





## AGENCY SERVICES POLICY

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| <b>Policy Owner</b>                                                                                                                                                                                                                                         | Director of Group Business Support                                                                                                                                                                                                 |
| <b>Document Author(s)</b>                                                                                                                                                                                                                                   | Group Business Support Manager                                                                                                                                                                                                     |
| <b>Approved By</b>                                                                                                                                                                                                                                          | Group Business Managers Team                                                                                                                                                                                                       |
| <b>Date approved</b>                                                                                                                                                                                                                                        | January 2025                                                                                                                                                                                                                       |
| <b>Next Review Date</b>                                                                                                                                                                                                                                     | January 2028                                                                                                                                                                                                                       |
| <b>Review Cycle</b>                                                                                                                                                                                                                                         | 3 years                                                                                                                                                                                                                            |
| <b>Communication &amp; Training Methods</b>                                                                                                                                                                                                                 | Review by RSL and Business Support Officers prior to sign off<br>DocTract                                                                                                                                                          |
| <b>Is a mandatory read required?</b>                                                                                                                                                                                                                        | NO                                                                                                                                                                                                                                 |
| <b>Does this policy require to go on the website?</b>                                                                                                                                                                                                       | NO                                                                                                                                                                                                                                 |
| <b>Who does this policy apply to eg GROUP or ENTITY NAME(S)<br/>NB if not all, check there is a separate policy in place</b>                                                                                                                                | Harbour Homes Scotland Ltd                                                                                                                                                                                                         |
| <b>The Policy has a direct link to the following Harbour policies and procedures<br/><br/>If there are separate procedures which require to be attached to the policy in Doctract, please ensure these are reviewed at the same time and also provided.</b> | Development Policy (for development agency services)<br><br>Asset Management Policy for (asset management agency services)<br><br>Any other relevant policies and procedures covering the team or department providing the service |
| <b>This policy complies with the requirements of these legal and/or regulatory documents</b>                                                                                                                                                                | Freedom of Information (Scotland) Act 2002<br>UK General Data Protection Regulation<br>UK Data Protection Act 2018 (DPA 2018)                                                                                                      |
| <b>Equality &amp; Diversity Impact (EI) Assessment Status</b>                                                                                                                                                                                               | This document was EDI Assessed by Group Business Support Manager and HR & OD Manager using the organisation's set procedure in January 2025 and is considered to be free of anything which may lead to any unfair                  |

|                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|---------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                       | <p>discrimination in its application.</p> <p>EI Assessment records are held by the Business Support team and can be accessed on request to the Group Business Support Manager.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>Data Protection Considerations</b> | <p>Our policies and procedures foster an approach of 'data protection by design and by default'</p> <p>In practice it means that our policies and procedures consider data protection issues, ie how to protect the data subject served by the policy or procedure; New systems, services, products and business practices involving personal data are designed and implemented to ensure personal data is protected by default; Data protection principles and safeguarding of individuals' rights are clear in the policy or procedure; And that if the policy or procedure aims to provide service to vulnerable groups (eg children) that the personal data is treated with extra protection.</p> |

## **1. INTRODUCTION**

- 1.1 This policy sets out the framework and processes to follow when providing agency services to other organisations.
- 1.2 For the purposes of this policy and attached agreement, 'agency services' are defined as any professional service provided to an external organisation for a fee. This could include, for example, financial services, procurement advice and assistance, and the provision of development or asset management agency services (ranging from advice to full project management services). Development agency services could also include the sale of completed housing units.
- 1.3 This policy covers services by Harbour Homes Scotland Limited (the RSL) to external organisations only. Services by the RSL to Harbour subsidiary companies, or services provided by Harbour subsidiaries to external organisations, are dealt with elsewhere.

## **2. POLICY STATEMENT**

- 2.1 Harbour Homes will enter into agreements with other relevant organisations to provide services where management decide it is appropriate to do so. The management of Agency Service provision to others will be done using the framework and processes set out in this document.

## **3. RESPONSIBILITIES UNDER THE POLICY**

- 3.1 The Group Chief Executive and Director of Group Finance and Business Support will have day to day operational responsibility for the operation of this Agency Services Policy, supported as appropriate by other colleagues.

## **4. POLICY FRAMEWORK**

### **4.1 Aims and objectives**

- 4.1.1. To pursue the overall aims and objectives incorporated within the policy statement as contained in Section 2 above.
- 4.1.2 Where there is capacity, to pursue and respond to new opportunities to provide agency services.
- 4.1.3 Where services are being provided, we will provide at all times the highest level of service and comply with the terms and conditions of the agency services agreement.
- 4.1.4 To enter into a service agreement using the standard agency services agreement attached at Appendix 1. This standard agreement will apply to all new services and will be adhered to where possible. Any changes to the main agreement will require approval by the Business Support Managers Team; however the schedule of services appended to the agreement may be changed

according to the nature of the service offered.

4.1.5 To set charge-out rates at a level which covers Harbour Homes costs.

4.1.6 Charge-out rates will be calculated per hour and comprise three elements:

- i) Basic salary (including employer's NI) based on the top salary point for each grade
- ii) Employer's pension contributions, using a grade-based weighted average pension rate based on the actual spread of pensions within each grade
- iii) Standard overheads (the same for each salary grade)

4.1.7 Value Added Tax will be added to the charge.

4.1.8 Charge-out rates will be reviewed and agreed by Group Leadership Team annually, or at any other date where it is considered that charges should be varied, as permitted by the terms of the agency agreement.

4.1.9 Where the RSL is providing development agency services and is developing new build properties for another organisation, it may opt to levy a percentage fee based on the total construction cost (to be approved by Group Leadership Team), rather than an hourly charge out rate. As a percentage fee is normally agreed at the outset of a development, in exceptional circumstances the fee levied may not fully cover the RSL's actual costs. However, services will not normally be offered at a rate where a potential deficit is anticipated.

4.1.10 Where the RSL is developing a housing or non-residential unit which will be retained by Harbour Homes and leased to a client organisation, the fee for the development services provided will be included within the total development costs, along with all other consultants' fees, and will be factored in when calculating the rent charge for the lease.

4.1.11 All agreements relating to Agency Services to other organisations must be approved by relevant Group Leadership Team member and agreement documents signed by them.

## **4.2 Area of operation**

4.2.1 Harbour Homes may provide services to organisations whose office or activity bases are located outwith the RSL's traditional areas of operation.

## **5. ASSOCIATED PROCEDURES**

5.1 Harbour Homes has a range of operational procedures which cover the activities undertaken by the particular team providing the agency service.



**Appendix 1      Standard agency services agreement template (red text denotes information to be inserted)**

**AGENCY AGREEMENT**

**between**

**xxxx**

**and**

**HARBOUR HOMES SCOTLAND LTD  
AGENCY AGREEMENT FOR PROVISION OF **xxxx** SERVICES**

***between***

**xxxx**, registered under the Co-operative and Community Benefit Societies Act 2014 (Registered Number **xxxxxx**), a registered charity (Scottish Charity Number **SCxxxxxx**) and having its registered office at **xxxx**, (hereinafter referred to as “the Client”).

***and***

Harbour Homes Scotland Ltd, registered under the Co-operative and Community Benefit Societies Act 2014, a registered charity (Scottish Charity Number SC027945) and having its registered office at 108 Constitution Street, Leith, Edinburgh EH6 6AZ (hereinafter referred to as “the Agent”).

**1.      Whereas**

- 1.1      The Client is engaged in managing properties in Edinburgh, and that the Agent is willing and able to provide services to assist the Client on certain terms and conditions.

**2.      Now Therefore**

- 2.1      The parties have agreed to enter into an Agreement for the provision of some Services and it is agreed between the parties as follows:

**3.      Interpretation**

- 3.1      In this Agreement where the context so admits:

“**Agreement**” means this Service Level Agreement and its Schedule;

“**Applicable Laws**” means all applicable laws, statutes, regulations from time to time in force;

**“Business Day”** means a day other than a Saturday, Sunday or bank holiday in Scotland, within the meaning of the Banking and Financial Dealings Act 1971;

**“Confidential Information”** means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of a party, including intellectual property rights, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as “confidential”) or which ought reasonably to be considered to be confidential;

**“Controller”** has the meaning given to it in the Data Protection Legislation;

**“Data Protection Legislation”** means any law, statute, subordinate legislation regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body which relates to the protection of individuals with regard to the processing of Personal Data to which a Party is subject including the Data Protection Act 2018 or any statutory amendment or re-enactment thereof and the GDPR;

**“Data Subject”** has the meaning given in the Data Protection Legislation;

**“GDPR”** means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation);

**“Personal Data”** means personal data (as defined in the Data Protection Legislation) which is Processed by the Agent or any Sub-Processor on behalf of the Client pursuant to or in connection with this Agreement;

**“Personal Data Breach”** has the meaning given to in the Data Protection Legislation;

**“Process”** has the meaning given in the Data Protection Legislation and cognate expressions including “Processed” and “Processing” shall be construed accordingly;

**“Processor”** has the meaning given to in the Data Protection Legislation;

**“Services”** means the Services specified in part one of the Schedule;

**“Sub-Processor”** means any person (including any third party but excluding an employee of the Agent) appointed by or on behalf of the Agent which is engaged in the Processing of Personal Data on behalf of the Client in connection with this Agreement; and

**“Supervisory Authority”** has the meaning given in the Data Protection Legislation.

#### **4. Agreement Period and Services to be provided**

- 4.1 Notwithstanding the date(s) of signing, the term of this Agreement shall commence on xxxx and shall be for an initial period of 12 months (the “Initial Period”). Subject to the provisions of Clause 10 and Clause 11, the Agreement cannot be terminated within the Initial Period. On expiry of the Initial Period, the Agreement shall

automatically continue until terminated by either party giving not less than 6 months' notice in writing in accordance with Clause 17.

- 4.2 The Agent will provide the Services. Additional tasks and services may be added to or may be removed from the Services by written agreement between the Client and the Agent. Such agreement will specify the additional services to be provided and the cost of providing the additional services and will be recorded in writing, signed on behalf of both parties and shall constitute variations to this Agreement.
- 4.3 This Agreement and its operation will be reviewed via 6 monthly meetings of the parties. The agenda for the review meetings will include the following items:
  - 4.3.1 review the Services provided during the preceding 6 months;
  - 4.3.2 discuss and agree any proposed changes to the Services; and
  - 4.3.3 review the financial arrangements.

## **5. Provision of services**

### **5.1 The Agent shall**

- 5.1.1 provide the services to the Client and to implement effectively and timeously, the Services during the period of this Agreement, subject in all cases to the specific instructions of the Client;
- 5.1.2 in carrying out the Services, comply with all Applicable Laws, any relevant regulatory requirements (including without prejudice to the foregoing generality, the requirements of any insurer), insurance policy effected pursuant to Clause 5.1.4 and any of the Client's applicable policies (insofar as such policies are reasonable and notified in advance to the Agent);
- 5.1.3 maintain adequate and appropriately skilled staff resources to provide an effective and consistent service to the Client and to inform the Client on any anticipated changes to key personnel; and
- 5.1.4 effect and maintain, throughout the period when this Agreement is in force and for a period of two years after expiry or termination (for whatever reason) of this Agreement, professional indemnity insurance at an amount not less than £20,000 in relation to provision of the Services and exhibit the terms of the policy on request.

## **6. Duties of the Client**

### **6.1 The Client shall**

- 6.1.1 give clear instructions to the Agent only via the Client's Lead Person (as defined in part 1 of the Schedule);
- 6.1.2 provide the Agent's Lead Person (as defined in part 1 of the Schedule) with access to all appropriate files and facilities including use of desk, files, telephone, computer and photocopying services if required;

- 6.1.3 provide such support and assistance from the Client staff to the Agent as may be necessary in providing the agreed Services;
- 6.1.4 provide the Agent with the information necessary to enable the agreed Services to be provided;
- 6.1.5 allow access to records as necessary to enable the agreed Services to be provided; and
- 6.1.6 arrange access to properties where required.

## **7. Duty of the Agent**

- 7.1 Notwithstanding any other terms of this Agreement, it shall be the duty of the Agent to carry out their obligations in a competent and professional manner with reasonable skill and care. While the manner in which the Services are performed is a matter for the Agent, the Agent and the Client will mutually agree any standard, policy initiative or performance requirements all to the Client's reasonable satisfaction which will be recorded in writing.

## **8. Payment**

- 8.1 The Agent shall provide the Client with details of hours worked by all staff and shall invoice the Client monthly / quarterly / annually (~~delete as applicable~~) in arrears within four weeks after completion of each month's / quarter's / year's (~~delete as applicable~~) work. The Client shall pay each invoice submitted within 28 days of receipt to a bank account nominated in writing by the Agent.
- 8.2 The invoice shall be based on the time spent by the Agent's staff on the Client's work as well as any expenses incurred in carrying out the Services. Each grade of staff has an hourly cost rate (as specified in part 1 of the Schedule), and this rate shall be applied to the hours worked to arrive at the sum specified in the invoice.
- 8.3 If the Client fails to make a payment due to the Agent under this Agreement by the due date, then, without limiting the Agent's remedies under Clause 10, the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this Clause 8.3 will accrue each day at 2% per annum above the Base Rate of the Royal Bank of Scotland plc rate from time to time, but at 2% per annum year for any period when that Base Rate is below 0%.
- 8.4 If the Client disputes a payment in good faith, then the interest payable under Clause 8.3 is only payable after the dispute is resolved, on sums found or agreed to be due, from the due date until payment.

## **9. Variation**

- 9.1 Any terms of this Agreement may be altered, deleted or added to, subject to agreement by both parties. No variation of this Agreement shall be effective unless it is in writing and signed by the parties.

## **10. Termination**

- 10.1 Either party shall be entitled to terminate this Agreement with immediate effect, by written notice to the other party, on the occurrence of any of the following events:
- a. the other party commits a material breach of any term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
  - b. the other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;
  - c. a petition is presented, an order made, or meeting convened, or an effective resolution passed, for the winding up of a party;
  - d. if a receiver is appointed to the whole or any part of the assets and undertakings of the other party;
  - e. 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 other party; or
  - f. the other party enters into any arrangement or composition with, or for the benefit of, his creditors; or enters into liquidation either voluntary or compulsory (except for the purposes of amalgamation or reconstruction).
- 10.2 Any termination of this Agreement shall be without prejudice to the accrued rights and/or liabilities of either party arising under or in terms of this Agreement.
- 10.3 Any termination of this Agreement shall be without prejudice to the antecedent rights of either party against the other.
- 10.4 Neither party will be liable for damages, losses, costs or expenses, howsoever arising, associated with the termination of this Agreement.
- 10.5 On termination, the Client shall immediately pay to the Agent all of the Agent's outstanding unpaid invoices and interest and, in respect of the Services supplied but for which no invoice has been submitted, the Agent may submit an invoice, which shall be payable immediately on receipt.
- 10.6 On termination or expiry of this Agreement the following clauses shall continue in force: Clause 3 (Interpretation), Clause 8 (Payment), Clause 12 (Confidentiality), Clause 13 (Data Protection), Clause 14 (Freedom of Information), Clause 15.3 (Limitation of the Agent's liability), Clause 16 (Resolution of Disputes) Clause 19 (Waiver), Clause 20 (Severance), Clause 25 (Law) and this Clause 10.6.

## **11. Force Majeure**

- 11.1 Force Majeure Event means any circumstance not within a party's reasonable control including, without limitation:
- 11.1.1. acts of God, flood, drought, earthquake or other natural disaster;
  - 11.1.2. epidemic or pandemic;

- 11.1.3. terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
  - 11.1.4. nuclear, chemical or biological contamination or sonic boom;
  - 11.1.5. any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;
  - 11.1.6. collapse of buildings, fire, explosion or accident; and
  - 11.1.7. interruption or failure of utility service.
- 11.2 Provided it has complied with Clause 11.3, if a party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event (for the purposes of this clause the "Affected Party"), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 11.3 The Affected Party shall:
- 11.3.1. as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under this Agreement; and
  - 11.3.2. use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 11.4 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 3 (three) months, either party may terminate this Agreement by giving written notice to the Affected Party.

## **12. Confidentiality**

### **12.1 Subject to Clause 14:**

- 12.1.1 a party (for the purposes of this clause the "Receiving Party") shall keep in strict confidence all Confidential Information that has been disclosed to the Receiving Party by the other party (for the purposes of this clause "Disclosing Party"), its employees, agents or subcontractor, which the Receiving Party may obtain through the performance of this Agreement and
- 12.1.2 the Receiving Party shall only be able to disclose such Confidential Information:
  - 12.1.2.1 to those of its employees, agents and subcontractors who need to know it for the purposes of discharging the Receiving Party's obligations under this Agreement,

provided that the Disclosing Party has required that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to this Agreement;

12.1.2.2 to the extent required by law, a court of competent jurisdiction or any governmental or regulatory authority; or

12.1.2.3 is in the public domain otherwise than by reason of the breach of an obligation of confidentiality owed under of pursuant to this Agreement.

### **13. Data Protection**

13.1 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.

13.2 The parties acknowledge that the Personal Data described in the scope of Part 2 of the Schedule will be Processed in connection with the Services under this Agreement. For the purposes of any such Processing, the parties agree that the Agent acts as the Processor and the Client acts as the Controller.

13.3 The Agent shall, in relation to any Personal Data Processed in connection with the performance by the Agent of its obligations under this Agreement:

13.3.1 agree and comply with the terms of the data processing provisions set out in Part 2 of the Schedule;

13.3.2 Process that Personal Data only on the written instructions of the Client unless the Agent is required to do otherwise by Applicable Laws to which they are subject, in which case the Agent shall to the extent permitted by Applicable Laws inform the Client of that legal requirement before the relevant Processing of that Personal Data;

13.3.3 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, to protect against unauthorised or unlawful Processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful Processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and Services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

13.3.4 ensure that all of the Agent's employees who have access to and/or Process Personal Data are:

- 13.3.4.1 obliged to keep the Personal Data confidential;
- 13.3.4.2 are aware of and comply with the Agent's duties under this clause;
- 13.3.4.3 are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Agent or as otherwise permitted by this Agreement; and
- 13.3.4.4 have undergone adequate training in the use, care, protection and handling of Personal Data;
- 13.3.5 The Agent shall not engage a Sub-Processor to carry out Processing in connection with the Services without prior specific or general written authorisation from the Client. In the case of general written authorisation, the Agent must inform the Client of any intended changes concerning the addition or replacement of any other Sub-Processor and give the Client an opportunity to object to such changes;
- 13.3.6 If the Agent engages a Sub-Processor for carrying out Processing activities on behalf of the Client, The Agent must ensure that the same data protection obligations as set out in this Agreement are imposed on the Sub-Processor by way of a written and legally binding contract, in particular providing sufficient guarantees to implement appropriate technical and organisational measures. The Agent shall remain fully liable to the Client for the performance of the Sub-Processor's performance of the obligations;
- 13.3.7 The Agent must provide to the Client reasonable assistance including by such technical and organisational measures as may be appropriate in complying with Data Protection Legislation;
- 13.3.8 The Agent must notify the Client if it, in relation to any Personal Data:
  - 13.3.8.1 receives a request from a Data Subject or purported request under the Data Protection Legislation;
  - 13.3.8.2 receives any other request, complaint or communication relating to either party's obligations under the Data Protection Legislation;
  - 13.3.8.3 receives any communication from the Supervisory Authority or any other regulator; or
  - 13.3.8.4 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by law;

and such notification must take place as soon as is possible but in any event within three (3) Business Days of receipt of the request or any other period as agreed in writing with the Client from time to time; and

- 13.3.9 Taking into account the nature of the Processing and the information available, the Agent must assist the Client in complying with the Client's obligations concerning the security of personal data, reporting requirements for data breaches, data protection impact assessments and prior consultations in accordance with Data Protection Legislation. These obligations include:
  - 13.3.9.1 ensuring an appropriate level of protection through technical and organisational measures that take into account the circumstances and purposes of the Processing as well as the projected probability and severity of a possible infringement of the Data Protection Legislation as a result of security vulnerabilities and that enable an immediate detection of relevant infringement events;
  - 13.3.9.2 notifying a Personal Data Breach (affecting the Personal Data Processed by the Agent in connection with this Agreement) to the Client without undue delay and in any event no later than twenty-four (24) hours after becoming aware of a Personal Data Breach;
  - 13.3.9.3 assisting the Client with communication of a Personal Data Breach (affecting the Personal Data Processed by the Agent in connection with this Agreement) to a Data Subject;
  - 13.3.9.4 supporting the Client with preparation of a data protection impact assessment; and
  - 13.3.9.5 supporting the Client with regard to prior consultation of the Supervisory Authority.
- 13.4 At the end of the provision of Services relating to Processing the Agent must, on written instruction of the Client, delete or return to the Client all Personal Data and delete existing copies unless EU or Member State law requires storage of the Personal Data.
- 13.5 The Agent must maintain written records including in electronic form, of all Processing activities carried out in performance of the Services or otherwise on behalf of the Client containing the information set out in Article 30(2) of the GDPR.
- 13.6 The Agent must:
  - 13.6.1 provide such information as is necessary to enable the Client to satisfy itself of the Agent's compliance with this Clause 13;
  - 13.6.2 allow the Client, its employees, auditors, authorised agents or advisers reasonable access to any relevant premises, during normal business hours, to inspect the procedures, measures and records referred to in this Clause 13 and contribute as is reasonable to those audits and inspections; and
  - 13.6.3 inform the Client if in its opinion an instruction from the Client infringes any obligation under the Data Protection Legislation.

- 13.7 If requested, the Agent must make such records referred to in Clause 13.5 available to the Supervisory Authority on request and co-operate with the Supervisory Authority in the performance of its tasks.
- 13.8 The parties acknowledge that the inspecting party will use reasonable endeavours to carry out any audit or inspection under Clause 13.6.2 with minimum disruption to the Agent's day to day business.
- 13.9 Subject to Clause 15, the Agent shall indemnify the Client against any loss or damage suffered by the Client in relation to any breach by the Agent of its obligations under this Clause 13.

#### **14. Freedom of Information**

- 14.1 In so far as Freedom of Information (Scotland) Act 2002 ("FOISA") and/or the Environmental Information (Scotland) Regulations 2004 ("EIR") applies to either party, if that party receives a request for information under the FOISA or EIR (for the purposes of this clause the "Receiving Party"), which includes any Confidential Information, the Receiving Party may seek the consent of the other party to release some or all of the information in response to the said request and shall do so if the Receiving Party is minded to disclose such items, whether in terms of the public interest or otherwise. If the other party shall fail to respond to such a request for consent within five (5) Business Days of the request being made, it shall be deemed to have consented to the release of information as requested by the Receiving Party.
- 14.2 In all cases the Receiving Party is responsible for determining in its absolute discretion, and notwithstanding any other provision in this Agreement or any other agreement, whether the information requested is exempt from disclosure in accordance with the provisions of the FOISA or the EIR. In reaching this conclusion the Receiving Party shall take into account any representations made in connection with this by the other party within seven (7) days of a request by the Receiving Party but the decisions of the Receiving Party as to what constitutes the public interest shall be final and conclusive in any dispute, difference or question arising in respect thereof.

#### **15. Indemnity**

- 15.1 Subject to Clause 15.2 and 15.3, and without prejudice to any other remedy or claim available to the Client, the Agent hereby agrees to indemnify the Client in respect of any losses incurred or suffered directly by the Client arising as a direct result of any breach by the Agent of their obligations under this Agreement (except and insofar as such loss has been occasioned by an act, omission, neglect or default of the Client or its other agents and representatives or may have been occasioned by the acts or omissions of third parties out with the control of the Agent (except where the acts or omissions arise from the Agent's failure to implement its obligations to the Client in terms of this Agreement or otherwise)).
- 15.2 In respect of the indemnity under Clause 15.1 the Agent shall not be liable to the Client whether in contract, delict (including without limitation negligence), breach of statutory duty or otherwise for consequential, special or indirect losses.
- 15.3 The Agent's total liability to the Client under this Agreement shall not exceed the sum of £20,000. The Agent's total liability includes liability in contract, delict (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Agreement.

15.4 Nothing in this Clause 15 shall limit liability in respect of the following:

15.3.1 death or personal injury caused by negligence;

15.3.2 fraud or fraudulent misrepresentation; and

15.3.3 any other losses which cannot be excluded or limited by applicable law.

## **16. Dispute Resolution**

16.1 It is the declared intention of the parties that all matters of disagreement should be resolved by negotiation and discussion between the parties and the parties will use all reasonable endeavours to apply the terms of this Agreement without the necessity for recourse to the provisions of Clause 16.2.

16.2 All disputes questions or differences whatsoever which may at any time hereafter arise between the parties hereto or their respective representatives touching this Agreement or the subject matter thereof arising out of or in relation thereto and whether as to construction and effect or otherwise shall be referred to a single arbiter to be agreed between the parties and failing agreement, to be nominated by the President for the time being of the Law Society of Scotland, whose decision shall be binding and conclusive on the parties.

16.3. For the avoidance of doubt, Clause 16.2 shall not apply to any failure to agree the amendment of the scope of the Services or the charges for the Services under Clause 4.2.

## **17. Notices**

17.1 Any notice given to a party under or in connection with this Agreement shall be in writing and shall be:

17.1.1 delivered by hand or by pre-paid first-class post, or other next Business Day delivery service at its registered office or such other address as the parties may notify to each other in writing; or

17.1.2 sent by email, in the case of the Agent, to **xxxx**, in the case of the Client, to **xxxx** or such other email addresses as the parties may notify to each other in writing.

17.2 Any notice shall be deemed to have been received:

17.2.1 if delivered by hand, on signature of a delivery receipt;

17.2.2 if sent by pre-paid first-class post or other next Business Day delivery services. At 9:00AM on the second Business Day after posting or at the time recorded by the delivery service; or

17.2.3 if sent by email, at 9:00AM on the next Business Day after transmission.

17.3 This clause does not apply to the service of any proceedings or any documents in any legal action.

## **18. Assignment**

- 18.1 No party may assign the benefit of this Agreement (in whole or in part) to any person save with the prior written consent of the other party.
- 18.2 This Agreement shall be binding upon and inure to the benefit of each party's successors and permitted assignees.

## **19. Waiver**

- 19.1 A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

## **20. Severance**

- 20.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.
- 20.2 If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **21. Entire Agreement**

- 21.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 21.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.
- 21.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Agreement.

## **22. No Partnership**

- 22.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 22.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

## **23. Third Party Rights**

23.1 This Agreement does not give rise to any rights under the Contract (Third Party Rights) (Scotland) Act 2017 for any third party to enforce or otherwise invoke any term of this Agreement.

## **24. Counterparts**

24.1 This Agreement may be executed in any number of counterparts and by each of the parties on separate counterparts.

24.2 Where executed in counterparts:

24.2.1 this Agreement shall not take effect until each of the counterparts have been delivered; and

24.2.2 each counterpart of this Agreement will be held as undelivered until the parties agree a date for delivery; and

24.2.3 the date of delivery of this Agreement may be inserted on the front page of this Agreement in the blank provided for the delivery date.

## **25. Law**

25.1 This Agreement and any dispute or claim arising out of or in connection with it shall be governed by and construed in accordance with Scottish law.

25.2 All disputes or claims arising out of or relating to this Agreement shall be subject to the exclusive jurisdiction of the Scottish Courts, to which the parties irrevocably submit.

### **In Witness Whereof**

This agreement, consisting of this and the preceding pages together with the Schedule annexed and attached as relative hereto, are executed as follows:

|                                                                                                                                                           |                                                                                      |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------|
| Signed for and on behalf of<br>Harbour Homes Scotland<br><br>.....<br>Authorised Signatory<br><br>Name.....<br><br>Date.....<br><br>Place of signing..... | In the presence of: -<br><br>.....<br><br>Name.....<br><br>Address.....<br><br>..... |
| Signed for and on behalf of<br>xxxx<br><br>.....<br>Board Member/Authorised Signatory                                                                     | In the presence of: -<br><br>.....<br><br>Name.....<br><br>Address.....              |

|                       |       |
|-----------------------|-------|
| Name.....             | ..... |
| Date.....             |       |
| Place of signing..... |       |

## AGENCY AGREEMENT BETWEEN xxxx AND xxxx

### SCHEDULE

#### **Part 1 of the Schedule - PROVISION OF TECHNICAL SERVICES BY THE AGENT**

1. The title (for this Agreement) of the lead person provided by the Agent shall be **xxxx (add job title)** (the "Agent's Lead Person").
2. The **xxxx** shall report to the Client's **xxxx (add job title)** (the "Client's Lead Person").
3. The Agent will provide the following Services as required by the Client (the "Services")

**4. Charge out rates xxxx/xx (add year)**

| <b>Position</b> | <b>Hourly Rate</b> | <b>Vat</b> | <b>Total Hourly Rate</b> |
|-----------------|--------------------|------------|--------------------------|
|                 |                    |            |                          |
|                 |                    |            |                          |
|                 |                    |            |                          |
|                 |                    |            |                          |

The hourly rates may be reviewed annually on the 1<sup>st</sup> of April and any proposed change will be notified one month in advance by the Agent and only introduced by mutual agreement in writing.

## **Part 2 of the Schedule – DATA PROTECTION INFORMATION**

### Part 1 – Data and Categories of Data Subject

For the purposes of this Agreement, the categories of personal or special categories of data being processed are *(please amend as applicable, depending on the services provided and nature of data. Delete all of those that do not apply):*

- Name
- Address
- Contact Details (telephone number, email address)
- Household makeup
- Language spoken
- Vulnerabilities or risk factors (including deafness, mental health, and physical disability)
- Criminal convictions and offences

The data subjects will be *xxxxx (please add as applicable, depending on the nature of the services provided eg staff of the Client, tenants of the Client, members of the tenant's household, factored owners and members of their household).*

### Part 2 – Nature and purpose of the processing

The Agent will process Personal Data under this Agreement when performing the Services.

The parties are processing this data for the following reasons:

The processing is necessary for:

- the performance of the contracts between the Client and its tenants and factored owners OR
- the nature of the services provided by the Agent to the Client *(eg if providing payroll services)*

*(please amend or delete the above as applicable, depending on the services provided and nature of data)*

### Part 3 – Duration and subject-matter

The subject matter of this Agreement is the execution and performance of the Services.

Processing will continue until the Agent no longer provides the Services to the Client.