

(1) BARRHEAD HOUSING ASSOCIATION LIMITED

(2) LEVERN PROPERTY SERVICES LIMITED

Approved August 2018

SERVICE LEVEL AGREEMENT



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THIS AGREEMENT

BETWEEN

- 1 Barrhead Housing Association Limited registered under the Co-operative and Community Benefit Societies Act 2014 (Registration Number 2229R(S)), a registered Scottish Charity (Charity number SC036265) and having their registered office at 60-70 Main Street, Barrhead, Glasgow, G78 1SP (**the “Parent”**).
- 2 Lavern Property Services Limited, incorporated under the Companies Acts (Company Number SC411917) and having their registered office at 60-70 Main Street, Barrhead, Glasgow, G78 1SP (**the “Subsidiary Company”**).

RECITAL

The purpose of this Agreement is to record the services to be provided by the Parent to the Subsidiary Company and the basis for payment to the Parent for those services.

NOW IT IS HEREBY AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions.

In this Agreement where the context so admits the following words and phrases shall bear the following meanings:

“Agreement” means this Service Level Agreement and its Schedule.

“Business Day” means a day (which is not a Saturday or Sunday) on which the Parent is open for business.

“Charges” means the amounts payable by the Subsidiary Company to the Parent

“Commencement Date” means November 2011 [#].

“Financial Year” means a period to which annual audited accounts of each Party are prepared.

“Group” means the Parent and all its subsidiary companies

“Independence Agreement” means the Independence Agreement entered into by the Parent and the Subsidiary Company.

“Nominated Officer” means the member of the Parent’s Management Team who is identified as the officer responsible for ensuring the effective delivery of the Services and who normally be the Chief Executive for governance arrangements and the Director of Corporate Services for financial arrangements and Director of Asset Management for operational arrangements#.

“Parties” means the Parent and the Subsidiary Company.

“Price” means the sum payable by the Subsidiary Company to the Parent for the Services in accordance with clause 4.

“Review Date” bears the meaning set out in clause 6 ____.

“Schedule” means the Schedule (or any part of it) attached to this Agreement.

“Services” means the services set out in the Schedule.

“GDPR” means General Data Protection Regulations 2016

1.2 Interpretation

In this Agreement where context allows:-

- 1.2.1 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.
- 1.2.2 Reference to any statutory provisions or instruments shall be deemed to include reference to any such provisions or instruments from time to time amended, varied, replaced, extended or re-enacted and to any orders or regulations under such provisions.
- 1.2.3 Reference to a clause or a Schedule shall be deemed to be references to a clause of 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.
- 1.2.4 In this agreement 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 As from the Commencement date the Parent shall provide to the Subsidiary Company the Services set out in the Schedule. The Services shall be provided by the Parent in a competent and efficient manner and with all due diligence and despatch and where relevant fully in compliance with The Scottish Housing Regulator Regulatory Standards and guidance.
- 2.2 The Parent will provide all requisite staff with the appropriate skills and experience to ensure that the Services are provided to the Subsidiary Company in accordance with the terms of this Agreement.
- 2.3 The Parent will arrange for staff to attend meetings of the Board of the Subsidiary Company as reasonably required in order to report on the provision of the Services.

3. EXECUTION OF SERVICES

- 3.1 The parent shall allocate responsibility to the Nominated Officer, Chief Executive for ensuring the effective provision of Services in accordance with this Agreement. The Nominated Officer, Chief Executive shall be responsible for reporting to the Board of the Subsidiary Company on all aspects relating to the delivery of Services on behalf on the Parent.
- 3.2 The Nominated Officer may delegate operational responsibility for provision of Services in accordance with this agreement to relevant members of staff of the Parent, normally the Director of Corporate Services for financial arrangements and Director of Asset Management for operational arrangements. The Board of the Subsidiary Company shall be informed of the allocation of such operational responsibilities at the commencement date. Any subsequent changes will be notified to the Board as they occur.
- 3.3 In providing services the Subsidiary Company, staff of the Parent shall have full authority to incur all necessary expenditure on behalf of the Subsidiary Company provided that expenditure falls within the terms of the budget approved by the Board of the Subsidiary Company, its Standing Orders and the Group Scheme of Delegated Authority.
- 3.4 In providing services under the terms of this Agreement, the Nominated Officer and all officers of the Parent to whom the Nominated Officer may delegate operational responsibility will comply with the terms of the Group Scheme of Delegated Authority **EXCEPT** that the following require the prior approval of the Board of the Subsidiary Company:
 - 3.5.1 Matters that involve material or reputational risks or questions of strategic policy

3.5.2 The sale, lease or purchase of land, assets or other heritable property by or on behalf of the Subsidiary Company

3.5.3 The terms of all borrowing by the Subsidiary Company and the granting of any security over any part of the Subsidiary Company's assets

3.5.4 The appointment or dismissal of the Subsidiary Company's auditors, bankers or solicitors

3.5.5 Approval of the Subsidiary Company's business plans, budgets and financial plans

3.5.6 Approval of all formal agreements between the Parent and the Subsidiary Company and any variations or amendments to such agreements

4. PAYMENT FOR SERVICES

4.1 The Subsidiary Company agrees to pay to the Parent for the Services such amounts and on such basis as is agreed between the Parties from time to time in accordance with the Business Plan from time to time prepared for the Subsidiary Company in accordance with the Independence Agreement.

4.2 Any payments made pursuant to this Agreement shall unless otherwise agreed be paid in cleared funds to the account nominated by the Parent at the times and in the manner agreed when the Price is agreed under Clause 4.1.

4.3 For the avoidance of doubt all sums payable under this Agreement are exclusive of VAT and other duties or taxes (if any). Any such duties or taxes shall be payable in addition to these sums.

5. TERM OF THE AGREEMENT

This Agreement shall continue in full force and effect until determined by either Party giving to the other not less than one year's notice in writing or pursuant to clause 7.

6. REVIEW OF OPERATION

The operation of this Agreement shall be formally reviewed by the Parent and the Subsidiary Company on an annual basis in the following manner:-

6.1 Any review shall be commenced by the Parent reporting in writing to the Subsidiary Company in respect of the Services performed in each Financial Year. The report shall be delivered within six months following the end of the Financial Year.

6.2 The review meeting shall be held within 2 months after delivery of the report in terms of clause 6.1 unless the Subsidiary Company indicates that it does not require a review meeting.

6.3 Following the review meeting, at which the Services 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.

7. RESOLUTION OF DISPUTES

7.1 It is the declared intention of the Parties that all matters of disagreement under this Agreement should be resolved by negotiation and discussion between the parties. In the event that a resolution cannot be secured by discussion between the appointed representatives, the matter shall be referred to a joint meeting of the parties' governing bodies, whose decision shall be final.

8 **TERMINATION**

8.1 The Parent shall be entitled to terminate this Agreement by written notice to the other Parties if:

8.1.1 The Subsidiary Company fails to pay any amount due under this Agreement in cleared funds on the due date.

8.1.2 The Subsidiary Company ceases to be a Subsidiary of the Parent.

8.1.3 A petition is presented, an order made or meeting convened or an effective resolution passed, for winding up the Subsidiary Company; or

8.1.4 An encumbrancer takes possession or a liquidator, provisional liquidator, receiver, manager, trustee, sequestrator or similar officer is appointed over all or any of the assets of the Subsidiary Company; or

8.1.5 A distress, execution, attachment or other legal process is levied, enforced on or sued out against any of the assets of the Subsidiary Company and not being discharged or paid in full without five Business Days or any encumbrance over any assets of the Subsidiary Company become enforceable and steps are taken to enforce the same; or

8.1.6 The Subsidiary Company being unable or admitting in writing an inability to pay its debts within the meaning of section 123 (excluding from sub-sections (1)(e) and (2) of that section the words "it is proved to the satisfaction of the Court that") of the Insolvency Act 1986 (which provision shall be deemed to apply to the Subsidiary Company) or proposes or enters into a voluntary arrangement (within the meaning of Section 1 of the Insolvency Act 1986) or takes or is subjected to any proceedings under any law, or suspends or threatens to suspend payment of all or a material part of its debts, or commences negotiations with one or more of its creditors for the readjustment, rescheduling or deferment of all or any of its debts, or proposes or enters into any general assignment or composition with or for the benefit of its creditors.

8.2 Any termination of this Agreement shall be without prejudice to the antecedent rights of either Party against the other.

8.3 The Parent and the Subsidiary Company may agree that the Services will be varied and/or that any of them will be terminated. Such agreement and consent will be recorded in a written agreement which will record any agreed consequential change to the Price.

9. **DEFAULT INTEREST**

Any amount payable to any Party under this Agreement which is not paid on the due date shall bear interest at a rate of 3% per annum above the base rate of the Clydesdale Bank plc from time to time in force from the due date till the date of actual payment unless such interest is waived by the payee, and will be compounded at such intervals as the payee determines.

10. **GOVERNING LAW AND JURISDICTION**

10.1 The validity, construction and performance of this Agreement shall be governed by Scots Law and the Parties prorogate the jurisdiction of the Scottish Courts exclusively.

11. **ASSIGNATION AND SUB-CONTRACTING**

11.1 The Parties shall not assign, charge or transfer any right or obligation under this Agreement or in any way deal or part with their respective interests in this Agreement or any part of it to any person.

12. **NOTICES**

Every notice, request or other communication shall:

- 12.1 be in writing delivered personally or by prepaid first class letter;
- 12.2 be deemed to have been received, in the case of a letter when delivered personally or 48 hours after it has been sent by first class post provided that any letter personally which arrives after business hours or on a day which is not a Business Day shall be deemed to have been served at open of business on the next Business Day; and

- 12.3 be sent

12.3.1 to the Parent at its address stated above marked for the attention of its Chairman

12.3.2 to the Subsidiary Company at its address stated above marked for the attention of its Chairman

or (in each case) to such other address as may be notified in writing by the relevant party to the other party by not less than 15 days' notice.

13. **ENTIRE AGREEMENT AND AMENDMENTS**

- 13.1 This agreement and any documents referred to in it constitute the whole Agreement between the parties. Any amendments to this Agreement must be evidenced in writing and signed by authorised representatives of each Party.

14. **NO PARTNERSHIP AGENCY**

- 14.1 Nothing in this Agreement shall create or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than that contractual relationship established expressly by the terms of this Agreement. In entering into this Agreement and fulfilling its obligations, both Parties acknowledge that they are acting entirely on their own account.

15. **WAVIER**

- 15.1 The exercise or failure to exercise any right under the terms of this Agreement shall not, unless otherwise provided, constitute a waiver of that or any other right.

16. **GDPR**

The parties are required to comply with data protection legislation, the main provisions of which impose obligations on any UK organisation which obtains and processes personal data. In the carrying out of the activities listed in the Schedule to this Agreement the Parent is a data processor for the Subsidiary. In accordance with said contract/agreement and in compliance with the parties' obligations under the EU General Data Protection Regulation 2016/679 ("GDPR") and Data Protection laws, the Parent, as the Data Processor of the Subsidiary shall:

- i. Comply with all applicable data protection laws in the processing of Subsidiary personal data;
- ii. Not process Subsidiary personal data other than on the Subsidiary's documented instructions.
- iii. Take reasonable steps to ensure the reliability of any employee, agent or contractor who may have access to the Subsidiary personal data, ensuring that access is strictly limited to those individuals who need to know/access the relevant data, as strictly necessary for

the purposes of performance of this agreement between the parties and comply with applicable laws in the context of that individual's duties to the contracted processor, ensuring that all such individuals are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.

- iv. Implement appropriate technical and organisational measures to ensure a level of security for the Subsidiary personal data, as is appropriate to that risk;
- v. Notify the Subsidiary, in writing, of the engagement of any sub-processor and carry out adequate due diligence prior to the engagement of such sub-processor;
- vi. Assist the Subsidiary by implementing appropriate technical and organisational measures, for the fulfilment of the Subsidiary's obligations to respond to requests to exercise data subject rights under the data protection laws.
- vii. Notify promptly the Subsidiary if the Parent, or any sub-processor, receives a request from a data subject under any data protection law in respect of Subsidiary personal data; and ensure that they do not respond to that request except on the documented instructions of the association or as required by applicable laws to which the processor/sub-processor is subject
- viii. Notify the Subsidiary without undue delay upon the processor, or any sub-processor, becoming aware of a personal data breach affecting the Subsidiary personal data, providing the Subsidiary with sufficient information to allow it to meet any obligations to report or inform data subjects of the personal data breach under the data protection laws.
- ix. Co-operate with the Subsidiary and at its own expense take such reasonable commercial steps as are directed by the Subsidiary to assist in the investigation, mitigation and remediation of each such personal data breach.
- x. Delete and ensure the deletion or return of all copies of the Subsidiary personal data when required by the Subsidiary, within seven days of such request.
- xi. Make available to the Subsidiary, on request, all information necessary to demonstrate compliance with these terms and compliance with the applicable data protection legislation and shall allow for and contribute to audits in relation to the processing of Subsidiary personal data.

The Subsidiary hereby instructs the Parent as their processor (and authorises the processor to instruct sub-processors to process association personal data. The Subsidiary consents to the Parent using all the personal data that the Parent maintains about the Subsidiary (including names, addresses and any personal details of contacts in the Subsidiary's organisation) in order to provide the Shared Services to the Subsidiary. If the Parent intends to use the Subsidiary's personal data for any other reason, the Parent shall obtain the Subsidiary's written consent prior to doing so.

IN WITNESS WHEREOF these presents are subscribed as follows:-

Signed for and on behalf of Barrhead Housing Association Limited Committee Member/Authorised Signatory Name.....	In the presence of:- Name..... Address.....
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 Date.....
Signed for and on behalf of Levern Property Services Limited Director/Authorised Signatory Name.....	In the presence of:- Name..... Address..... Date.....

**This is the Schedule referred to in the foregoing agreement
between the Parent and the Subsidiary Company**

Services

The Parent will provide to the Subsidiary Company the following services to enable the policy and objectives of the Subsidiary Company to be achieved.

The following services will be provided:-

STRATEGY, PLANNING AND OPERATIONAL SERVICES

1. Strategy and planning advice to the Board.
2. Preparation and review of the Business Plan and associated budgets and financial plans for consideration by the Board.
3. Preparation and implementation of plans and programmes relating to the Subsidiary Company's business activities.
4. Delivery of management and related services and fulfilment of all contractual obligations to customers of Levern Property Services (subsidiary company) in accordance with the terms of the contractual agreement between Levern Property Services (subsidiary company) and the customer
5. Advice to the Board on the terms of the contractual agreements entered into between Levern Property Services and its customers
6. Management of the Subsidiary Company's portfolio of commercial rental properties, in accordance with Levern Property Services (subsidiary company) policies, Group Policies and applicable tenancy agreements and leases, including:
 - a) The granting of leases
 - b) Management, repairs and maintenance services
 - c) Rent collection, recovery and action in relation to debtors;
 - d) Provision of customer advice and services;
 - e) Insurance services, including advice on and management of insurance arrangements and claims
7. Advice to the Board on new business opportunities.

8. Operational management of any new business activities undertaken by the Subsidiary Company, that have been approved by the Parent Board in accordance with the Independence Agreement between Barrhead HA and Lavern Property Services (subsidiary company).
9. Development, implementation and monitoring of the Subsidiary Company's approach to risk management, as overseen by its Board
10. Procurement of goods and services in accordance with the instructions of Barrhead HA's Board
11. Acquisition and disposal of assets as instructed by and with the approval of the Board of Barrhead HA
12. The provision of all clerical and administrative support required to fulfil the requirements of this Agreement

Company Secretary Services

The services described below may be provided by the Nominated Officer, **Director of Corporate Services of Barrhead Housing Association** or by the other officers of the Parent as instructed by the Nominated Officer.

1. The provision of a full company secretary service to the Subsidiary Company.
2. Overseeing the business support systems required by the Subsidiary Company, including the preparation of business plans
3. Ensuring that the Board receives regular reports on the performance of the Company, its services and business activities.
4. Maintenance of the Subsidiary Company's records, books, registers and seal.
5. Ensuring that the Subsidiary Company makes any required returns timeously to all relevant statutory and regulatory authorities.
6. Ensuring that the Subsidiary Company provides all required information to the Parent.
7. Advice and support to the Board on its obligations under the Independence Agreement and to other contracts with the Parent.
8. Advice and support to members to ensure compliance with the Memorandum and Articles of the Subsidiary Company, and that the Board meets its legal and contractual obligations to **Barrhead Housing Association** and to external parties.
9. Calling, servicing and recording of Board and general meetings, and ensuring that appropriate records are kept of proceedings.
10. Advice and support to the Board on complying with Group Policy requirements on governance, including the Cod of Governance, declaration of interests, and managing conflicts of interest.
11. Commissioning any external legal or other professional advice as the Subsidiary Company and its Board may require.
12. Implementing procedures throughout the Group to ensure that the separate legal identities of the Parent and the Subsidiary Company are always made clear in all Board reports, internal and external communications, and in the Subsidiary Company's dealings with its service users and stakeholders.
13. Policy preparation and review
14. Co-ordination of all services provided by # in accordance with the terms of this Agreement.

FINANCIAL MANGEMENT SERVICES

1. Preparation of annual, medium and long term budgets and cash flow projections as set put in the Independence Agreement
2. Monitoring the Subsidiary Company's budgets and financial performance in relation to its Business Plan, and providing regular reports, information and advice to the Subsidiary Company Board about the Subsidiary Company's financial standing and performance.
3. Preparation of annual accounts and (where required) consolidated Group accounts, including liaison with the Subsidiary Company's external auditors.
4. Preparation and review of financial regulations, policies, procedures and financial control documentation and ensuring compliances with Group Policies.
5. The observance of Group policies on internal controls.
6. Business assurance services.
7. Negotiating and arranging private finance and any financial instruments relating to Subsidiary Company.
8. Preparing any proposals for on-lending within the Group, subject to the approval of the Boards of both Barrhead HA and Lavern Property Services
9. Monitoring the Subsidiary Company's compliance with financial covenants and standards set by lenders and ensuring that the Board is kept fully apprised of any failure or known potential failure to comply.
10. Taxation arrangements and providing or commissioning advice on compliance and/or tax mitigation strategies.
11. Financial administration and accounting, including maintenance of accounts; creditors and debtor management; invoicing; payment of invoices, and all treasury management transactions, including loan draw downs and investments.
12. Advice to the Board on banks and financial institutions to be used, and managing transactions and relationships with banks and financial institutions.
13. Arranging and reviewing insurances for the Subsidiary Company.
14. Monitoring insurance claims and liabilities and advising the Subsidiary Company.

HUMAN RESOURCES AND PERSONNEL

Lavern Property Services does not employ HR staff and purchases all required services from **Barrhead Housing Association** under the terms of this Service Level Agreement. In relation to the staff services it provides to **Lavern Property Services, Barrhead HA** shall be responsible for all aspects of human resources and personnel management in line with Group policies and standards, including:

1. Recruitment and selection.
2. Employee training and development.
3. Terms and conditions of employment.
4. Industrial relations.
5. Payroll and pensions administration.
6. Workforce planning.
7. Compliance with all employment law requirements, including those relating to equality and diversity and Health and Safety at Work.
8. Organisational development and quality initiatives, for example Investors in People.
9. Development of employment policies for the Group, and monitoring theirs implementation.
10. All matters relating to employee grievances and/or discipline.

INFORMATION AND COMMUNICATIO S TECHNOLOGY (ICT)

1. Providing all ICT services required by the Subsidiary Company for the effective and efficient management of its business.
2. Maintaining, servicing and upgrading the Group's ICT systems and services.
3. Preparing and maintaining audit, housekeeping, access, security and disaster recovery systems.
4. Maintenance of software programmes and databases.
5. Developing and introducing new systems, in consultation with the Subsidiary Company where appropriate.