

APPENDIX 4

PROPOSED INTRAGROUP AGREEMENT

DATED _____ **2017**

Brabners Draft: 22.11.2016

PIERHEAD HOUSING ASSOCIATION LIMITED

and

LEASOWE COMMUNITY HOMES

and

[] LIMITED

INTRAGROUP AGREEMENT

Brabners

Horton House

Exchange Flags

Liverpool L2 3YL

(Draft 6; 22 November 2016)

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PARTIES

- (1) **PIERHEAD HOUSING ASSOCIATION LIMITED** a Community Benefit Society with registered number 20002R whose registered office is at 8th Floor, Horton House, Exchange Flags, Liverpool L2 3PG (**PHA**);
- (2) **LEASOWE COMMUNITY HOMES** a company limited by guarantee and a registered charity that is registered with Companies House under number 03616536 and with the Charity Commission under number 1072539 whose registered office is at [602 Aston Avenue, Birchwood Park, Birchwood, Warrington WA3 6ZN]¹ (**LCH**); and
- (3) [] **LIMITED** a company limited by shares and registered with Companies House under number [] and whose registered office is at [] (**COMMERCIAL SUBSID**)².

INTRODUCTION

- (A) The Group Members agree on a number of common objectives and have decided that they wish to form a group so that they can better achieve these objectives.
- (B) The Group Members wish to document their joint commitment to successful achievement of these objectives in this Agreement.
- (C) In order to form the new group, LCH and COMMERCIAL SUBSID will become subsidiaries of PHA and wish to regulate through this agreement how that relationship will be conducted and to set out their respective rights and obligations to each other whilst recognising LCH's status as a registered charity and PHA's status as an exempt charity.
- (D) The Group Members stated intention in establishing the Group is that whilst PHA as parent will have overall responsibility for the strategic direction, strategy and financial policy of the Group, those Group Members who are registered providers will act with autonomy, so permitting each Group Member to retain responsibility for operational matters and local strategy. As a whole the Group shall operate on the basis of collaboration and co-operation and on the basis of a shared understanding of the objectives of each Group Member, which will be facilitated through joint working groups and shared scoping and visioning events involving each Group Member's Boards.

Agreed terms

1. Interpretation

In this Agreement where the context so admits:

- 1.1 the following words and phrases shall bear the following meanings:

Board means the board of management or board of directors of each Group Member as appropriate;

Budget means each Group Member's own budgets for the current year set in accordance with clause 8;

Business Plan means each Group Member's own business and financial plans set in accordance with clause 8;

¹ Presumably this is going to change but where to?

² Company yet to be incorporated.

Charity Commission means the Charity Commission for England and Wales;

Constitution means each Group Member's constitution as appropriate;

Competent Authority means, insofar as each of these has regulatory authority over any of the Group Members, the Regulator, the Financial Conduct Authority, the Charity Commission, the Registrar of Companies or any other body with statutory regulatory authority over a Group Member;

Employee Services Agreement means an agreement in the form set out in Schedule 6 to be entered into by (i) PHA and each of LCH and COMMERCIAL SUBSID setting out the terms upon which employees (including Mary Quigg to LCH) are to be provided or seconded by PHA to each of those Group Members and (ii) such Group Members as may be agreed from time to time where the employees of one Group Member are to be provided or seconded to another Group Member;³

Group means PHA, LCH and COMMERCIAL SUBSID and **Group Members** means all or some of them as appropriate;

Group Chief Executive means the most senior executive officer of PHA appointed in accordance with clause 10.3;

Group Policies means a policy or policies applicable to the Group adopted and publicised in accordance with clause 7 by PHA;

LCH Staff means those people who, at the date of this agreement will or have become employees of [either PHA or] LCH, pursuant to a TUPE transfer from Your Housing Group;

LETA means the Leasowe Estate Tenant's Association;

PHA Board means the board of management of PHA;

Registered Provider means a social housing provider registered with the Regulator;

Regulator means the Homes and Communities Agency acting through the Regulation Committee established by it pursuant to Part 2 of the Housing and Regeneration Act 2008 or any successor body carrying out the same or similar regulatory functions in respect of Registered Providers;

Regulatory Standards means any standards or requirements established by the Regulator under Sections 193 and 194 of the Housing and Regeneration Act 2008;

Service Agreement means an agreement in the form set out in Schedule 4 to be entered into by (i) PHA and each Group Member setting out the terms upon which Services are to be provided by PHA to each Group Member (ii) LCH and PHA setting out the terms upon which LCH will manage PHA's Wirral stock on behalf of PHA; and (iii) such Group Members from time to time where services are provided by one to another;

Services means those services that one Group Member has agreed to provide to another pursuant to this Agreement and the relevant Service Agreement; and

Subsidiary means each of LCH and COMMERCIAL SUBSID and **Subsidiaries** shall mean some or all of them as the case may be.

3 It needs to be resolved whether LCH staff will be employed by LCH or PHA. It is anticipated that Mary will be a PHA employee.

- 1.2 Words denoting the singular shall include the plural and vice versa, words denoting the masculine gender shall include the feminine gender and vice versa and words denoting persons shall include corporations.
- 1.3 Reference to any statutory provisions or instruments shall be deemed to include reference to any such provisions or instruments as from time to time amended, varied, replaced, extended or re-enacted and to any orders or regulations under such provisions.
- 1.4 Reference to a clause or a schedule shall be deemed to be references to a clause or a schedule to this Agreement and references to a sub-clause shall be deemed to be references to a sub-clause of the clause in which the reference appears.
- 1.5 In this Agreement clause headings are included for ease of reference only and shall not affect this Agreement or the interpretation hereof.

2. **Group Objectives**

- 2.1 The parties wish to record their intention that they should be treated as a group and each party covenants to carry on its business in accordance with the Group's objectives as set out in this clause 2, as from time to time amended by agreement of all Group Members.
- 2.2 The objective underlying the Group is that of strong member organisations that undertake a range of activities to meet the needs of the communities in which they operate, including needs in housing, regeneration, community development, employment skills and training, health, the provision of sheltered workshops for people with physical or mental disabilities and education, but which subscribe to common values and disciplines, and which operate effectively in order to meet the aims of the Group's strategic plan, with PHA also acting as an enabling body to facilitate each Group Member delivering those objectives.
- 2.3 The business focus of all the Group is expected to reflect these objectives and values. The parties are expected to be dynamic and to act as autonomously as possible subject always to the parameters of this Agreement and the Business Plans and Budgets set in accordance with this Agreement.

3. **PHA Covenants**

- 3.1 PHA agrees that at all times it will comply with the Group Policies.
- 3.2 PHA also covenants with each Subsidiary in the terms set out in Schedule 2 in relation to co-operating with each Subsidiary.

4. **Subsidiary Covenants**

- 4.1 LCH agrees that:
 - 4.1.1 its policies for the admission of members shall be in accordance with the governance requirements set out in any Group Policies, or otherwise agreed with PHA; and
 - 4.1.2 it shall ensure that the composition of its Board shall satisfy the governance requirements set out in any Group Policies, or otherwise agreed with PHA.
- 4.2 Where there is any proposal to amend the constitution of a Subsidiary, the relevant Subsidiary shall notify PHA as soon as practicable. Such amendment shall require the consent of PHA in writing before becoming effective.
- 4.3 LCH shall have the right to establish skills based committees of its Board where there is a clear rationale for doing so and following consultation with PHA. No such committee may be established where PHA is of the reasonable opinion that the work of such committee would duplicate the work of PHA or any committee of PHA's Board or of the Group. PHA agrees

that it shall not create or allow the creation by another Group Member of a committee that will remove or restrict the permitted autonomy of another Group Member.

- 4.4 LCH covenants with PHA on the terms set out in Part 1 of Schedule 1.
- 4.5 COMMERCIAL SUBSID covenants with PHA on the terms set out in Part 2 of Schedule 2.
- 4.6 LCH covenants with PHA that as soon as reasonably practicable following the date of this agreement it shall review its relationship with Leasowe Development Trust having regard to the Regulatory Standards in general and the value for money standard in particular. LCH shall report to PHA on the outcome of that review on or by 30 June 2017 and LCH and PHA shall then discuss and agree on LCH's future relationship and dealings with Leasowe Development Trust.

5. **Responsibilities of the Parties and Charitable Status**

- 5.1 It is agreed that each party should have sole responsibility for all aspects of its business referred to as its responsibility in Schedule 3.
- 5.2 It is further agreed that each Board should have the right to manage their respective businesses in accordance with the objectives set out in their Group Member's Constitution and in the best interests of that Group Member, subject only to acting in accordance with Regulatory Standards (value for money in particular), Group Policies, the provisions of this Agreement, its Business Plan and Budget and the Group's overall business and financial strategy set in accordance with the terms of this Agreement.
- 5.3 The Group Members each recognise the registered or exempt charity status of LCH and PHA and (notwithstanding any other clause in this Agreement) agree not to undertake any action (whether under this Agreement or otherwise) which would cause PHA and/or LCH to act outside of their charitable objects or which would otherwise compromise their charitable status.⁴

6. **Provision of Assistance**

- 6.1 In the event that LCH does not or may not be able to comply with one or more of the Regulatory Standards, PHA and LCH will work together to determine what, if any, assistance PHA might provide and/or what steps need to be taken by LCH to address the actual or potential breach of the Regulatory Standard(s). Following this PHA may:
 - 6.1.1 provide such support as it assesses to be appropriate in the circumstances, and/or
 - 6.1.2 issue directions to LCH to take specific steps to remedy an actual breach or avoid a potential breach and/or
 - 6.1.3 exercise its rights under LCH's articles of association and/or this Agreement to appoint and/or remove members of LCH's Board.
- 6.2 Where LCH is required to do so under the Regulatory Standards, or any other requirement of the Regulator, it will forthwith notify the Regulator and PHA of an actual or potential breach of the Regulatory Standards, of the steps it intends to take in respect of that breach and of any assistance which is to be provided or directions which have been issued by PHA under clauses 6.1.1 and/or 6.1.2 and/or 6.1.3.
- 6.3 Any directions given by PHA under clause 6.1.2 shall not require LCH to act in such a way as to place it further in breach of a Regulatory Standard or which would prevent it from meeting any other Regulatory Standard or other formal requirement of the Regulator or the Charity Commission, regarding its obligations as a registered charity.

⁴ This assumes that PHA's conversion to become an exempt charity has been concluded prior to completion.

6.4 Should the circumstances described in this clause 6 arise then PHA may, at its absolute discretion, provide such additional support as it considers to be appropriate in the circumstances.

7. **Group Policies**

7.1 PHA shall designate as Group Policies all such policies, standing orders and financial regulations and standards as apply to all Group Members. Such Group Policies shall not be implemented without prior consultation with LCH and shall not be contradictory to the provisions of clause 2 and Schedule 3.

7.2 Subject to clause 7.1, PHA shall have the power to adopt such Group Policies from time to time as it shall consider appropriate.

7.3 In adopting Group Policies, PHA shall draft these in such a way as to ensure that LCH is able to comply with Regulatory Standards. PHA shall also bear in mind the need to ensure:

7.3.1 compliance by each Group Member individually and the Group as a whole with:

7.3.1.1 reasonable standards of financial and business probity;

7.3.1.2 good practice in governance and risk assessment;

7.3.2 that the business of each Group Member is carried on in accordance with its Constitution and with the Group's corporate plan (or the relevant part thereof);

7.3.3 the requirement for each Group Member to contribute to the Group's business plan developed in accordance with clause 8; and

7.3.4 PHA and LCH's compliance with their obligations as exempt/registered charities.

8. **Group Business Plans**

8.1 Prior to PHA delivering to each Subsidiary its requirements under clause 8.2, PHA shall make arrangements to allow each Subsidiary to present to PHA the preferred aims and objectives of each Group Member for the following year.

8.2 PHA shall by no later than 31 December in each year deliver to each Subsidiary the details of the Group's business plan parameters and assumptions (including any support to be provided by PHA) and of the assumptions to be used by each Subsidiary in preparation of their own individual Business Plan and Budget for the following year and which shall include details of the Group's requirements (if there are any) for a Subsidiary to set a Business Plan to achieve particular outcomes, which may include (but which are not limited to):

8.2.1 delivery of a particular level of surplus or turnover; and/or

8.2.2 delivery of particular outcomes (which may not necessarily be financial in nature); and/or

8.2.3 efficiency savings; and/or

8.2.4 PHA's expectations in relation to the utilisation of any such surplus.

8.3 Each Subsidiary shall deliver to PHA its updated Budget and Business Plan by 30 January (or such other later date as may be agreed by PHA (having particular regard to any late delivery by PHA under clause 8.2)) in the form approved by its Board and shall confirm to PHA that such Business Plan and Budget:

- 8.3.1 complies with Group Policies and the requirements of the overall Group business plan parameters and assumptions for the relevant period as delivered by PHA in accordance with clause 8.2;
- 8.3.2 evidences compliance with all third party obligations and in particular financial covenant obligations under borrowing arrangements both for the current year and for all forthcoming years whilst such borrowings are projected to remain outstanding;
- 8.3.3 shows that it is able to meet its payment obligations as they fall due; and
- 8.3.4 takes into account all contemplated obligations and commitments and in particular:
 - 8.3.4.1 provides for services to tenants to be maintained in accordance with Regulatory Standards and Group Policies;
 - 8.3.4.2 makes proper and reasonable provision for the maintenance of its properties over the period of the Business Plan;
 - 8.3.4.3 evidences compliance with the value for money standard;
 - 8.3.4.4 evidences compliance generally with Regulatory Standards and other Regulatory requirements, including the requirements of the Charity Commission;
 - 8.3.4.5 in relation to the Business Plan of a Subsidiary which is not a Registered Provider, that it does not put at risk any social housing assets of any Group Member that is a Registered Provider; and
 - 8.3.4.6 ensures the proper use of public funds
- 8.4 The PHA Board shall as soon as practicable after receipt of an updated Business Plan and Budget from a Subsidiary pursuant to clause 8.3 confirm, having regard to the provisions of clause 2, whether it has any issues of concern with such Business Plan and Budget.
- 8.5 Should PHA notify a Subsidiary that it has any issues of concern with the proposed Business Plan and Budget then it shall explain its reasons for raising issues of concern and PHA and that Subsidiary will use all reasonable endeavours to work together to agree a revised Business Plan and Budget for approval by that Subsidiary's Board and the PHA Board as soon as possible. Should the relevant Subsidiary and PHA be unable to agree a revised Business Plan and Budget then the provisions of clause 12 shall apply. Until such issues are resolved the draft Business Plan and Budget shall not become an agreed Business Plan and Budget for the purposes of this Agreement and the preceding year's Business Plan and Budget shall continue to have effect.
- 8.6 Each Subsidiary covenants to carry on their businesses and only to enter into commitments as envisaged by their Business Plan and Budget or, where any matter is outside their Business Plan and Budget, with the consent of PHA (which shall not be unreasonably withheld or delayed so long as there is a clear business case for doing so).
- 8.7 Nothing in this clause 8 shall require a charitable Group Member to prepare a Business Plan which is not compatible with its status as an exempt or registered charity.

9. **Group Services**

- 9.1 The parties have established the Group in order to benefit from the provision of high quality, cost effective services from each other. Subject to relevant legal and Regulatory constraints, it is intended that the primary central service provider will be PHA. Each Subsidiary consequently agrees that they will procure the services listed in Part 2 of Schedule 4 through PHA save, subject to clauses 9.3 and 9.4, where a Subsidiary is able to demonstrate that it would be unreasonable to do so taking into account considerations of quality, timeliness,

performance or price and the availability of other external providers. The parties acknowledge that Services shall be sourced in accordance with their respective Business Plans and Budgets (or otherwise in accordance with clause 8.6).

- 9.2 The parties specifically acknowledge the intention that (subject to existing contractual arrangements and the service recipient being satisfied in relation to value for money and service standards) LCH will manage PHA's Wirral based stock on behalf of PHA from a date to be agreed.
- 9.3 A Service Agreement substantially in the form set out in Schedule 4 shall be entered into by Group Members recording the agreed services to be provided, the relevant performance standards, quality considerations, term of the agreement and pricing.
- 9.4 Having entered into a Service Agreement for particular Services a Subsidiary shall then only have the right to source such Services from someone other than PHA in the event that PHA is unable to provide such Services in accordance with and to the standard required by the relevant Service Agreement such that a termination has occurred under clause 7 of such Service Agreement.
- 9.5 PHA may (acting reasonably having regard to quality and value for money) enter into any agreements it deems appropriate or desirable with any contractors, consultants, or specialist firms for the provision of the Services.
- 9.6 The parties to each Service Agreement shall designate a specific officer who shall be responsible for the operation of the Service Agreement and all related liaison between the parties.
- 9.7 It is the intention of the parties that if any surpluses are generated by COMMERCIAL SUBSID (or any other trading subsidiary established by PHA) that any such surpluses will be redistributed in an equitable manner and taking into account the volume of work placed in COMMERCIAL SUBSID (or the relevant trading subsidiary) by each Group Member in the preceding financial year and such redistribution may be reflected in the fees charged by COMMERCIAL SUBSID (or the relevant trading subsidiary) to that Group Member for the next financial year.

10. **Staffing and Board Members**⁵

- 10.1 Each party agrees that:
- 10.1.1 it shall employ its own staff as appropriate from time to time in accordance with all relevant Group Policies;
- 10.1.2 service provision by PHA shall be in accordance with the Service Agreement entered into pursuant to this Agreement; and
- 10.1.3 on the date of this agreement the relevant parties will enter into the Employee Services Agreement.
- 10.2 PHA may employ such staff as it shall reasonably deem appropriate to provide the Services within budgets and once PHA employs staff it shall take all reasonable steps to ensure that staff engaged in the delivery of the Services are suitably competent and experienced in relation to the Services being delivered by them and may vary the staffing levels as it shall reasonably deem necessary for the performance of the Services.
- 10.3 The Group Chief Executive shall be appointed by and be accountable to the PHA Board.

⁵ Subject to employment advice re who LCH staff will be employed by.

- 10.4 All staff recruitment, management and remuneration shall be carried out by the Group Member employing those staff, in accordance with Group Policies relating to human resources and (subject to the terms of any Employee Services Agreement and the Group Policies) each Subsidiary shall have ultimate responsibility for the management of its staff in the case of any conflict between it and PHA.
- 10.5 Each Subsidiary covenants to obtain the approval of the PHA Board (who shall not unreasonably withhold or delay their approval) prior to appointing any employee who is to be designated as managing director (or having a job description or role akin to that of a managing director or otherwise designating an employee as such). Each Subsidiary acknowledges and agrees that the responsibility for the recruitment of such person shall be undertaken jointly between PHA and the Board of the relevant Subsidiary and both the relevant Subsidiary and PHA must be in agreement in relation to the recruitment process and the appointment of any person to such post.
- 10.6 The parties agree that the Board members of each Group Member shall be appointed on a skills basis (subject to PHA's step in rights) and no Group Member shall have the right to a specified number of seats on the PHA or any other Board.
- 10.7 PHA confirms its intention that, for the period of 12 months from the date of this agreement, it shall not procure or do anything to cause any of the LCH Staff to be made redundant from their employment with [LCH/PHA]. Such statement of intent shall not fetter the Group's discretion should circumstances dictate that redundancies may be appropriate nor shall it prevent the Group from either commencing a review of the LCH Staff and/or seeking to harmonise the terms and conditions of employment across the Group.

11. Variations

- 11.1 It is anticipated by Group Members that pursuant to their overall aim and intention to co-operate for the benefit of the Group as a whole, the provisions of this Agreement may from time to time require amendment.
- 11.2 It is accordingly agreed between by Group Members that they shall each formally review the operation of this Agreement annually and shall report thereon to their respective Boards. One Group Member may thereupon propose that a variation be made to this Agreement and in such event the Group Members shall negotiate in good faith but without obligation with a view to reaching agreement upon the variation proposed.
- 11.3 In the event of a failure to agree the matter in dispute shall be considered pursuant to the procedure set out in clause 12.
- 11.4 In the event of a variation being agreed or determined in accordance with clause 12, the same shall be recorded in a supplemental deed entered into by each of the Group Members.

12. Resolution of Disputes

- 12.1 It is the declared intention of the Group Members that all matters of disagreement should be resolved by negotiation and discussion and each agrees to use its best endeavours to apply the terms of this Agreement without the necessity for implementing the dispute resolution procedures of this clause.
- 12.2 In the event that there is any disagreement or dispute between any of the Group Members as to the operation of this Agreement each relevant Group Member agrees that its chair and another member of its Board shall meet with a view to resolving any issues of concern.
- 12.3 In the event that, notwithstanding the discussions and meetings envisaged by clauses 12.1 and 12.2 above having occurred, any dispute or other failure to agree continues between any Group Members in relation to the matters the subject of this Agreement, any Employee Services Agreement or Service Agreement which cannot be resolved by negotiation and

discussion as envisaged by clauses 12.1 and 12.2, the relevant Group Members shall observe the following procedure for the resolution of the same:

- 12.3.1 any Group Member may serve upon another a dispute notice. Such notice shall state the subject matter of the dispute and shall specify the proposals of the Group Member serving the notice for the resolution of the dispute;
- 12.3.2 no later than 14 days after the date of service of a dispute notice and if the proposals for resolution set out in the dispute notice are not acceptable to it, the Group Member upon whom such notice shall have been served may serve a counter notice specifying its proposals for the resolution of the dispute, and specifying a date (which shall be not less than seven nor more than twenty one days after the service of the counter notice) for a meeting to resolve the dispute;
- 12.3.3 the meeting referred to in clause 12.3.2 shall be attended by two members from the Board of each relevant Group Member and at least one member of the PHA Board (who is not also a Board member of the relevant Group Members) and shall be held at PHA's registered office or at some other place to be agreed between the relevant Group Members;
- 12.3.4 those persons present at such meeting shall use their best endeavours in a reasonable manner to resolve the dispute, but if the dispute shall not be resolved the matter shall, be referred to advisory conciliation;
- 12.3.5 advisory conciliation shall be carried out by an independent person who shall be appointed jointly by the relevant Group Members or, failing agreement, upon such appointment shall be nominated by the Chief Executive for the time being of the National Housing Federation following a reference to him by one of the relevant group Members within fourteen days of the meeting referred to in clause 12.3.3;
- 12.3.6 the relevant Group Members agree to co-operate with the person appointed or nominated to carry out the advisory conciliation pursuant to clause 12.3.5, and shall act in good faith with a view to reaching agreement upon the matter in dispute with the assistance of such advisory conciliation;
- 12.3.7 the person appointed or nominated to carry out the advisory conciliation shall as a term of his appointment or nomination be required to present a report of his findings. Such report shall be copied to each relevant Group Member and the PHA Board who shall by notice in writing to the other served within fourteen days of receipt of the report indicate its willingness or otherwise to settle the dispute upon the basis suggested in the report. The costs of any advisory conciliation shall be shared equally by the relevant Group Members;
- 12.3.8 in the event that the matter in dispute:
 - 12.3.8.1 is referred to advisory conciliation, but is not resolved; or
 - 12.3.8.2 is not referred to advisory conciliation; or
 - 12.3.8.3 could reasonably be regarded by the PHA Board, having regard to the autonomy of the LCH Board set out in this agreement, to be sufficiently serious that the delay caused by the steps set out in this clause 12 would necessitate not going through some or all of the steps set out in this clause 12,

the matter shall be referred to the PHA Board which shall consider all the relevant matters relating to the dispute and have regard to Group Policies and the provisions of this Agreement. The decision of the PHA Board reached by majority vote of those of its Board members who are not also Board members of the relevant Group Member shall be final and binding upon all relevant Group Members; and

12.3.9 any decision made by PHA's Board shall be subject to paragraph 11 of Schedule 2.

12.4 In addition to PHA's rights under clause 12.3.8, should PHA regard the matter in dispute to be sufficiently serious it may accelerate the timetable set out in this clause 12 on reasonable notice to the relevant Group Member.

13. Step in rights of PHA

PHA agrees with LCH that, without formally fettering its powers to appoint or remove members of its Board, it shall not seek to exercise those powers save in the circumstances and manner set out in Schedule 5.

14. Existing IGA

PHA and COMMERCIAL SUBSID hereby unconditionally and irrevocably agree to terminate the intra-group agreement between the two of them dated [] with immediate effect subject only to any accrued rights that one might have to the other thereunder.⁶

15. Notices

15.1 Any notice to be served on PHA under the terms of this Agreement shall be in writing and addressed to the Group Chief Executive of PHA at the address shown on the front of this Agreement or to such other address as PHA may from time to time to supply in writing to the other Group Members and shall be deemed to be duly served:

15.1.1 on delivery, if delivered by hand and receipted for by PHA;

15.1.2 48 hours after dispatch by recorded delivery;

15.1.3 if faxed or emailed, one hour after transmission provided that no transmission notification of non-delivery or error has been received by the person transmitting the communication and the transmission is to the fax number or email address of the Group Chief Executive.

15.2 Any notice to be served on a Subsidiary under the terms of this Agreement shall be in writing and addressed to the Chair at the address shown on the front of this Agreement or to such other address as a Subsidiary may from time to time to supply in writing to the other Group Members, and shall be deemed to be duly served:

15.2.1 on delivery, if delivered by hand and receipted for by the recipient;

15.2.2 48 hours after dispatch by recorded delivery;

15.2.3 if faxed or emailed, one hour after transmission provided that no transmission notification of non-delivery or error has been received by the person transmitting the communication and the transmission is to the fax number or email address of its Chair.

15.3 A change of address under clause 15.1 or 15.2 must be duly notified in writing to the other Group Members.

16. Jurisdiction

This agreement shall be governed by English law and the Courts of England shall have exclusive jurisdiction to determine any dispute between the parties.

⁶ This IGA has yet to be entered into but as the Commercial Subsid is anticipated to become a subsidiary prior to LCH joining the Group it is envisaged that there will be an IGA in place that will need to be terminated, hence this clause.

17. **Third Parties**

A person who is not a party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

18. **Counterparts**

This Agreement may be executed in any number of counterparts and by different parties on separate counterparts (which may be facsimile copies), but shall not take effect until each party has executed at least one counterpart. Each counterpart shall constitute an original, and all the counterparts together shall constitute a single agreement.

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

Schedule 1

Part 1

Covenants by LCH

LCH covenants to co-operate with PHA as follows:

1. By remaining registered with the Regulator as a Registered Provider and complying with the Regulatory Standards and other Regulatory requirements of the Regulator from time to time.
2. By remaining registered with the Charity Commission as a registered charity and complying with the requirements of the Charity Commission from time to time.
3. By complying with all requests of any Competent Authority.
4. By complying with all reasonable advice from PHA in relation to probity, standards of competence, management, fidelity and customer services (which shall be given having regard to any non-compliance by LCH with Group Policies and strategy).
5. By implementing and complying with Group Policies.
6. By carrying on its business and only entering into financial commitments in accordance with and as envisaged by its Business Plan.
7. By working closely with all appropriate local agencies in seeking to satisfy local housing needs in its area of operation.
8. By attending liaison meetings with PHA if requested on reasonable notice (having regard to the purpose of the meeting) and providing such relevant information as may be requested by PHA as to its performance in relation to strategic policy, local knowledge and financial matters.
9. By reporting to PHA upon its housing management and other operational functions in such form as PHA shall from time to time reasonably require.
10. By providing PHA with copy board reports and papers (at the time of circulation to its own Board) and minutes of meetings of its Board and of all sub-committees promptly following those meetings.
11. By permitting the Group Chief Executive to attend all of its Board and committee meetings.
12. By providing all information upon any aspect of its affairs reasonably requested from time to time by PHA and co-operate fully with any investigations into its affairs initiated by PHA from time to time.
13. By appointing the Group's internal and external auditors as its internal and external auditors and using the Group's panel of bankers, solicitors and any other consultants (other than consultants of a temporary or minor nature employed for day to day work) and by making appropriate recommendations to PHA of banks, firms and consultants who could join the Group's panel.
14. By appointing the secretary of PHA from time to time as its secretary.
15. By respecting confidentiality of all material and negotiations (otherwise than in respect of those already in the public domain) and only disclosing any confidential information pertaining to the Group with the prior agreement of PHA (except where required to do so by any law or regulation).

16. By preparing for and co-operating with any monitoring of its activities by the Regulator and by providing copies to PHA of all communications with the Regulator relating to the Regulator's role as Regulator of a Registered Provider.
17. By operating in accordance with standing orders and financial regulations.
18. By only contracting as itself and not attempting to commit PHA, or any other Group Member, as an agent or otherwise in any contractual arrangement.
19. Save for as expressly set out in the Budget and/or the Business Plan for that year, by only entering into contracts which either have on-going obligations or which are for one off purchases having a value in excess of £2,500 with the prior written consent of PHA (such consent not to be unreasonably withheld or delayed).
20. In all communications with third parties (e.g. letters) acknowledging that it is part of the Group in such form as shall be agreed by PHA from time to time.
21. By complying with the reasonable requests of PHA to contribute to specific areas of the Group's business at particular times, noting that such contribution would result in the payment of agreed (having regard to the value for money standard) management charges, fees and/or other expenses by PHA to LCH in respect of the same.
22. By ensuring that the composition of its Board shall be as set out in its Constitution and be approved by PHA.
23. By complying with all covenants entered into in any loan or security agreement which it enters into.
24. By being part of PHA's VAT Group.

Part 2

Covenants by COMMERCIAL SUBSID

COMMERCIAL SUBSID covenants to co-operate with PHA as follows:

1. By complying with all reasonable advice from PHA in relation to probity, standards of competence, management and fidelity and customer services.
2. By implementing and complying with Group Policies.
3. By carrying on its business having regard to value for money and only entering into financial commitments in accordance with and as envisaged by its Business Plan.
4. By attending liaison meetings with PHA if requested and providing such relevant information as may be requested by PHA as to its performance in relation to strategic policy and financial matters.
5. By reporting to PHA upon its financial management in such form as PHA shall from time to time reasonably require.
6. By providing PHA with copy board reports and papers (at the time of circulation to its own Board) and minutes of meetings of its Board and of all sub-committees promptly following those meetings.
7. By permitting the Group Chief Executive to attend all of its Board and committee meetings.
8. By providing all information upon any aspect of its affairs reasonably requested from time to time by PHA and co-operate fully with any investigations into its affairs initiated by PHA from time to time.
9. By appointing the Group's auditors as its auditors and using the Group's panel of bankers, solicitors and any other consultants (other than consultants of a temporary or minor nature employed for day to day work) and by making appropriate recommendations to PHA of consultants who could join the Group's panel.
10. By appointing the secretary of PHA from time to time as its secretary.
11. By respecting confidentiality of all material and negotiations (otherwise than in respect of those already in the public domain) and only disclosing any confidential information pertaining to the Group with the prior agreement of PHA (except where required to do so by any law or regulation).
12. By operating in accordance with its own standing orders and financial regulations.
13. By only contracting as itself and not attempting to commit PHA or any other Group Member, as an agent or otherwise in any contractual arrangement.
14. Save for as expressly set out in the Budget and/or the Business Plan for that year, by only entering into contracts which either have ongoing obligations or which are for one off purchases having a value in excess of £2,500 with the prior written consent of PHA (such consent not to be unreasonably withheld or delayed)
15. In all communications with third parties (e.g. letters) acknowledging that it is part of the Group in such form as shall be agreed by PHA from time to time.
16. By complying with the reasonable requests of PHA to contribute to specific areas of the Group's business at particular times, noting that such contribution would result in the payment

of agreed (having regard to the value for money standard) management charges, fees and/or other expenses by PHA to COMMERCIAL SUBSID in respect of the same.

17. By ensuring that the composition of its Board shall be as set out in its Constitution and be approved by PHA and by not appointing any Board Member or alternate Board Member without PHA's consent.
18. By not committing another Group Member to any liability without theirs and PHA's prior written agreement.

Schedule 2

Covenants by PHA

PHA will co-operate with each Subsidiary as follows:

1. By providing high level professional and other advice and support as required by each Subsidiary relating to significant policy matters generally, including advice on Regulatory requirements in relation to performance expectations, monitoring and good professional standards.
2. By implementing and complying with any relevant Group Policies.
3. By advising each Subsidiary on and assisting in the selection and appointment of solicitors and other consultants.
4. By appointing:
 - 4.1 external auditors for the Group;
 - 4.2 internal auditors following consultation with LCH;
 - 4.3 bankers for the Group (subject to existing contractual arrangements).
5. By complying with all reasonable requests of the Regulator.
6. By implementing all its adopted strategic policies.
7. By providing such advice and assistance as each Subsidiary may reasonably require in the preparation of its Business Plan, Budget, financial plans, statements, financial reports and cash flows.
8. By complying with its responsibilities in relation to the approval of the Business Plans and Budgets under clause 8.
9. By respecting confidentiality of all material and negotiations.
10. By operating in accordance with its own standing orders and financial regulations.
11. By operating in accordance with the Group's core values and vision.
12. By remaining registered with the Regulator as a Registered Provider and complying with the Regulatory Standards and other Regulatory requirements of the Regulator from time to time.
13. By complying with all requests of any Competent Authority.
14. By preparing for and co-operating with any monitoring of its activities by the Regulator.
15. By keeping the other Group Members informed of the activities and plans of PHA and the other Group Members.
16. By only contracting as itself and not attempting to commit any other Group Member as an agent or otherwise in any contractual arrangement.
17. By ensuring that the composition of its Board shall be as set out in its Constitution.
18. By having regard to LCH's status as an independent entity. In particular by having regard to PHA's intent not to intervene in the day to day operational aspects of LCH's business for so long as LCH is complying with its obligations under this Agreement, implementing its

approved Business Plans and Budgets and operating in the manner of a well-run commercial entity.

19. By, unless so agreed with the majority consent of the LCH Board, ensuring that LCH does not become a guarantor or incur any obligation liability or covenant under any financial facility under which PHA or COMMERCIAL SUBSID are the borrower and which LCH has no interest in.
20. By not taking action that would prevent LCH from complying with its obligations and objects as a charity, as set out in its Constitution, and any requirements or regulation set out by the Charity Commission.
21. By operating a VAT Group for the benefit of the Group (unless it resolves otherwise).

Schedule 3

Group responsibilities

1. PHA

PHA is responsible for the following functions:

- 1.1 Strategic direction – including overall culture and values; business planning and budget guidelines, setting and monitoring of core values and performance standards.
- 1.2 Approval of the Group's overall budgets and capital programmes.
- 1.3 Approval of bids to the Homes and Communities Agency.
- 1.4 Regular review of governance arrangements for the Group.
- 1.5 Receipt of reports from the Audit Committee.
- 1.6 Development – subject to input from respective subsidiaries on specific schemes. PHA responsibility will include development of strategy and design and quality standards, managing relationship with HCA, development and maintenance of detailed procedural guide, maintenance of relevant contractor and consultant frameworks, approval of development programme and management of approved development programme.
- 1.7 The approval and review of the Group's Policies and Standing Orders and Financial Regulations including the framework of delegation to staff.
- 1.8 Contractor role – in relation to services provided to Subsidiaries.
- 1.9 Information technology.
- 1.10 Financial services.
- 1.11 Setting the borrowing and financial management framework.
- 1.12 Procurement of all external services to the Group including maintenance of lists of approved contractors and consultants – but with local input as appropriate to the service.
- 1.13 Research.
- 1.14 New initiatives – where these involve significant use of resources, whether existing or new.
- 1.15 Monitoring compliance by the Group with all Regulatory Standards and taking the action envisaged by this Agreement in the event of non-compliance.
- 1.16 Setting the treasury management policies for the Group.
- 1.17 Arranging internal and external audit.
- 1.18 Doing all such actions as it may consider appropriate to encourage, ensure and promote the financial and business viability of each Subsidiary and that all Regulatory requirements affecting the Group are complied with and that the Group's overall reputation and good standing is fully protected at all times.
- 1.19 Setting the health and safety framework for the Group.
- 1.20 Setting the risk management framework for the Group.

- 1.21 Setting policies and procedures in relation to human resources for the Group, including setting levels of remuneration for staff across the Group.
- 1.22 Monitoring key performance indicators.
- 1.23 Managing Group external communications.
- 1.24 Approval of the contracts that Group Members propose to enter into which either have ongoing obligations or which are for one off purchases having a value in excess of £2,500.
- 1.25 Call centre operation – receipt of repairs/emergencies etc.

2. **Subsidiary responsibilities**

Each Subsidiary is responsible for the following functions within the context of its own business and acting as autonomous entities:

- 2.1 Carrying out all acts necessary or desirable to ensure its business is carried out in accordance with its Constitution, Regulatory Standards and any other requirements of the Regulator or any other appropriate Competent Authority, and that its overall business objectives are furthered in the manner that its Board considers most appropriate subject only to the provisions of this Agreement.
- 2.2 Running all operational, management and day to day aspects of its business, including the setting of strategic and operational frameworks for housing management, within the context of its Business Plan, overall Group Policies and the vision and values of the Group.
- 2.3 Regular review of operational policies and procedures in accordance with a defined programme.
- 2.4 Tenant involvement and participation.
- 2.5 Management of Housing repairs – all aspects except contract procurement. It is envisaged that each Subsidiary will utilise the repairs service procured by PHA for the benefit of the Group, provided that such service is shown to satisfy value for money principles.
- 2.6 Development – input into development design brief from both management and area viewpoints; final decision as to whether to develop particular scheme/service for social housing within agreed Group parameters, subject to the prior approval of PHA.
- 2.7 Development and approval of detailed local budgets (within guidelines), which will be subject to the approval of PHA.
- 2.8 Monitoring of performance standards in line with the Group's performance standards.
- 2.9 Reporting to PHA Board as required by the Agreement.
- 2.10 Client function in relation to centrally operated services.
- 2.11 Generation of new operational initiatives.
- 2.12 Ensuring its business is operated in accordance with the objectives, goals and values of the Group from time to time.
- 2.13 Taking action on internal and external audit findings.
- 2.14 Maintaining good relationships with any external parties such as local authorities, health authorities and other statutory agencies in line with the Group's key stakeholder policy.

- 2.15 Monitoring key performance indicators and risk and reporting on the same to PHA.
- 2.16 Implementation of reports from the Group Risk Management and Audit Committee.
- 2.17 Monitoring compliance by itself with all Regulatory Standards and taking the action envisaged by this Agreement in the event of non-compliance.
- 2.18 Review of governance arrangements in conjunction with PHA.
- 2.19 Annual review of the performance of its Board in conjunction with PHA.

Schedule 4

Part 1

Form of service agreement

This service agreement is made on ●

Parties

- (1) [] a [company limited by [guarantee][shares] registered with Companies House under number []][Community Benefit Society with Registered Number] and whose registered office is at [] (the **Service Provider**); and
- (2) [] a [company limited by [guarantee][shares] registered with Companies House under number []][Community Benefit Society with Registered Number] and whose registered office is at [] (the **Client**).

Supplemental to an Intragroup Agreement (**the Intragroup Agreement**) dated [] 2017 and made between the parties.

AGREED TERMS

1. Interpretation

1.1 In this Agreement where the context so admits:

1.1.1 The following words and phrases shall bear the following meanings:

Price shall mean the sum payable by the Client to the Service Provider for the provision of the Services as calculated in accordance with Schedule B;

Services shall mean the Services to be provided under this Agreement as set out in Schedule A.

1.1.2 Words denoting the singular shall include the plural and vice versa, words denoting the masculine gender shall include the feminine gender and vice versa and words denoting persons shall include corporations.

1.1.3 Reference to any statutory provisions or instruments shall be deemed to include reference to any such provisions or instruments as from time to time amended, varied, replaced, extended or re-enacted and to any orders or regulations under such provisions.

1.1.4 Reference to a clause or a schedule shall be deemed to be references to a clause or a schedule to this deed and references to a sub-clause shall be deemed to be references to a sub-clause of the clause in which the reference appears.

1.2 In this deed clause headings are included for ease of reference only and shall not affect this deed or the interpretation hereof.

2. Provision of Services

2.1 The Service Provider shall provide to the Client the Services set out in Schedule A, or such other services as may be agreed between the parties from time to time.

2.2 Such Services shall be provided by the Service Provider with reasonable skill and care and otherwise to the level and standard specification agreed between the parties (as varied from time to time by agreement between the parties) and the Service Provider agrees to use all

reasonable endeavours to meet those standards, and where no standards are specified the Service Provider shall provide the Services in a competent and professional manner to provide a high quality service.

- 2.3 Both parties agree to comply with Group Policies, standing orders and financial regulations as required by the Intragroup Agreement and by the Client's policies and procedures as notified to the Service Provider prior to the date of this Service Agreement and as may be subsequently notified following prior consultation. The Service Provider shall be entitled to vary the Price if any amendment to such policies and procedures would result in additional expenditure or cost for the Service Provider.

3. Payment for Services

- 3.1 The Client hereby agrees to pay the Service Provider the Price for the Services on the basis of such calculations as are agreed between the parties from time to time, such payments to be made in the manner and at the times agreed between the parties from time to time.
- 3.2 For the avoidance of doubt all sums payable under this agreement are exclusive of VAT and other duties or taxes (if any) and such duties or taxes (if any) shall be payable in addition to such sums.
- 3.3 The Service Provider and the Client both confirm that at the date of this Service Agreement they qualify as a VAT Group and agree to use their best endeavours to ensure that they continue to so qualify.

4. Provision of and Payment for Other Services

- 4.1 To the extent that the Client requires the provision of additional services which are not Services it shall be entitled to request the Service Provider to provide the same and the Service Provider shall where possible comply with any such request.
- 4.2 The price to be paid by the Client for such additional services shall be agreed between the parties in due course and will relate to such additional service provision or on such other basis as may be agreed between the Service Provider and the Client from time to time.
- 4.3 If the Service Provider is unable to provide or procure the additional services requested by the Client or the price for such services cannot be agreed between the parties (both parties acting reasonably) it shall notify the Client of the fact as soon as practicable and the Client shall be entitled at its own cost to procure such additional services from an alternative service provider providing the services procured are of at least the same quality and are of lower cost to those which may have been provided or procured by the Service Provider.

5. Term of the Agreement

- 5.1 Subject to clause 7 this Agreement shall continue in full force and effect until determined by either party giving to the other not less than [24] months' notice in writing to expire on [31 March] in any year.
- 5.2 Both parties agree to consult with each other prior to serving any notice of termination under clause 5.1 with a view to resolving any disputes under this Service Agreement and to amending this Service Agreement in such manner as may be reasonably acceptable to both parties in order to avoid a termination of the Service arrangements provided for by this Service Agreement.

6. Review of Operation

- 6.1 The operation of this Agreement and the achievement by the Service Provider of the level and standard specification agreed between the parties pursuant to clause 2.2 shall be formally reviewed by the parties on an annual basis (with particular regard to the need to achieve value for money). Such review shall be commenced by the Service Provider reporting in

writing to the Client in respect of the Services performed in each year to 31 March, such report to be delivered within three months following the end of each year, and shall be followed by a review meeting to be co-ordinated by the Group Chief Executive (as defined in the Intragroup Agreement), or persons appointed to deputise for the Group Chief Executive, such review meeting to be held within six months of the end of each year. Following such meeting, at which the Services, the level and standard specification and the Price in respect of the then current or any future year of operation may be revised by consent, any amendments to this Agreement shall be noted in writing signed on behalf of the parties and shall operate as variations to this Agreement.

6.2 Without prejudice to the provisions of clause 6.1 the Service Provider shall be required at the third anniversary of this Agreement and subsequently at each three yearly intervals to demonstrate in relation to the price the cost effectiveness and value for money thereof.

6.3 The Price shall be formally reviewed by the parties on an annual basis. The Service Provider shall make available to the Client all relevant information as to its costs in performing the Services. Such information shall be provided within three months following the end of each relevant period, and upon each yearly review the meeting referred to in clause 6.1 shall additionally consider such information. The Service Provider shall be required to show that the Price mechanism for the next period is cost effective, achieves value for money for the Client and represents best value. Following such meeting, any amendments to this Agreement in relation to the Price shall be noted in writing signed on behalf of the parties and shall operate as variation to this Agreement.

7. Termination

7.1 In the event that either party is in default of its obligations pursuant to this Agreement, the party alleging the default may serve notice upon the other requiring it to remedy the default within such period as may be reasonable (not being less than [three months]).

7.2 Without prejudice to clause 7.1, in the event that the Service Provider fails to provide the Services then the Client shall (having given the Service Provider a reasonable (having regard to the prevailing circumstances) opportunity to remedy the breach) be permitted to source the Services from elsewhere until such time that the Service Provider is able to resume provision of the Services.

7.3 In the event that the default complained of shall not be remedied within such reasonable period as may be specified in such notice the party alleging the default may thereafter serve a further notice to determine this Agreement in whole or in part of the breach relates to any part of the Services and upon such further notice being served this Agreement (in whole or in part as the case may be) shall absolutely cease and determine without prejudice to the antecedent rights of either party against the other **provided that** neither party may serve a notice to terminate this Agreement without consent of the lenders to the Client if such termination would in such lenders' opinion have a material adverse effect on the ability of the Client to fulfil its obligations under the relevant loan agreement(s).

8. Resolution of Disputes and Notices

For the avoidance of doubt it is hereby agreed between the parties that the provisions of clauses 12 and 15 to 18 of the Intragroup Agreement are hereby incorporated into this Agreement.

9. Illegality

If any provision or term of this Agreement or any part thereof shall become or be declared illegal, void, invalid, or unenforceable for any reason whatsoever, including without limitation by reason of any provision of any legislation or other provisions having the force of law or by reason of any decision of any Court or other body of authority having jurisdiction over the parties to this Agreement including the EEC Commission and European Court of Justice, such terms or provision shall be divisible from this Agreement in the jurisdiction in question

provided always that if any such deletion substantially affects or alters the commercial basis or financial viability or practicality of this Agreement the parties shall negotiate in good faith to amend and modify the provisions and terms of this Agreement as may be necessary or desirable in the circumstances.

10. **Force majeure**

Neither party shall be in breach of this Agreement if there is any total or partial failure of performance by it or its duties or obligations under this Agreement occasioned by (but not limited to) act of God, natural disaster, fire, act of intervention of government or state riot or civil commotion, insurrection or industrial dispute of whatever nature or any other reason beyond the control of either party and if either party is unable to perform its duties or obligations under this Agreement as a direct result of the effect of one of the above reasons that party shall give written notice to the other of the inability stating the reason therefore and the operation of this Agreement shall be suspended during the period (and only during the period) in which such reason continues and forthwith upon such reason ceasing to exist the party relying upon it shall give written notice to the other of this fact, provided that if the reason continues for a period of more than 90 days and substantially affects the commercial basis, financial viability or practicality of this Agreement the party not claiming relief under this clause shall have the right to terminate this Agreement upon giving 30 days written notice of such termination to the other party.

11. **Confidentiality**

11.1 Both parties hereto agree:

11.1.1 to respect the confidentiality of information concerning any individual or organisation which may from time to time become available to them, and

11.1.2 to comply with the provisions of the Data Protection Act 1998.

12. **Assignment**

The Client may assign its rights under this Agreement to its lenders.

This Agreement has been executed as a deed on the date stated at the beginning of it.

Part A
Services⁷

Strategy and Business Development

- Group strategy and policies and advice on all policy developments
- PR, marketing and publicity services
- Special initiatives (development, advice and support)
- Development of housing strategy
- Research and business development
- Regeneration activities
- Performance Management
- Value for money framework
- Tenant Participation Strategy

Finance and IT

- Corporate and business planning
- Financial strategy
- Exchequer services including creditors payments, debtor collection and banking functions
- Rent control
- Financial and management accounting
- Insurance
- Tax advice
- Internal and external audit procurement
- RTB financial administration
- Treasury Management
- IT client function
- IT and communications strategy, policy and system development
- Reports for funders

Procurement

- Development of procurement strategy and client function

⁷ These are examples – exact list to be discussed.

- Property services technical advice
- Development of local employment policy links to procurement
- Architectural, surveying and engineering advice
- Project management for major works and cyclical and future planned maintenance monitoring and reporting on progress of improvements programme

Support Services

- Personnel service
- Employment policy
- Welfare Services to staff
- Payroll function
- Training policy and strategy
- Training programme implementation
- Company secretarial services (in conjunction with local administrative staff) including legal services procurement
- Health and Safety policy and advice
- Office accommodation services and central administration
- Data protection advice and monitoring

Schedule B

Price

As agreed between the parties at the relevant time

Service Level Agreement – execution page

SIGNED by)
duly authorised on behalf of)
[])
in the presence of:)

SIGNED by)
duly authorised on behalf of)
[])
in the presence of:)

Part 2

Group Services

The following services will be provided by PHA to LCH:

[]

The following services will be provided by PHA to COMMERCIAL SUBSID:

[]

The following services will be provided by LCH to PHA:

[]

Schedule 5

Step in rights

Circumstances in which PHA would intend to appoint and/or remove members of the Board of LCH:

1. Where PHA's Board considers that the existing persons on LCH's Board (acting alone or together with other persons) have:-
 - 1.1 failed to comply with any Group Policy or any other matter provided for in this Agreement;
 - 1.2 failed to comply with any code of conduct or any contract or policy relating to their duties as a board member;
 - 1.3 brought the Group or any Group Member into disrepute or have acted in a manner which is materially prejudicial to the Group or any Group Member;
 - 1.4 breached, or have caused, whether by act or omission to act, the Group or any Group Member to have breached any Regulatory requirement or guidance of the Regulator or any Competent Authority;
 - 1.5 caused the Group or any Group Member to be in breach of any contractual obligation to any third party;
 - 1.6 failed to comply with LCH's Constitution;
 - 1.7 failed to take action to respond to material weaknesses identified in internal or external audit reports;
 - 1.8 failed to agree a Business Plan in accordance with this Agreement or have caused a failure in terms of compliance with an agreed Budget or Business Plan or funders' covenants or to be in a position where LCH either is, or is likely to become, unable to meet its debts as they fall due;
 - 1.9 failed to act in a way which PHA's Board reasonably considers is in the best interests of the Group, PHA or LCH;
 - 1.10 a conflict of interest which PHA considers is prejudicial to the good governance of the Group or LCH;
 - 1.11 taken any steps to wind up, dissolve or put LCH into liquidation or to appoint a receiver or administrator (or any similar process) or circumstances have arisen where a third party is taking any such action or has threatened to take any such action;
 - 1.12 been appraised in accordance with Group Policy and been considered to be under-performing in the performance of their duties as a board member; or
 - 1.13 breached the terms of any service agreement which board members are required to enter into under LCH's Constitution and in accordance with Group Policies such that LCH has the right to terminate that service agreement.
2. Where:-
 - 2.1 the Regulator issues an adverse supervisory or Regulatory report relating to any aspect of LCH's business or takes Regulatory action of any kind, or exercises any of its statutory powers against LCH or any other Group Member or their board members as a consequence of any concern with LCH's business or breach of the Regulator's Regulatory Standards or the

Regulator has indicated, or PHA's Board is reasonably concerned that such action might be taken by the Regulator in future;

- 2.2 LCH receives a negative Regulatory Judgement;
 - 2.3 LCH is insolvent or any enforcement action is being taken against it, or has been threatened, by any third party; or
 - 2.4 PHA has a reasonable concern as to the financial viability of LCH or its ability to meet its contractual obligations as they fall due.
3. Where PHA's Board considers that without taking such action one of the above circumstances would apply

Procedure for PHA exercising its step in rights

4. Subject always to paragraph 7 below, PHA shall (to the extent it is practicable to do so given the nature of the circumstances giving rise to the exercise of its powers under this Schedule 5) immediately send notification in writing to all members of LCH's Board and its managing director (if appointed) if it has reasonable cause to consider that LCH is, or is likely to become, in a position whereby PHA might exercise its step in rights (the **Step In Circumstances**).
5. As soon as reasonably possible after receiving such notification, and in any event within seven days, the LCH Board shall meet with PHA for the purpose of agreeing measures to satisfy PHA in relation to the Step In Circumstances. PHA shall give all reasonable consideration to submissions made by the LCH Board during such consultation.
6. If in the opinion of PHA such a meeting fails to agree such measures, PHA may then immediately:
 - 6.1 remove all or any of the members of the LCH Board by a notice in writing to the members of the Board so removed and to the secretary and managing director (if appointed) of LCH. PHA may from time to time appoint and remove such other LCH Board members as it shall in its absolute discretion think fit; and/or
 - 6.2 appoint such number of persons to the Board of LCH,

so as to give PHA nominated members of the LCH Board at least a simple majority of the LCH Board.
7. The duty of PHA to consult with the LCH Board is at all times subject to the reasonable exercise of its discretion in determining whether such consultation is appropriate in light of the circumstances facing LCH. In particular and for the avoidance of doubt, PHA shall be under no duty to consult where the time taken to do so would remove PHA's ability to take emergency action to resolve difficulties facing the Group or LCH such as where action has been or may be taken by the Regulator or where there are issues that might reasonably be expected to cause:
 - 7.1 reputational damage to the Group and/or a Group Member; or
 - 7.2 damage to the financial standing of the Group and/or a Group Member.
8. Should PHA exercise its rights under paragraph 6 in respect of one or more of the members of the LCH Board nominated by Wirral MBC or LETA pursuant to LCH's Constitution then such removal shall apply to that individual or those individuals and shall be without prejudice to Wirral MBC's or LETA's right (as applicable) to nominate an alternative in accordance with LCH's Constitution.

Cessation of step in rights

9. PHA shall send notification in writing to all LCH Board members and the managing director (if appointed) of LCH as soon as it is, acting reasonably, of the opinion that LCH is no longer either likely to be, or is not in fact, in breach of its obligations.
10. Thereupon, PHA shall take all steps reasonably necessary to remove or appoint members of the Board of LCH in consultation with those Board members of LCH who will remain following the completion of this step.

Schedule 6

Provision of Employee Services Agreement

THIS AGREEMENT is made on day of 201[]

BETWEEN

- (1) [] a [company limited by [guarantee][shares] registered with Companies House under number []][Community Benefit Society with Registered Number] and whose registered office is at [] (the **Service Provider**); and
- (2) [] a [company limited by [guarantee][shares] registered with Companies House under number []][Community Benefit Society with Registered Number] and whose registered office is at [] (the **Client**).

WHEREAS

- (A) Pursuant to the provisions of an Intragroup Agreement dated [] (**the Intragroup Agreement**), the parties have agreed that [all] staff providing services to the Parties shall be employed by [].
- (B) [] will provide to the Parties the services of such its staff (**Staff**) as are necessary for the Parties' business.
- (C) This Agreement regulates the manner in which the responsibilities of [] and each of the parties for the Staff will be discharged and the apportionment of liability between them.

NOW THIS DEED WITNESSES as follows:

1. Interpretation

1.1 The following words and phrases shall have the following meanings:

Group shall have the meaning referred to in the Intragroup Agreement.

Group Policy shall have the meaning set out in the Intragroup Agreement.

Parties shall mean the parties to this Agreement.

Staff means employees employed by [] pursuant to the terms of this Agreement for the purposes of providing services to the Parties.

2. [] Obligations

2.1 [] shall be responsible for the recruitment of all Staff in accordance with Group Policies, and may delegate such responsibility to the Parties where appropriate.

2.2 [] will have responsibility for the management of the Staff in relation to the discharge of their obligations under their contracts of employment and in accordance with Group Policies which responsibility may be delegated by [] as appropriate.

2.3 [] shall determine the terms and conditions of appointment of the Staff and shall have the power to amend such terms and conditions.

2.4 [] shall pay the Staff and provide them with benefits in accordance with all legislation and contractual entitlements pursuant to their contract of employment.

2.5 [] will procure membership by the Staff of such pension scheme as is approved by PHA from time to time.

2.6 [] shall deduct and pay to the appropriate authorities income tax and national insurance contributions and any other statutory deductions applicable to the employees.

3. **The Parties' Obligations**

3.1 The Parties agree that the costs attributable to the employment of the Staff shall be allocated in accordance with the provisions of the Intragroup Agreement

3.2 The Parties agree that the Group Policies will apply to the Staff and that [] shall be entitled to take appropriate action thereunder. The Parties agrees that each of them shall notify [] of any actions taken by them in relation to the Staff and if an issue of dismissal arises or is likely to arise under such terms and conditions of employment, the relevant Party shall take no further action without the prior consent of [].

3.3 The Parties agree to notify [] of any conflict that arises between them or [] in relation to the employment of the Staff provided that where there is a conflict which cannot be resolved in accordance with the provisions of the Intragroup Agreement the instructions given by [] will prevail.

4. **Indemnities**

4.1 Each Party will indemnify [] for any costs incurred in relation to any claims, demands, liabilities or expenses claimed by any Staff member arising out of:

4.1.1 Any breach by the Party of the terms of this Agreement including any instructions or directions given without the consent of [].

4.1.2 Any acts or omissions or alleged acts or omissions by it.

4.1.3 Any claims in respect of negligence or breach of statutory duty by it.

4.1.4 The redundancy of any Staff member assigned to it by [] pursuant to the terms of this Agreement including but not limited to any sums attributable to early payment or enhancement of pension as a result of such redundancy.

4.2 [] will indemnify each of the parties for any costs incurred in relation to any claims, demands, liabilities or expenses claimed by the Staff member (subject to the same not arising out of any of the acts or omissions of the parties) arising out of:

4.2.1 Any breach by [] of the terms of this Agreement.

4.2.2 Any acts or omissions or alleged acts or omissions by [] other than dismissal of any Staff member on the ground of redundancy or those taken in good faith in discharging its obligations under this Agreement.

4.2.3 Any claims in respect of negligence or breach of statutory duty by [] in relation to the Staff member.

5. **Resolution of disputes**

The Parties agree that the provisions of clause 12 of the Intragroup Agreement are incorporated into this Agreement and shall accordingly apply to the resolution of disputes between the Parties.

IN WITNESS WHEREOF the parties have caused their commons seals to be affixed the day and year first before written.

The common seal of [])
was hereunto affixed in the presence of:)

The common seal of [])
was hereunto affixed in the presence of:)

The common seal of [])
was hereunto affixed in the presence of:)

THE COMMON SEAL of)
PIERHEAD HOUSING ASSOCIATION LIMITED)
was hereunto affixed in the presence of:)

THE COMMON SEAL of)
LEASOWE COMMUNITY HOMES)
was hereunto affixed in the presence of:)

SIGNED AS A DEED BY)
[] LIMITED)
acting by a single director in the presence of:)

Witness Signature:

Witness Name

Witness Address

Witness Occupation: