any person with the informed prior consent of that Occupant and the prior written approval of the Local Authority;

15.2.3 in exceptional circumstances only, information about an Occupant to any person without the consent of that Occupant but subject always to the prior written approval of the Local Authority. Such exceptional circumstances may include, without limitation:

15.2.3.1 where disclosure is necessary in the best interests of that Occupant or anyone else so affected (this shall include Occupant protection issues);

15.2.3.2 where disclosure is necessary in order to prevent or detect crime, or to apprehend offenders;

provided that in each such case the person concerned has signed a confidentiality undertaking on substantially the same terms as set out in this clause 15.

15.3 The restrictions in clauses 15.1 shall continue to apply after the Agreement has come to an end or, if it takes place earlier, termination of the whole of this Agreement but they shall not apply (whether whilst this Agreement is in force or after) to information which:

15.3.1 is in, or comes into, the public domain (except if this is as a result of a breach by either party of this clause);

15.3.2 is required to be disclosed by law;

- 15.3.3 was already in the Association's possession without any restriction as to its use;
  - 15.3.4 subsequently lawfully comes into the Association's possession from a third party; or
  - 15.3.5 is required to be disclosed by any Regulatory Body or governmental body.
- 15.4 Both Parties agree to respect the confidentiality of individual Occupants and to comply with the law including the DPA.
- 15.5 The Local Authority and the Association shall each inform the Occupants that there may be a need to share information with third parties on a need-to-know basis in order to ensure that the housing management and support is delivered effectively.
- 15.6 Where there is a need to share Personal Data it shall only be shared to the extent that is necessary to do so and shall only be shared with those individuals or organisations that have a legitimate need for it.
- 15.7 If an Occupant raises any objections to Personal Data being shared this may have implications for the delivery of support and the possible consequences should be explained to the Occupant. Where objections have been raised by an Occupant, Personal Data should not be shared unless it is essential to do so and the disclosure is permitted under the DPA.
- 15.8 Personal Data that is passed to another organisation should be restricted to that in which the recipient has a legitimate interest and the recipient shall be subject to the same obligations as the Local Authority and the Association in respect of the Personal Data.

## **16 Data Protection Act 1998 (DPA)**

- 16.1 Both Parties must comply with the requirements of the DPA insofar as they apply to the provision of the Service and/or otherwise to this Agreement
- 16.2 Notwithstanding any other provision of this Agreement:
- 16.2.1 in relation to all Personal Data, the Association shall at all times comply with the DPA as a data controller if necessary, including maintaining a valid and up to date registration or notification under the DPA covering the data processing to be performed in connection with the Service;
  - 16.2.2 the Association and any sub-contractor shall only undertake processing of Personal Data reasonably required in connection with the Service and shall not transfer any Personal Data to any other country or territory outside the European Economic Area;
  - 16.2.3 the Association shall bring into effect and maintain all technical and organisational measures to prevent unauthorised or unlawful processing of Personal Data and accidental loss or destruction of or damage to Personal Data including but not limited to taking

reasonable steps to ensure the reliability of staff having access to the Personal Data;

- 16.2.4 the Local Authority may, at reasonable intervals, request a written description of the technical and organisational methods employed by the Association and any sub-contractor referred to in Clause 16.2.3 and within 20 Working Days of such a request, the Association shall supply written particulars of all such measures detailed to a reasonable level such that the Local Authority can determine whether or not, in connection with the Personal Data, it is compliant with the DPA.
- 16.2.5 in complying with the obligations of this Clause 16.2, the Parties agree that:
  - 16.2.5.1 they shall at all times act in good faith and the Association shall do nothing to prevent the Local Authority from complying with its obligations under the DPA;
  - 16.2.5.2 the Association will not disclose to any third party information that is exempt under the DPA.
- 16.3 The Association shall indemnify and keep indemnified the Local Authority against all losses, claims, damages, liabilities, costs and expenses (including reasonable legal costs) incurred by or in respect of any breach of this Clause 16 by the Association.

## **17 Freedom of Information Act 2000 (FOIA)**

- 17.1 Notwithstanding any other provision of this Agreement:
  - 17.1.1 The Association acknowledges that the Local Authority is subject to the requirements of the FOIA and the EIR 2004 and that the Local Authority may be obliged under the FOIA and the EIR 2004 to disclose any information under this Agreement (or in any other related documentation) provided by the Association:
    - 17.1.1.1 without consulting with the Association; or
    - 17.1.1.2 following consultation with the Association and having taken their views into account;
  - 17.1.2 the Association shall use all reasonable efforts to assist the Local Authority in its compliance with the obligations imposed on the Local Authority by the FOIA and the EIR 2004, to the extent that the obligations relate to the information held by the Association on behalf of the Local Authority or otherwise in connection with this Agreement or the Service provided hereunder;
  - 17.1.3 the Association shall provide the Local Authority with a copy of all information, including confidential information, held by the Association on behalf of the Local Authority, or otherwise in connection with this Agreement or the Service provided hereunder, in the form that the Local Authority requires within five Working Days of the Local Authority's request, to enable the

Local Authority to respond to a request for information within the time for compliance set out in the FOIA and the EIR 2004;

- 17.1.4 the Association shall ensure that information held on behalf of the Local Authority or otherwise in connection with this Agreement or the Service provided hereunder is retained for disclosure and shall permit the Local Authority to inspect such information from time to time.
- 17.1.5 In complying with the obligations of Clause 17.1, the Parties agree that:
  - 17.1.5.1 they shall at all times act in good faith and the Association shall do nothing to prevent the Local Authority from complying with its obligations under the DPA, FOIA and the EIR 2004; and
  - 17.1.5.2 they shall not disclose to any third party information that is exempt under the DPA, FOIA and the EIR 2004.
- 17.2 The Association shall indemnify and keep indemnified the Local Authority against all losses, claims, damages, liabilities, costs and expense (including reasonable legal costs) incurred by it in respect of any breach of Clause 17.1 by the Association.

## **18 Environmental Information Regulations 2004 (EIR 2004)**

- 18.1 The Association shall at all times comply with the EIR 2004 which provides a parallel access to documents regarding environmental information. All documents detailing environmental information shall be automatically exempt from disclosure under the Freedom of Information Act 2000, but shall instead be disclosed under the EIR 2004, which has different rules for 'Commercial Interest' and 'Confidentiality' exemptions as well as other applicable exemptions and shall relate to information about the elements of the environment, factors likely to affect these elements, the measures likely to affect these elements and factors, reports and cost-benefit analyses relating to these measures, and the state of human health and safety arising out of these issues.
- 18.2 The Association shall detail any exemptions under the EIR 2004 to allow for the protection of intellectual property rights, the protection of information volunteered without obligation and confidentiality of commercial and industrial information where confidentiality is provided by law to protect a legitimate economic interest.

## **19 Indemnity and Insurance**

- 19.1 The Association shall indemnify, and keep indemnified, the Local Authority against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of, or in any way arising out of the provision of, or failure to provide the Service in relation to, injury or death of any person, and loss of, or damage to, any property (including property belonging to the Local Authority) and any other matter whatsoever arising from the Association's provision of Service except and to the extent that it

may arise out of the act, default or negligence of the Local Authority, its employees or agents.

19.2 Without limiting or affecting the liabilities of the Association under the Agreement, the Association shall insure with a generally recognised reputable insurance company for the purposes of this Agreement for a minimum of:-

- £10,000,000 (ten million pounds) in respect of Employers Liability,
- £5,000,000 (five million pounds) in respect of Public Liability,

## **20 Assignment and Sub-Contracting**

20.1 The Local Authority shall be entitled to assign the Agreement or benefit of the Agreement or any part thereof and shall give written Notice of any assignment to the Association.

20.2 The Association shall not, without obtaining the prior written consent of the Local Authority:

20.2.1 assign the Agreement or any part thereof or the benefit or advantage of the Agreement or any part thereof; or

20.2.2 sub-contract the Service or any part of the Service.

20.3 In the event of a proposed change of ownership, the Association shall immediately and in any event prior to the change taking place, inform the Local Authority.

20.4 The Association shall give notice to the Local Authority should:

- it merge with another organisation;
- it transfer any of its business to another organisation.

20.5 The Local Authority, on consideration of any change arising as a result of Clause 20.3 and 20.4 may take action to terminate the Agreement in accordance with Clause 26` contained herein.

## **21 Agency**

21.1 Neither the Association nor its Workers shall in any circumstances hold themselves out as being:

21.1.1 the employee, servant or agent of the Local Authority;

21.1.2 authorised to enter into any contract on behalf of the Local Authority or to in any way bind the Local Authority to the performance, variation, release, discharge or any obligation under this Agreement.

## **22 Waiver**

22.1 Failure by either Party at any time to enforce the provisions of the Agreement or to require performance by the Party in Default of any of the provisions shall not affect the validity of the Agreement or any part thereof or the right of the Party not in Default to enforce any provision in accordance with its terms.

## **23 Notice**

23.1 Any Notice to be served upon the Local Authority shall be valid and effective if it is in writing and is sent by recorded delivery to the Local Authority or delivered by hand to the Contract Manager.

23.2 Any Notice to be served upon the Association shall be valid and effective if it is sent by recorded delivery or delivered by hand to the registered office or the principal place of business of the Association or delivered by hand to the named individual of the Association referred to in clause 10.4.

23.3 The Local Authority and the Association shall:

23.3.1 Pass on to the other within seven days of receipt a copy of any Notice received or served;

23.3.2 Notify the other immediately of any incident which could lead to adverse publicity or of any change of circumstances or any complaint concerning the Service to the other;

23.3.3 Not do anything or knowingly permit anything to be done in the Properties which would invalidate any insurance taken out by either party or which would increase the premiums payable;

23.3.4 Should they become aware of any circumstances that may affect the continued provision of the Service, inform the other/s within 7 days.

## **24 Default**

24.1 If, in the reasonable opinion of the Local Authority or the Contract Manager, the Association fails to provide the Service in accordance with the Agreement, the Local Authority shall issue a Notice of Default to the Association. If a Notice of Default is issued, the Local Authority may (without prejudice to any other remedy available to it):

24.1.1 require the Association to remedy the Default (where the Default is capable of such) within such reasonable period as the Local Authority may specify without any additional charge to the Local Authority; or

24.1.2 itself provide the Service, or have the Service provided in whole or in part, until such time as the Association can demonstrate to the Local Authority that the Association is able to provide the Service in accordance with the Agreement.

24.2 Where the Local Authority issues a Notice of Default under Clause 24.1 it may charge the Association the sum of £150.00 as a contribution towards the Local Authority's administrative costs in connection with the Notice of

Default. The Association acknowledges that this represents a genuine pre-estimate of the costs, which the Local Authority would incur in issuing each such Notice of Default.

- 24.3 Where the Local Authority provides the Service under Clause 24.1.2 hereof, they may recover any monies which have been paid in advance for the Service.
- 24.4 Where the Local Authority provides the Service under Clause 24.1.2 hereof, it may charge the Association the cost of providing the Service plus a reasonable sum in respect of the Local Authority's administration costs in connection with such provision.
- 24.5 Where, in the reasonable opinion of all Parties to the Agreement, the Default is deemed to be incapable of remedy, action to terminate the Agreement under Clause 26 shall be taken.

## **25 Resolution of Dispute**

- 25.1 Without prejudice to any other rights which each Party may have under the Agreement, either Party may register a dispute with the other by raising the matter with the other Party in writing (a '**Dispute Notice**'). A Dispute Notice shall set out brief particulars of the matter in dispute and the remedy or other outcome sought by the Party serving the Dispute Notice.
- 25.2 Within 10 Working Days of the serving of a Dispute Notice, the Contract Manager and the named individual of the Association referred to in clause 10.4 shall meet and attempt to resolve the dispute.
- 25.3 If the dispute remains unresolved after the Clause 25.2 meeting, the dispute shall be referred to the appropriate Executive Director of the Local Authority and the Care and Supported Housing Director of the Association who shall meet within 10 Working Days of the Clause 25.2 meeting to attempt to resolve the dispute.
- 25.4 If the dispute remains unresolved after the Clause 25.3 meeting, the dispute may be referred by either Party or both Parties to a suitably qualified expert (the 'Expert') for expert determination. The Expert shall be nominated jointly by the Local Authority and the Association or, in default of such agreement, shall be appointed by the President of the Law Society of England and Wales.
- 25.5 In the event of the dispute being referred to an "Expert" the Party requesting the referral shall be responsible for paying the costs of the nomination of the "Expert". Following such nomination, the fees accruing from the ongoing involvement of the "Expert" shall be shared equally between the Parties.

## **26 Termination**

- 26.1 Without prejudice to any other rights the Local Authority may have under the Agreement the Agreement may be terminated at any time by the

Local Authority giving at least 6 months' notice in writing to the Association (or such lesser period as may be agreed between the Parties).

26.2 The Local Authority may terminate the Agreement by Notice in writing having immediate effect should any of the following apply:

- 26.2.1 the Association has committed a breach of its obligations under the Agreement, any legislation or regulatory requirements, which is, in the reasonable opinion of the Local Authority substantial and, if the breach or failure is capable of remedy, has failed to remedy the same to the reasonable satisfaction of the Local Authority within 10 Working Days of the Association receiving Notice of the breach from the Local Authority;
- 26.2.2 the Association becomes bankrupt, or makes a composition or arrangement with its creditors, or had a proposal in respect of its company for a voluntary arrangement for a composition of debts, or scheme or arrangement approved in accordance with the Insolvency Act 1986;
- 26.2.3 any gift or inducement of whatever kind is offered or given by or on behalf of the Association to any person in connection with the Agreement or any offence committed under the Bribery Act 2010, or the offer or giving of any fee or reward, the receipt of which is an offence under Section 117(2) of the Local Government Act 1972;
- 26.2.4 the Association has a winding up order made or (except for the purposes of a solvent amalgamation or reconstruction) a resolution for voluntary winding up passed;
- 26.2.5 the Association has a provisional liquidator of its business or undertaking duly appointed;
- 26.2.6 the Association has an administrative receiver as defined in the Insolvency Act 1986 appointed;
- 26.2.7 the Association has possession taken by or on behalf of the holders of any debentures secured by a floating charge of any property comprised in or subject to the floating charge;
- 26.2.8 the Association is in circumstances which entitle the court or a creditor to appoint, or have appointed, a receiver, manager, or administrative receiver, or which entitle the court to make a winding-up order;
- 26.2.9 the Association is, or has any Partner, Director or Senior Manager of it involved in the Services, convicted of an offence of dishonesty;
- 26.2.10 where in the Contract Manager's reasonable opinion the Association by its act or omission causes or will cause a serious risk to the mental or physical well-being of all or any of the Occupants (details of which will be specified in the Notice);
- 26.2.11 Intervention or enforcement action is taken by the Regulatory Committee of the HCA or its successor body.



- 26.3 Termination under Clause 26.1 or 26.2 is without prejudice to the rights of the Parties accrued prior to termination and to Clauses 24 and 26.4.
- 26.4 In the event of termination under Clause 26.2, the Local Authority shall:
- 26.4.1 cease to be under any obligation to make further payment until any costs, loss or damage resulting from or arising out of the termination shall have been calculated and provided that such calculation shows a sum or sums due to the Association;
  - 26.4.2 be entitled to employ and pay other persons to provide and complete the provision of the Service or any part thereof;
  - 26.4.3 be entitled to deduct from any sum or sums which would but for Clause 26.4 have been due from the Local Authority to the Association under the Agreement or any other contract or be entitled to recover the same from the Association as a debt, any loss or damage to the Local Authority resulting from or arising out of the termination. Such loss or damage shall include the reasonable cost to the Local Authority of the time spent by it in terminating the Agreement and in making alternative arrangements for the provision of the Service or any part thereof.
- 26.5 In respect of a termination under Clause 26.2 when the total costs, loss and damage resulting from or arising out of the termination of the Agreement have been calculated and deducted so far as practicable from any sum or sums which would but for Clause 26.4 have been due to the Association, any balance shown as due to the Local Authority shall be recoverable as a debt. Alternatively, the Local Authority shall pay to the Association any balance shown as due to the Association.
- 26.6 Notwithstanding any other provision of this Agreement, if this Agreement is terminated by the Local Authority due to the Association's insolvency or Default at any time, the Local Authority shall only be liable to reimburse eligible payments made by, or due to, the Association in respect of the provision of the Service before the date of termination.

## **27 Legal Proceedings and Investigations by the Local Commissioner**

- 27.1 The Association shall, subject to the Local Authority meeting the reasonable expenses of the Association provide any information relevant to the provision of the Service, including written documents, to the Local Authority in connection with any actual or prospective legal inquiry or court proceedings in which the Local Authority is or may be involved; or any relevant disciplinary hearing internal to the Local Authority and shall ensure that its Workers are available to be interviewed in connection therewith and to give evidence in such inquiries or proceedings or hearings arising out of the provision of the Service.
- 27.2 The Association shall co-operate fully and in a timely manner with any investigation by the Local Commissioner (Local Government Ombudsman) under Part III Local Government Act 1974, subject to the Local Authority meeting the reasonable expenses of the Association, including any requests from time-to-time to provide documents, or to procure the provision of

documents and to provide, or to procure, any oral or written explanation relating to the same and any requests made by the Local Commissioner to view premises or to interview the Association's Workers.

27.3 In the event of:

- 27.3.1 a Local Commissioner reporting that injustice has been caused to a person aggrieved in consequence of maladministration; and
- 27.3.2 such maladministration having been caused or contributed to by the act or omission of the Association; and
- 27.3.3 the Local Authority deciding on having such report laid before it to make a payment or provide some other benefit to such person;
- 27.3.4 or in the event of the Local Authority reasonably deciding to make a payment in a local settlement of any Ombudsman complaint at the suggestion of, or with the approval of, the Local Commissioner in circumstances where the injustice complained of is attributable in whole or in part to the act or omission of the Association;
- 27.3.5 then the Association shall reimburse the Local Authority the amount of such payment or pay to the Local Authority the reasonable cost of such benefit as the case may be (or such proportion thereof as the Local Authority may reasonably determine is attributable to the act or omission of the Association) and the Local Authority may deduct any such sums from any payment otherwise due to the Association under the Agreement.

## **28. Financial Viability**

- 28.1 The Association shall ensure that sufficient and appropriate resources are available to provide the Service in accordance with the Agreement from the Commencement Date until the expiry of the Contract Period.
- 28.2 The Association shall make available to the Local Authority all such financial and other records, which relate to the provision of the Service as the Local Authority may reasonably require upon Notice to the Association. The Association shall co-operate with the Local Authority to enable the Local Authority to view and if necessary copy such records, either at the premises of the Association or the Local Authority.
- 28.3 In the event of the Association's financial position being substantially adversely affected by any circumstances, the Association shall notify the Local Authority at the earliest possible time and shall submit all relevant financial statements and documentation to the Local Authority and shall, if so required by the Local Authority, meet with the Local Authority's representatives to consider the implications (if any) of such an adversely affected financial position for both the Service and Occupants together with how such implications can be minimised.

## **29 Equality and Diversity**

29.1 The Association shall comply with all statutory provisions relevant to the Service including (without limitation) the Human Rights Act 1998, the Equality Act 2010 and the Transfer of Undertakings (Protection of Employment) Regulations 2006, and shall indemnify the Local Authority against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever necessarily and reasonably incurred by the Local Authority in respect of any breach by the Association of this Clause.

### **30 Conduct**

30.1 The Association shall take all reasonable steps to ensure that all Workers engaged in providing the Service are at all times considerate, respectful and act in accordance with the requirements of this Agreement.

30.2 The Association shall promote its partnership with the Local Authority in a positive manner and at all times act in such a manner as to enhance the image and reputation of the Local Authority.

30.3 In particular the Association shall ensure that all Workers are aware of the requirements of this Agreement and in particular do not:

30.3.1 harm or expose to danger any Occupant;

30.3.2 use abusive or insulting language or behaviour towards or in the presence of any Occupants;

30.3.3 contravene any smoking policy;

30.3.4 discriminate against or harass any Occupant, by reference to the age, disability, gender, marital status, race, religion or belief, sex, sexual orientation, nationality or other characteristic of that person or;

30.3.5 create nuisance or disruption to the Service;

30.3.6 display any pornographic material.

30.4 In the event of any breach of Clause 30.3, the Association shall remedy the breach through the use of its employment procedures.

30.5 The Association shall report any allegation of misconduct affecting the care of Occupants by a Worker to the Contract Manager.

30.6 In respect of this clause 30, the Association shall investigate and submit a report, including any actions taken as a result, to the Contract Manager, who will determine the impact on the Service and any further action to be taken under the terms of this Agreement.

### **31 Service Continuity**

31.1 The Association shall maintain a service continuity plan to ensure that it can continue to provide the Service in the event of an emergency which affects or may affect the Service. The Association shall:-

- prepare a robust service plan to ensure continuation of the Service;

- disclose such plan to the Local Authority (including any revisions made from time to time);
- permit the monitoring of the Association's service continuity arrangements by the Local Authority;
- notify the Local Authority if there is a requirement to invoke the Association's service continuity plan prior to any notification of such an issue or incident to the media in accordance with this Agreement;
- provide the Local Authority with a report on the management of any such incident and any consequential amendment made to the said plan or procedures thereafter;
- where a Property or Unit is uninhabitable, endeavour to provide temporary accommodation for Occupants, in conjunction with the Support Provider(s) and Local Authority.

## **32 Force Majeure**

32.1 In this Clause, 'Force Majeure' event means strikes or lockouts not involving the Association or its Workers, Acts of God, war, radiation, sonic booms, compliance with the express instructions of the police or other emergency services, compliance with any law or governmental order, rule, regulation or direction to the extent that any of the same are beyond the reasonable control of the Party seeking to rely on this Clause 32, or any other event or occurrence which is outside the reasonable control of either Party concerned or which is not attributable to any act or failure to take preventative action by the Party concerned.

32.2 If either Party is prevented, hindered or delayed from or in performing any of its obligations under this Agreement by reason of a Force Majeure event then:

32.2.1 the Party's obligations under this Agreement shall be suspended for so long as the Force Majeure event continues and to the extent that the Party is so prevented, hindered or delayed;

32.2.2 as soon as reasonably possible after commencement of the Force Majeure event that Party shall notify the other Party in writing of the occurrence of the Force Majeure event, the date of commencement of the Force Majeure event and the effects of the Force Majeure event on its ability to perform its obligations under the Agreement;

32.2.3 the Party shall use all reasonable efforts to mitigate the effects of the Force Majeure event upon the performance of its obligations under this Agreement and that Party shall forthwith notify the other Party in writing of the cessation of the Force Majeure event and shall resume the performance of its obligations under the Agreement as soon as reasonably possible after such cessation.

32.3 If the Force Majeure event continues for more than thirty days after the commencement of the Force Majeure event, either Party may terminate the provision of Services by giving not less than thirty days' Notice in writing to the other Party.

### **33 Human Rights Act 1998**

- 33.1 The Association shall have an understanding of the principles arising from the Human Rights Act 1998, comply with the Human Rights Act and submit details/handouts to Workers and offer training to ensure that all Workers have an awareness of all legislation in force from time to time.
- 33.2 The Association shall indemnify and keep indemnified the Local Authority against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of, or in any way arising out of any breach of the principles of the Human Rights Act or any related legislation.

### **34 Environmental Impact**

- 34.1 The Association shall at all times ensure that all of its Services are managed so that they take every practical opportunity to improve and maintain the quality and sustainability of both local and global environments.
- 34.2 The Association shall at all times endeavour to ensure that during the performance of the Agreement all working methods, equipment, materials and consumables, practices and procedures in the provision of the Service are employed which minimise environmental damage and adhere to any relevant environmental legislation.

### **35 Copyright**

- 35.1 All reports and other documents and materials the copyright or similar protection therein arising out of the performance of the Association's duties in relation to this Agreement are hereby assigned to and shall vest in the Local Authority absolutely.
- 35.2 The provisions of this Clause 35 shall apply during the continuance of the Agreement and after its termination howsoever arising.

### **36 Publicity**

- 36.1 The text of any press release or other communication to be published by or in the media concerning this Agreement shall require the prior approval of the Local Authority and the Association.
- 36.2 Subject to the provision in Clause 36.1, the Association shall respond, in the first instance, to all issues, concerns or queries that may arise from members of the community in respect of the provision of Service under this Agreement and inform the Local Authority of the outcome accordingly.
- 36.3 Either Party to this Agreement will notify the other Party immediately of any incident or formal complaint which could lead to adverse publicity or may affect delivery of this Agreement.

### **37 Contracts (Rights of Third Parties) Act 1999**

37.1 Nothing in the Agreement creates rights pursuant to the Contracts (Rights of Third Parties) Act 1999 in favour of anyone other than the Parties to the Agreement.

## **38 Law**

38.1 This Agreement is governed by English Law.

38.2 All disputes, claims or proceedings between the Parties relating to the validity, construction or performance of this Agreement shall be subject to the jurisdiction of the English Courts to which the Parties hereto irrevocably submit.

## **39 Prevention of Bribery and Corruption**

39.1 The Association warrants and undertakes to the Local Authority that it will throughout the duration of this Agreement use all reasonable endeavours to have in place adequate procedures (as referred to in section 7(2) of the Bribery Act 2010) designed to prevent persons associated with the Association from bribing any person with the intention of obtaining or retaining business for the Association or with the intention of obtaining or retaining an advantage in the conduct of business for the Association.

## **40 Nomination and Allocation**

40.1 Nominations to the Association shall be made in accordance with the Lettings Policy.

40.2 The Local Authority will nominate each prospective Occupant to the Association, which will have the final decision on the allocation of Units; the Association shall not unreasonably refuse a nominated prospective Occupant.

40.3 The Local Authority shall have sole nomination rights to the Properties until this Agreement is terminated or specific properties are removed from the Schedule by mutual agreement between the Parties.

## **41 Move-On**

41.1 Where there are concerns about an Occupant's ability to sustain a tenancy in the scheme, the Parties shall work co-operatively to achieve the best outcome for the Occupant, looking to resolve issues at the earliest opportunity. The first option to consider in such situations will always be to assist the Occupant to maintain their tenancy.

41.2 The Local Authority and the Association, in conjunction with the Support Provider (where applicable), shall use their reasonable endeavours to identify suitable alternative accommodation for Occupants whose support needs cannot be met in the Property.

**42 Relationship with Support Providers**

- 42.1 The Association should be prepared to work with multiple Support Providers at each Property and will be jointly responsible for effective working relationships with all Support Providers.
- 42.2 The Association shall be jointly responsible for entering into a formal agreement with at least one Support Provider at each property; as a minimum, an agreement must be in place with the Lead Support Provider.
- 42.3 Section 3 of Schedule 3 details the expected responsibilities of Support Providers; the Association must endeavour to ensure that agreements with Support Providers will broadly include those responsibilities.

**IN WITNESS WHEREOF** the Parties have executed this Agreement the day and year first before written.

**For and behalf of  
Sheffield City Council:**

**For and behalf of  
Sheffield City Council:**

**Signature:** .....

**Signature:** .....

**Name:** .....

**Name:** .....

**Position:** .....

**Position:** .....

**For and behalf of The Guinness  
Partnership Limited:**

**For and behalf of The Guinness  
Partnership Limited:**

**Signature:** .....

**Signature:** .....

**Name:** .....

**Name:** .....

**Position:** .....

**Position:** .....

## **SCHEDULE 1**

### **Contract Payment Arrangements**

1. Occupancy Agreements are between the Association and each Occupant and payment for the rent and service charge of the Properties is the responsibility of the Occupants; the Local Authority accepts no liability on behalf of the Occupants for failure to pay the Association or comply with their Occupancy Agreement.
2. Where there is an unlet or unoccupied Unit the following shall apply:
  - 2.1 The Association shall be liable for the first 6 weeks of income (rent and service charge) that is lost on a Unit as a result of a Void Period.
  - 2.2 The Local Authority shall be liable for income lost as a result of a Void Period thereafter and shall make payment to the Association in accordance with Clause 9 (Payment) in the Agreement.
3. The Association must maintain clear and detailed records of occupancy and Void Periods and will be expected to evidence that the 6 weeks threshold has been exceeded before the Local Authority will make payments.
4. The Association will provide quarterly Void Periods reports to the Local Authority detailing Void Periods and associated lost income.



## SCHEDULE 2

### Properties Covered by this Agreement

For the Mansfield View scheme the Properties and Units are:

Flats/ Rms (Units)	No	Road	Postcode
1 & 2	12	Mansfield View	S12 2AW
1, 2, 3 & 4	14	Mansfield View	S12 2AW
1 & 2	15	Mansfield View	S12 2AW
1 & 2	16	Mansfield View	S12 2AW
1 & 2	17	Mansfield View	S12 2AW
1 & 2	17A	Mansfield View	S12 2AW
1 & 2	18	Mansfield View	S12 2AW
1 & 2	19	Mansfield View	S12 2AW

For the Handsworth Scheme the Properties and Units are:

Flats/ Rms (Units)	No	Road	Postcode
1 & 2	63	St Joseph's Road	S13 9AU
1 & 2	65	St Joseph's Road	S13 9AU
1 & 2	101	Hall Road	S13 9AJ
1 & 2	102	Hall Road	S13 9AJ
1 & 2	103	Hall Road	S13 9AJ
1 & 2	105	Hall Road	S13 9AJ
1 & 2	107	Hall Road	S13 9AJ

For the Newfield Farm Close Scheme the Properties and Units are:

Flats/ Rms (Units)	No	Road	Postcode
1 & 2	2	Newfield Farm Close	S14 1LY
3	2	Newfield Farm Close	S14 1LY
4	2	Newfield Farm Close	S14 1LY

For the Brindley Crescent Scheme the Properties and Units are:

<b>Flats/ Rms (Units)</b>	<b>No</b>	<b>Road</b>	<b>Postcode</b>
Flat 1 x 3 Bed	70	Brindley Crescent	S8 8RT
Flat 2 x 1 Bed	70	Brindley Crescent	S8 8RT
Flat 3 x 1 Bed	70	Brindley Crescent	S8 8RT
Flat 4 x 1 Bed	70	Brindley Crescent	S8 8RT
Flat 5 x 1 Bed	70	Brindley Crescent	S8 8RT
Flat 6 x 1 Bed	70	Brindley Crescent	S8 8RT
Flat 7 x 1 Bed	70	Brindley Crescent	S8 8RT
Flat 8 x 1 Bed	70	Brindley Crescent	S8 8RT
Flat 9 x 1 Bed	70	Brindley Crescent	S8 8RT

This Schedule may be updated and properties may be added or removed in accordance with this Agreement.

## SCHEDULE 3

### Responsibilities of the Parties

#### **1 The Association is responsible for:**

- 1.1 Allocation of accommodation to potential Occupants nominated by the Local Authority in accordance with the Lettings Policy in its capacity as Local Housing Authority;
- 1.2 Lettings and facilitating the signing of the Occupancy Agreements;
- 1.3 Discussing the contents of the Occupancy Agreement with Occupants and/or their advocates with assistance from the Support Provider(s);
- 1.4 Administering the Occupancy Agreement and carrying out its obligations as landlord;
- 1.5 Undertaking legal action relating to breaches of the Occupancy Agreement as necessary. The Association shall inform the Local Authority and Support Provider(s) (where appropriate) about any legal action and will consult the Local Authority and Support Provider(s) about any evictions. The Association shall bear the cost of any legal proceedings;
- 1.6 Setting the rent and service charges;
- 1.7 Informing the Occupants of the new rent and service charges in accordance with the requirements of the Occupancy Agreements;
- 1.8 Informing the Local Authority and Support Providers (where appropriate) of any proposed changes to rent and service charges;
- 1.9 Maintaining proper records of rent and charges payable and received;
- 1.10 Maintaining proper records of dates and details of Voids and informing the Local Authority when they occur;
- 1.11 Collecting rent and service charges;
- 1.12 Maintaining the premises in accordance with the requirements of the Landlord and Tenant Act 1985;
- 1.13 Arranging and monitoring own equipment service contracts;
- 1.14 Maintaining the decoration of exterior and interior communal areas of the premises to a reasonable standard, subject to the agreed maintenance budget (internal to the Association);
- 1.15 Maintaining communal gardens as per Occupancy Agreement;

- 1.16 Making adequate provision for emergency repairs inside and outside normal office hours;
- 1.17 Informing the Local Authority and Support Provider(s) of any statutory Notices served on the Association in respect of the property covered by this Agreement;
- 1.18 Cleaning common parts and ensuring that gardens, paths and dustbin areas are kept clean and tidy unless otherwise specified in the Occupancy Agreement.
- 1.19 Maintaining budgets for the premises covering housing management, maintenance and landlord's services;
- 1.20 Maintaining an inventory of furniture, white goods, carpets and equipment, if provided and owned by the Association;
- 1.21 Maintaining, repairing and replacing (where necessary) any furniture, white goods, carpets and equipment, if provided and owned by the Association.
- 1.22 Facilitating adaptations to the premises (where reasonable) to meet the needs of Occupants subject to the provision of adequate funds for those purposes. Adaptations shall be those reasonably recommended by an Occupational Therapist or Care Manager and agreed by the Local Authority;
- 1.23 Paying council tax, water, gas and electricity whenever that charge becomes the responsibility of the landlord, and providing information to the Local Authority on Council Tax when requested.
- 1.24 The Association shall insure each Property to its full replacement value. The Association will endeavour to provide temporary accommodation for Occupants in the event of an emergency. The Support Providers may assist in this to the extent that it is reasonable to do so as may the Local Authority in its capacity as Local Housing Authority;
- 1.25 In the event of an emergency outside office hours relating to electricity, gas or water services, or anything that would endanger the health and safety of the Occupants, the Support Provider shall support Occupants to contact the Association's emergency service and request attendance to eliminate the hazard. However if the service is not available or the Association fails to respond to the repair within the agreed timescale, the Support Provider or responsible staff may make reasonable immediate arrangements to eliminate the hazard. The Support Provider will inform the Association in writing with full details of the nature of the emergency, what efforts were made to contact the Association and what works were carried out;
- 1.26 The Association shall meet the cost of such emergency work unless it has resulted from any act or omission of the Support Provider or Occupant;
- 1.27 Consultation with or involving Occupants, the Local Authority and the Support Provider in changes to the management or services offered at the scheme;
- 1.28 Employing appropriate staff to carry out the above responsibilities;

- 1.29 Regular liaison with the Local Authority and Support Provider(s);
- 1.30 The relevant Fire Safety Responsibilities detailed in Section 4.

## **2 The Local Authority is responsible for:**

- 2.1 The nomination of prospective new Occupants in a timely fashion, where vacancies arise;
- 2.2 Assessing care and support needs and arranging provision for those with eligible needs under learning disabilities eligibility criteria as amended from time to time;
- 2.3 Convening the annual service review meeting.

## **3 The Association's Agreement with Support Providers:**

- 3.1 The Association will endeavour to ensure that any agreements with Support Providers will place broadly the following responsibilities on to Support Providers:
  - 3.1.1 Providing all necessary care and personal support services (in accordance with proper professional practice) for all Occupants of the Property.
  - 3.1.2 Ensuring:
    - 3.1.2.1 That a pre-allocation form is completed and provided to the Association for consideration and response in advance of any offer of rehousing being made;
    - 3.1.2.2 that in conjunction with the Local Authority the Association is given not less than two (2) weeks' notice that the proposed Occupant is to move into the Property;
    - 3.1.2.3 that the Occupant does not move into the Property without first ensuring that the Occupant has signed an Occupancy Agreement with the Association;
    - 3.1.2.4 that Occupants of the Property reside in the Property to which their Occupancy Agreement relates, and ensuring that Occupants do not move between the Units of Accommodation or between any other properties in which the Association may have an interest (without the prior written consent of the Association).
  - 3.1.3 Arranging moving in of potential Occupants in conjunction with the Local Authority.
  - 3.1.4 Maintaining a support plan for each Occupant (in conjunction with the Local Authority).

- 3.1.5 Ensuring that no alterations or additions are made to the Property except with the prior written consent of the Association.
- 3.1.6 Employing and providing qualified and sufficient staff to ensure that support can be given to Occupants in accordance with:
  - 3.1.6.1 the Care Standards Act 2000
  - 3.1.6.2 the Local Authority's contract with the Support Provider, where applicable
  - 3.1.6.3 the Occupant's contract with the Support Provider, where applicable
  - 3.1.6.4 the terms of this Agreement
- 3.1.7 Employing the staff to meet the support needs of Occupants.
- 3.1.8 Assessing the support needs of new Occupants and ensuring that each has a support plan in place to enable them to develop the necessary skills to live in the home with appropriate support and participate in community and leisure activities.
- 3.1.9 The general welfare of Occupants.
- 3.1.10 Meeting Occupants' needs in areas of safety and well-being and making appropriate referrals, where necessary.
- 3.1.11 Providing appropriate support to Occupants in respect of their finances including advising and assisting in respect of claims for welfare benefits, rent and utility payments, in conjunction with an appointee where appropriate.
- 3.1.12 Reviewing the support plans of individual Occupants and seeking referrals, where necessary.
- 3.1.13 Ensuring that the property is kept safe in accordance with the health and safety policies including keeping means of escape free from obstruction.
- 3.1.14 Supporting Occupants to notify the Association of disrepair or maintenance defects of which it is aware or doing so on behalf of the Occupants where they are unable/ unwilling to do so.
- 3.1.15 Not used.
- 3.1.16 Supporting Occupants to arrange access to the Association's maintenance contractors when required.
- 3.1.17 Supporting Occupants to maintain physical security arrangements.
- 3.1.18 Liaising with the Association and the Local Authority to obtain any aids or adaptations needed by Occupants at the Properties.

- 3.1.19 Providing copies of any inspection reports and any other relevant reports to the Association.
- 3.1.20 General liaison with the Association.
- 3.1.21 Assisting the Occupants to keep an inventory of furnishing belonging to the Association.
- 3.1.22 Assisting the Occupants to maintain the internal décor to a high standard, where it is the Occupants' responsibility.
- 3.1.23 Working with the Occupants to ensure that they understand the requirements of the Occupancy Agreement entered into with the Association.
- 3.1.24 Consulting with Occupants on any changes/provision of support services.
- 3.1.25 Supporting Occupants to arrange access and gain permission for Association staff to enter the premises.
- 3.1.26 Advising the Occupants that their personal items and effects are not insured by the Association and that the Occupants should take out insurance to cover them.
- 3.1.27 Assisting the Occupants to maintain the furniture and equipment provided at the Property by the Occupant in a safe and usable condition.
- 3.1.28 Keeping all gas and electrical equipment which has been provided and is owned by the Occupants in good and safe working order (including replacing where necessary).
- 3.1.29 Assisting the Occupants to reimburse the Association for the cost of any repairs necessitated by any act or omission of the Occupant.
- 3.1.30 Assisting the Occupants to report to the police any criminal damage at the Property and obtain a crime reference number and inform the Association.
- 3.1.31 Using reasonable endeavours to prevent Occupants from deliberately damaging the property and to support Occupants to pay charges for repair as a result of damage.
- 3.1.32 In conjunction with the Association's Technical Officer, assisting the Occupants to carry out internal and external inspections of the Property as required to ensure compliance with the above obligations.
- 3.1.33 Not used.

- 3.1.34 Assisting the Occupants to understand that any alteration to the Property cannot be made without the prior written consent of the Association and uphold any conditions contained within that consent.
- 3.1.35 Where an Occupant requires a specific Property adaptation or installation due to disability, assisting the Occupant to make applications to the appropriate bodies. Any adaptations should only be carried out with prior written approval from the Association.
- 3.1.36 Using reasonable endeavours to support an Occupant to comply with the terms of the Occupancy Agreement and, in particular, to prevent the Occupant from breaching the following clauses of their Occupancy Agreement:
- Nuisance
  - Illegal or immoral use
  - Racial and other harassment
  - Violence towards staff
  - Health and safety
  - Absence from property
- 3.1.37 The relevant Fire Safety Responsibilities detailed in Section 4.

## **4 Fire Safety Responsibilities**

### **Responsibilities of Support Providers:**

- 4.1 Establishing health and safety procedures which safeguard their employees whilst working at the properties;
- 4.2 The Support Provider's fire, health and safety procedures should not take away responsibility from Occupants to manage their own fire, health and safety requirements. Where Occupants are unable to do so independently, the Support Provider will provide the appropriate support to enable Occupants to do this;
- 4.3 Supporting Occupants to know what to do in the event of a fire evacuation at the property. Appropriate records shall be kept. These should include specific approaches, risks and any specialist equipment required;
- 4.4 Supporting Occupants to report defective fire-fighting and fire protection equipment to the Association, immediately upon becoming aware of such defects;
- 4.5 Checking fire equipment, fire alarms and emergency lighting and conducting appropriate fire drills on a regular basis and keeping appropriate records of these activities;



- 4.6 Notifying the Association immediately about defective fire-fighting and fire protection equipment, where provided by the Association;
- 4.7 Adhering to the Regulatory Reform (Fire Safety) Order 2005 by ensuring that a Fire Risk Assessment and Action Plan for the building as a workplace are in place. These documents to be provided at least annually or in the event of:
- A fire
  - A 'near miss' or other incident
  - A new Occupant moving in
- 4.8 Ensuring that a Personal Emergency Evacuation Plan (PEEP) is completed and reviewed at least annually for each Occupant
- 4.9 Ensuring all Occupants are aware of the means of escape in both single and shared dwellings

**Responsibilities of the Association:**

- 4.10 Ensuring that the furniture provided by the Association at the Property meets Furniture and Furnishings (Fire) (Safety) Regulations 1988 as amended;
- 4.11 Keeping all fixed gas and electrical equipment supplied by the Association at the property in good and safe working order, repairing and replacing where necessary and carrying out regular gas and electrical checks of such installations and equipment in accordance with the relevant legislation and best practice;
- 4.12 Meeting the landlord's obligations of the Regulatory Reform (Fire Safety) Order 2005;
- 4.13 Otherwise adhering to the Regulatory Reform (Fire Safety) Order 2005 including by consulting, co-operating and co-ordinating with Support Providers;
- 4.14 Providing adequate means of escape and fire protection equipment in the property and servicing, maintaining and replacing this where necessary all in accordance with the reasonable recommendations of the Fire Officer.

## **SCHEDULE 4**

### **Appendix 5**

#### **to Sheffield City Council's Lettings Policy**

#### **Lettings to Supported Accommodation**

**(This may be subject to change at a future date)**

### **1 Introduction**

- 1.1 This appendix applies to nominations to the supported accommodation listed at the attached Schedule. If the City Council is the landlord of accommodation listed then these criteria will be used for allocations.
- 1.2 Supported Accommodation schemes are provided by a number of housing providers. Adults in these schemes have care or support needs for reasons such as age, learning disability, physical disability, sensory impairment or mental health. They receive an appropriate level of care and support to enable them to live independently. Some accommodation is self-contained, some is for small groups of people sharing, so offering a choice of where, how and with whom the service user may live.
- 1.3 Not all schemes are suitable for all applicants. The Council will not nominate an applicant to a scheme if it considers the applicant is unsuitable for the scheme. The factors to which the Council will have regard are care, support and housing needs, age, preferences of potential sharers in shared accommodation, Safeguarding Adults issues, the type of accommodation available and any agreement the Council has made with the housing provider.
- 1.4 The City Council will make nominations to a scheme. The decision to grant a tenancy will be made by the housing provider.

### **2 Aims of the Lettings Criteria**

- 2.1 The aim of these lettings criteria is to ensure that properties in the Supported Accommodation schemes are let fairly to people in eligible need and to give people as much choice and control as possible about the place they live.
- 2.2 In shared and cluster accommodation this includes ensuring the compatibility of Occupants as far as possible including taking the age, needs and wishes of existing residents into consideration, so that the letting is sustainable. Safeguarding Adults issues will also be considered as part of the process.
- 2.3 The applicant must normally have a care and/or support need but housing needs will also be taken into account. The balance of needs within a scheme is referred to below as the scheme "profile".

- 2.4 The care needs of the applicant will be assessed in accordance with guidance on adult social care eligibility criteria as amended from time to time, and may include consideration of whether a nomination may end or prevent a residential or nursing placement; support needs will be assessed with reference to the Council's Supporting People Programme.

### **3 Variations to Lettings Policy**

- 3.1 Vacancies will not be offered through Choice Based Lettings.
- 3.2 Nominations will be made taking into account the following factors in order of priority:
- (a) the profile of the particular scheme established by the housing provider as agreed with the Council;
  - (b) the lettings criteria and priorities elsewhere in this policy.