

DATED

2015

MONMOUTHSHIRE HOUSING ASSOCIATION LIMITED

and

MONMOUTHSHIRE COUNTY COUNCIL

AGREEMENT

for the provision of grounds maintenance services



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AGREEMENT

DATED:

BETWEEN:

- (1) **MONMOUTHSHIRE HOUSING ASSOCIATION LIMITED** (company number IP30087R) whose registered office is at Nant-Y-Pia House, Mamhilad Technology Park, NP4 0JJ (“MHA”).
- (2) **MONMOUTHSHIRE COUNTY COUNCIL** of County Hall, Croesceiliog, Cwmbran, NP44 2XH (the “Council”). Insert council’s new address

RECITALS:

- (A) MHA wishes to appoint the Council to provide the Services.
- (B) The Council has agreed to provide, and MHA has agreed to take and pay for the Services, subject to the terms and conditions of this Agreement.

IT IS HEREBY AGREED as follows:

1 INTERPRETATION

1.1 In this Agreement, unless the context otherwise requires:

Agreement	means this agreement, including its Schedules
Annual Review Meeting	has the meaning given to that term in clause 7.6.
Change Notice	has the meaning given to that term in clause 6.1.
Confidential Information	means the provisions of this Agreement and all information in respect of the business and financing of each party including without prejudice to the generality of the foregoing any ideas, business methods, finances, prices, business, financial, marketing, development or manpower plans, customers lists or details, computer systems and software, know-how or other matters connected with the Services provided or obtained by each party, and information concerning either party’s relationships with actual or potential clients or customers and the needs and requirements of such persons.
CPI	means the United Kingdom general index of consumer prices published by the Office for National Statistics (or any other government

	department or other body upon which the duties in connection with such index have devolved) or any index which replaces it from time to time.
Disputed Amount	has the meaning given to that term in clause 5.7.
Due Date for Payment	has the meaning given to that term in clause 5.4.
Effective Date	means the date of this Agreement.
Event of Force Majeure	has the meaning given to that term in clause 20.1.
Extended Expiry Date	means the fourth (4 th) anniversary of the Effective Date.
Fee	means the fee payable by MHA to the Council for the provision of the Services as set out in Schedule 2, subject to review in accordance with the terms of this Agreement.
Fee Review Date	means the first and each subsequent anniversary of the Effective Date.
Good Industry Practice	means the principles and practices of accepted and recognised standards for the Services.
Initial Expiry Date	means the third (3 rd) anniversary of the Effective Date.
Invoice	has the meaning given to that term in clause 5.3.
KPIs	has the meaning given to that term in clause 7.3.
Pre Employment Checks	has the meaning given to that term in clause 21.2.1.
Quarter	means each of the following: <ul style="list-style-type: none"> (i) a period from 1 January to 31 March (inclusive); (ii) a period from 1 April to 30 June (inclusive); (iii) a period from 1 July to 30 September (inclusive); and (iv) a period from 1 October to 31 December (inclusive);

and “**Quarterly**” shall be construed accordingly.

Quarterly Review Meeting	has the meaning given to that term in clause 7.4.
Regulated Activity	in relation to children as defined in Part1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults as defined in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.
Representative	means a person appointed by MHA or (as the case may be) the Council under clause 7 of this Agreement.
Services	means the services set out in the Services Specifications.
Services Specifications	means the services specifications attached at Schedule 1 of this Agreement, as the same may be varied from time to time in accordance with the provisions of this Agreement.
Sites	means the sites at which the Services are to be provided as set out in Schedule 1 (as the same may be varied from time to time in accordance with the provisions of this Agreement) and “ Site ” shall mean any one of them.
Staff	means all individuals employed or engaged by the Council from time to time in connection with the provision of the Services.
Term	means the period commencing on the Effective Date and, subject to earlier termination in accordance with the provisions of this Agreement, ending on either: <ul style="list-style-type: none">(a) the Initial Expiry Date; or(b) if MHA exercises its option pursuant to clause 3.2, the Extended Expiry Date.
Working Day	means Monday to Friday (inclusive) but excludes bank holidays and public holidays.

1.2 In this Agreement (except where the context otherwise requires):

1.2.1 any reference to a Recital, clause or Schedule is to the relevant clause or Recital or Schedule to this Agreement and any reference to a sub-clause or paragraph is to the relevant sub-clause or paragraph of the clause or Schedule in which it appears;

- 1.2.2 clause headings are inserted for convenience only and are not to be used in the interpretation or construction of this Agreement;
- 1.2.3 words importing the singular include the plural and vice versa;
- 1.2.4 use of any gender includes the other genders;
- 1.2.5 all monetary amounts are expressed in Pounds Sterling;
- 1.2.6 in the event of any inconsistency or conflict between the main body of this Agreement and any of the Schedules or the documents referred to in this Agreement, the main body of this Agreement shall prevail;
- 1.2.7 any reference to a statute, statutory provision or subordinate legislation (**legislation**) shall (except where the context otherwise requires) be construed as referring to such legislation as amended and in force from time to time and to any legislation which re-enacts or consolidates (with or without modification) such legislation;
- 1.2.8 the Schedules and Recitals form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement includes the Schedules and Recitals.

2 SUPPLY OF THE SERVICES

- 2.1 During the Term of this Agreement, the Council shall provide the Services in accordance with and subject to the terms and conditions of this Agreement.

3 TERM

- 3.1 Subject to earlier termination in accordance with its terms, this Agreement shall commence on the Effective Date and shall continue for the duration of the Term.
- 3.2 No later than ~~six three~~ (36) months prior to the Initial Expiry Date MHA may, in its absolute discretion, give written notice to the Council that it wishes the Agreement to continue until the Extended Expiry Date.
- 3.3 If MHA gives notice in accordance with clause 3.2 this Agreement shall continue until the Extended Expiry Date, subject to the provisions for earlier termination contained in the Agreement.

4 OBLIGATIONS OF THE COUNCIL

- 4.1 The Council:
 - 4.1.1 shall exercise all due skill, care and diligence in the performance of the Services and will carry out the Services in accordance with Good Industry Practice, the Service Specifications and the terms of this Agreement; and
 - 4.1.2 warrants and represents to MHA that it has all necessary authorisations, consents, licences, accreditations and corporate powers to enter into this Agreement and entry into and performance of its obligations under this Agreement will not conflict with or result in any breach of any law, regulation or contract or document binding on it.
- 4.2 During the Term of this Agreement the Council:

- 4.2.1 will at all times ensure to the reasonable satisfaction of MHA's Representative, the proper performance of the Services and comply with all the requirements on the part of the Council set out in the Services Specifications and further will comply with all reasonable requirements as to best practice stipulated by MHA from time to time as to the performance of the Services or the manner in which the Services are provided;
 - 4.2.2 will report to MHA on the provision and performance of the Services in accordance with the terms of this Agreement;
 - 4.2.3 will ensure that it employs sufficient persons of sufficient abilities and skills to supervise and administer the performance of the Services in a proper and continuous manner and in accordance with the Services Specifications;
 - 4.2.4 will ensure that the Staff will, when engaged in the Services and/or otherwise on MHA's premises, comply with those of MHA's policies and procedures which MHA notifies the Council are to be complied with by the Staff;
 - 4.2.5 will replace any Staff who MHA reasonably decides has failed to carry out their duties with reasonable skill and care and/or has not complied with the policies and procedures referred to in Clause 4.2.4;
 - 4.2.6 will not do anything in performance of the Services which would be likely to prejudice the reputation of MHA and cause it loss as a result;
 - 4.2.7 will schedule the Services with MHA's customers, will provide effective customer liaison in carrying out the Services and will report outcomes to MHA on completion of any Services;
 - 4.2.8 will provide (i) such information to MHA as is required by the Services Specification and (ii) such other information as MHA may reasonably request in connection with this Agreement (whether financial information or otherwise whatsoever) within five (5) Working Days of any request.
- 4.3 The provisions of this clause 4 shall be without prejudice to all the other obligations of the Council under this Agreement.

5 PAYMENT FOR THE SERVICES

- 5.1 In consideration of the proper performance of the Services in accordance with this Agreement, MHA shall pay to the Council the Fee (subject to any adjustment, deduction or review made or agreed in accordance with this Agreement) in accordance with the provisions of this clause 5 and in the instalments and at the intervals set out in Schedule 2.
- 5.2 Any additional or varied Services provided to MHA by the Council shall be charged on the basis agreed under clause 6.
- 5.3 On the last Working Day of each month the Council shall submit to MHA the **"Invoice"** which shall comprise a full breakdown of the amount that it considers due as that month's instalment of the Fee and setting out any other information or documents which MHA has given notice to the Council that it considers is necessary, in its discretion, to approve payment before any payment in respect of the Invoice shall be considered by MHA.
- 5.4 MHA shall make payment (subject to deduction of any Disputed Amounts) against the Invoice within twenty eight (28) days after the receipt by MHA of the Invoice and all

information required under clause 5.3 (the "**Due Date for Payment**"). The usual method by which MHA shall make payments under this clause 5 shall be by BACS transfer (to an account the details of which shall be notified to MHA by the Council prior to the first Due Date for Payment, but MHA reserves the right to make payment to the Council by cheque, if, in MHA's opinion, the circumstances require this. If the Council fails to provide any of the information or documents that it should have provided in complying with its obligations under clause 5.3 then MHA may reject the Invoice and clause 5.8 shall not apply.

- 5.5 Payment by MHA shall be without prejudice to any claims or rights which MHA may have against the Council and shall not constitute any admission by MHA as to performance by the Council of its obligations under this Agreement.
- 5.6 MHA shall have the right to amend the procedure for submission of Invoices by the Council if it deems necessary. This may involve, but shall not be limited to, varying the batching, frequency/timescale, computerised invoicing, documentation requirements, etc. MHA shall give the Council written notification of any such amendment and the Council shall comply within fourteen (14) days of receipt of the notification.
- 5.7 If MHA disputes in good faith its obligations to pay part or all of an Invoice submitted by the Council under this Agreement (the "**Disputed Amount**"), then the following provisions apply:
 - 5.7.1 MHA shall pay the undisputed amount to the Council in accordance with the provisions of this clause 5;
 - 5.7.2 MHA shall notify the Council before the payment becomes due of the Disputed Amount and the reasons why it considers it is not obliged to pay the Disputed Amount;
 - 5.7.3 MHA's failure to pay the Disputed Amount, pending resolution of the dispute, will not be a breach of this Agreement;
 - 5.7.4 where MHA has notified the Council under clause 5.7.2 that there is a Disputed Amount, the Council must notify MHA within five (5) Working Days following receipt of that notification if it does not agree with MHA's position (as notified to it under clause 5.7.2) and the reasons why it does not agree; failing which the Council will be deemed to agree that the Disputed Amount is not payable;
 - 5.7.5 the parties shall refer to the dispute resolution procedure under clause 9 the issue of whether or how much of the Disputed Amount is payable to the Council;
 - 5.7.6 upon the payment of the Disputed Amount which is payable by MHA (if any) being determined through the dispute resolution procedure under clause 9, MHA must pay that amount to the Council, within fifteen (15) Working Days of receipt of a corrected invoice from the Council for the Disputed Amount (or relevant part of it) as so determined; and
 - 5.7.7 where the Council agrees, or it is determined, that an invoice contains an error, and a subsequent invoice contains an equivalent error, MHA will be under no obligation to pay any part of the subsequent invoice until the error has been rectified and a correct invoice has been submitted and, for the avoidance of doubt, the time allowed for payment of the correct invoice under this clause will run from the date on which it is re-presented correctly.
- 5.8 If MHA fails to make any payment which (in accordance with clause 5.4) is due in full on the due date the Council may charge MHA interest (both before and after judgement) on

the amount unpaid from time to time at the rate of 2% above Barclays Bank's base rate from time to time, and the parties agree that this constitutes a substantial remedy for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998 and associated legislation.

- 5.9 The Fee payable under this Agreement will be adjusted on each Fee Review Date in line with the percentage adjustment in the CPI as published in the September immediately preceding the Fee Review Date in question, provided that where the percentage adjustment in the CPI is greater than a 5% increase, the Fee will be increased by 5% unless the Parties agree otherwise in writing.
- 5.10 All sums payable under this Agreement are exclusive of any applicable value added tax which will be added to each invoice at the applicable rate at the time and will be paid for by MHA.

6 VARIATION IN THE SERVICES

- 6.1 MHA may, at any time following the Effective Date, by giving written notice to the Council (a "**Change Notice**"):
- 6.1.1 vary the Services or the Service Specifications;
 - 6.1.2 increase or reduce the Sites to which this Agreement applies; and/or
 - 6.1.3 omit any part of the Services.
- 6.2 If any Services and/or Sites are omitted under this clause then MHA shall not be liable for any loss of profits, loss of contracts or other costs or losses suffered or incurred by the Council as a result.
- 6.3 Where a variation is ordered in accordance with this clause 6, the Parties shall meet within five (5) Working Days of the date of the Change Notice to discuss whether such variation necessitates an increase or decrease in the Fee payable to the Council, and any such increase or decrease shall be agreed following discussion between both Parties (acting reasonably) and then certified on behalf of MHA. A copy of such certificate shall be sent to the Council.
- 6.4 In the event of a dispute between the Parties as to whether a variation ordered in accordance with this clause 6 necessitates an increase or decrease in the Fee payable to the Council or as to the amount of any such increase or decrease the matter shall be decided in accordance with clause 9.

7 REPRESENTATIVES AND PERFORMANCE MANAGEMENT

- 7.1 The Council and MHA shall each nominate a Representative who shall be authorised to make decisions relating to the Services and this Agreement on their behalf.
- 7.2 Each party shall inform the other of any change in the identity of its Representative during the course of this Agreement. The Council must obtain MHA's consent before changing its Representative.
- 7.3 The parties shall, throughout the Term, look for and seek to achieve continuous improvement in the quality and carrying out of the Services through the development and implementation of such key performance indicators as may be agreed between them from time to time ("**KPIs**").

Quarterly Review Meetings

- 7.4 The parties' Representatives shall meet on a Quarterly basis to discuss and review the Council's performance of the Services in the preceding Quarter and such other matters as the parties deem appropriate (a "**Quarterly Review Meeting**").
- 7.5 No less than ten (10) Working Days before each Quarterly Review Meeting the Council shall provide MHA with the following information:
- 7.5.1 the cost of the Services against any agreed budget;
 - 7.5.2 an update on all the added value items as outlined within section 10.0 of the attached schedule 1.
 - 7.5.3 An update on all the monitoring items as outlined within section 11.0 of the attached schedule 1.
 - 7.5.4 the performance of the Services against the KPIs in that Quarter;
 - 7.5.5 the results of any customer satisfaction surveys undertaken in relation to the Services in that Quarter;
 - 7.5.6 a breakdown of the Services carried out and completed in that Quarter; and
 - 7.5.7 details of any instances where the Services have not been provided to the standards required by this Agreement in that Quarter, together with details of any matters which have adversely affected the Council's performance of the Services.

Annual Review Meetings

- 7.6 The parties' Representatives shall meet on annual basis no later than four (4) weeks before each anniversary of the date of this Agreement to discuss and review the Council's performance of the Services in the preceding year and such other matters as the parties deem appropriate (an "**Annual Review Meeting**").
- 7.7 No less than ten (10) Working Days before each Annual Review Meeting the Council shall provide MHA with the following information:
- 7.7.1 the cost of the Services against any agreed budget;
 - 7.7.2 the performance of the Services against the KPIs in that year;
 - 7.7.3 the results of any customer satisfaction surveys undertaken in relation to the Services in that year;
 - 7.7.4 a breakdown of the Services carried out and completed in that year; and
 - 7.7.5 details of any instances where the Services have not been provided to the standards required by this Agreement in that year, together with details of any matters which have adversely affected the Council's performance of the Services.
- 7.8 The Council shall maintain clear and accurate records relating to its performance of the Services and shall ensure that adequate systems are in place to enable it to comply with its obligations under this clause 7.

8 DEFECTS

- 8.1 MHA shall be empowered to direct, in respect of any Services requested, that the Council shall at its own cost immediately rectify to the entire satisfaction of MHA, all defects due to materials or workmanship not being in accordance with this Agreement, which may be discovered or become apparent in the Services executed during a period of twelve (12) calendar months from and after the date of completion of the Services, notwithstanding that this Agreement may have expired or been determined prior to the expiration of such period.
- 8.2 Any direction by MHA in relation to this clause 8 shall be issued to the Council in writing and shall be complied with by the Council in all respects.

9 RESOLUTION OF DISPUTES

- 9.1 If there is a dispute between the parties concerning any matter arising from or in connection with this Agreement, the parties will use reasonable endeavours to settle the matter in accordance with the dispute resolution procedure set out below.
- 9.2 Any dispute which has not been resolved between MHA's Representative and the Council's Representative within fourteen (14) days of the matter being raised by one to the attention of the other, may be escalated by either party to the Head of Service or a Director of each party, by notice in writing.
- 9.3 If the dispute has not been resolved within fourteen (14) days of a notice under clause 9.2, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing (**ADR notice**) to the other party to the dispute requesting a mediation. A copy of the request should be sent to CEDR. The mediation will start not later than twenty (20) days after the date of the ADR notice.

10 CONFIDENTIALITY

- 10.1 Except as otherwise provided under this Agreement, all Confidential Information communicated to one party by the other or learned by one party from the other, whether before or after the Effective Date, shall be kept in confidence and shall be used for the purpose of this Agreement. Each party confirms to the other that all Confidential Information of the other communicated or learned before the Effective Date has been kept in confidence and used only for the purpose of this Agreement.
- 10.2 No Confidential Information, including without limitation the provisions of this Agreement, shall be disclosed or used otherwise than for the purposes of this Agreement by the recipient party, its agents, sub-contractors, suppliers or employees without the prior written consent of the other party except:
- 10.2.1 as may be necessary by reason of binding legal requirements which were involuntarily incurred;
- 10.2.2 to the extent such Confidential Information is known (or becomes known) to the public otherwise than by a breach of the provisions of this clause 10;
- 10.2.3 to the extent such Confidential Information has been independently developed by persons who have had no access to or knowledge of the Confidential Information of the disclosing party;

- 10.2.4 to the extent such Confidential Information has been received from a third party without a duty of confidence;
- 10.2.5 to the professional advisers (including bankers) of the recipient party in connection with the interpretation or operation of this Agreement or any dispute arising therefrom provided that the recipient party has obtained an undertaking in writing from such professional advisers to keep such information confidential and to use the same only for the purposes of this Agreement; or
- 10.2.6 as may be required by any regulator.
- 10.3 Each party shall procure that all its employees, sub-contractors, agents or servants who have access to any information of the other party to which the obligations of clause 10.1 or 10.2 apply shall be made aware of and shall be bound by these obligations and shall further procure that all of such employees, sub-contractors, agents or servants shall, if required, enter into written undertakings in favour of the other party in this respect, in a form previously approved by the parties.
- 10.4 This clause 10 shall survive the termination of this Agreement.

11 TERMINATION

- 11.1 Either party shall be entitled to terminate this Agreement forthwith by written notice to the other if:
- 11.1.1 the other party commits any continuing or material breach of any of the provisions of this Agreement and, in the case of such a breach which is capable of remedy, fails to remedy the same within ten (10) Working Days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied; or
- 11.1.2 the other party ceases, or threatens to cease, to carry on its business, becomes insolvent, or has a liquidator, trustee in bankruptcy, receiver, manager, administrator or administrative receiver appointed in respect of its assets, or suffers any event analogous to any of the foregoing in any jurisdiction in which it is incorporated or resident.
- 11.2 MHA may terminate all or part of this Agreement forthwith by written notice to the Council if:
- 11.2.1 the Council without reasonable cause fails to proceed diligently with the Services or wholly suspends the carrying out of the Services; and/or
- 11.2.2 in performing the Services, the Council persistently fails to achieve the KPIs and targets specified within the KPIs.
- 11.3 Without prejudice to MHA's other rights of termination under this Agreement, MHA may terminate all or part of this Agreement at any time by giving not less than six (6) months written notice to the Council.
- 11.4 Any waiver by either party of a breach of any provision of this Agreement shall not be considered as a waiver of any subsequent breach of the same or any other provision.
- 11.5 The rights to terminate this Agreement given by this clause shall not prejudice any other right or remedy of either party in respect of the breach concerned (if any) or any other breach.

11.6 During any period of notice, both parties shall co-operate to ensure that the interests of each party are met under whatever new arrangements may be proposed.

12 CONSEQUENCES OF TERMINATION

12.1 Termination of this Agreement howsoever arising shall not prejudice or affect the accrued rights and liabilities of the parties as at termination.

12.2 Termination of this Agreement shall not affect continuation of any provisions which either are expressly stated to survive or impliedly survive termination.

12.3 In the event that this Agreement is terminated for any reason in whole or part, the Council shall (at its own expense) work with any new provider of MHA and shall provide all reasonable assistance to MHA to ensure a smooth and comprehensive handover to the new provider. For the avoidance of doubt and unless otherwise agreed in writing, the Council shall not be entitled to charge for any services provided by it in discharging its obligations under this clause 12.3.

12.4 In the event of termination or expiry of this Agreement (or part thereof) for whatever reason, MHA shall not be liable to the Council for any loss of profits, loss of contracts or other costs, losses and/or expenses arising out of or in connection with such termination or expiry.

13 LIABILITY OF THE COUNCIL

13.1 The Council accepts full responsibility for and shall indemnify and defend and hold harmless MHA from and against all costs (including legal costs), charges, expenses, damages and proceedings incurred or suffered by MHA or for which MHA may become liable, arising from or in connection with any negligence of or breach of this Agreement by the Council or any of its employees or agents including, but without limitation:

13.1.1 any failure by the Council to comply with any applicable laws and regulations, including but not limited to the Health and Safety at Work etc Act 1974, relating to the provision of the Services;

13.1.2 all claims whatsoever and howsoever arising which may at any time be made and which arise out of any injury, death, sickness or ill health caused to or suffered by MHA's employees, licensees, tenants, residents or customers;

13.1.3 all third party claims arising out of the performance of the Services;

13.1.4 all loss or damage caused to any land, building or chattel in the ownership, occupation, or possession of or partial ownership, occupation or possession of MHA by the Council; or

13.1.5 any other loss or damage or whatever kind incurred or suffered by MHA.

14 ASSIGNMENT AND SUB-CONTRACTING

~~14.1~~ MHA shall have the right to novate, assign or transfer this Agreement, in whole or in any part, or share its interest in the Agreement without the consent of the Council. In such event, MHA shall notify the Council accordingly in writing providing 6 months notice. ~~Should the council ask for prior written consent as MHA has in 14.2 below?~~

~~14.2~~14.1 The Council shall not, without the prior written consent of MHA, assign or transfer this Agreement, in whole or any part, share or interest in this Agreement.

14.314.2 The Council shall not, without MHA's written consent (which MHA in its absolute discretion shall be entitled to grant or withhold), sub-contract any portion of the Agreement.

14.414.3 The Council's sub-contracting any part of this Agreement, shall not relieve it from any liability or obligation under the Agreement and the Council shall be responsible to MHA for all acts, omissions and defaults of its sub-contractor or its agents, staff or own sub-contractors as if they were the acts, omissions and defaults of the Council notwithstanding that MHA may, as a condition of giving its consent to the Council to sub-contract require the sub-contractor to enter into, directly with MHA, any warranties, undertakings, guarantees or indemnities concerning the provision of the Services and the sub-contractor's compliance with this Agreement in all respects.

15 INSURANCE

15.1 The Council shall maintain policies of insurance (and produce certified copies to MHA on request together with satisfactory evidence of their existence and renewal) in respect of any insurances which the Council is obliged to carry under any applicable laws, including (without limitation) insurance against public liability (which covers, without limitation, damage to property) in the minimum sum of £[] and employers liability in the minimum sum of £[]. The Council will note MHA's interest on the insurance policies.

15.2 This clause 15 shall not be deemed to limit in any way the Council's liability under this Agreement.

16 LICENCES AND CONSENTS

The Council warrants that it will maintain and keep in force for the duration of this Agreement any operators' licence, other licence, consent, approval, authority or other authorisation required by virtue of any statutes or relevant regulations or otherwise for the provision of the Services other than those agreed between MHA and the Council from time to time to be maintained by MHA which MHA shall maintain and keep in force for the duration of this Agreement and shall ensure that the terms of such permit the Council to operate any relevant system for the term of the Agreement.

17 COMPLIANCE WITH LAWS AND REGULATIONS

The Council warrants that it will comply in all respects with all applicable laws and relevant regulations, MHA's safety, health and environmental regulations, rules and codes of practice from time to time (as notified by MHA to the Council from time to time).

18 DATA PROTECTION

18.1 The Council warrants that it will comply with each of the provisions of the Data Protection Act 1998 (the "Act") as amended or replaced from time to time, as if it were a data controller, including without limitation the data protection principles set out in Schedule 1 to the Act.

18.2 In particular, the Council warrants:

18.2.1 to process the personal data that it will be processing on behalf of MHA only as is necessary for the purposes of this Agreement and shall not carry out any other processing, use or disclosure using such personal data; and

18.2.2 it will take appropriate technical and organisation measures against the unauthorised unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.

19 NOTICES

19.1 All notices or other communications under or in connection with this Agreement shall be given in writing, email or by fax. Subject to clause 19.2 any such notice will be deemed to be given as follows:

19.1.1 if in writing, when delivered (delivery shall be deemed to be immediate if by hand or two days after posting if sent by first class post); and

19.1.2 if by fax, when received (provided that all of it is legible).

19.1.3 If by email to the relevant person which will be either the Head of Department, Director or the representative as notified under 7.1

19.2 A notice given in accordance with clause 19.1 but received on a non-Working Day or after business hours in the place of receipt will only be deemed to be given on the next Working Day in that place.

19.3 The address and facsimile number of each party for all notices under, or in connection with, this Agreement, are as set out below or as otherwise specified by the relevant party by giving at least ten (10) Working Days' written notice:

19.3.1 MHA: 0845 677 5544

19.3.2 the Council: **[TBC]** *Station House, Station Road, Raglan, Monmouthshire NP15 2ER – 01633 644136*

20 FORCE MAJEURE

20.1 Neither party shall be liable for failure to perform its obligations under this Agreement if such failure results from circumstances beyond the party's reasonable control to the extent it renders such performance unlawful or impossible (an "**Event of Force Majeure**").

20.2 Each of the parties hereto agrees to give notice forthwith to the other upon becoming aware of an Event of Force Majeure such notice to contain details of the circumstances giving rise to the Event of Force Majeure.

20.3 If a party incurs a delay due to an Event of Force Majeure which continues for more than four (4) weeks then the other party shall be entitled to terminate this Agreement. Neither party shall have any liability to the other in respect of the termination of this Agreement as a result of an Event of Force Majeure.

21 TUPE AND PRE-EMPLOYMENT CHECKS

21.1 The parties have agreed that they shall comply with their respective obligations contained in Schedule 3.

21.2 The Council shall:

- 21.2.1 ensure that all Staff engaged in Regulated Activity are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service (the “**Pre-Employment Checks**”);
 - 21.2.2 monitor the level and validity of the Pre-Employment Checks for each member of Staff;
 - 21.2.3 not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk; and
 - 21.2.4 share any Pre-employment Checks or risk assessment in respect of any member of Staff with MHA.
- 21.3 The Council warrants that at all time for the purposes of this Agreement it has no reason to believe that any person who is or will be employed or engaged by the Council in the provision of Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.

22 WAIVER

No delay, neglect or forbearance on the part of either party in enforcing against the other party any term or condition of this Agreement shall either be or be deemed to be a waiver or in any way prejudice any right of that party under this Agreement.

23 NO PARTNERSHIP OR AGENCY

This Agreement shall not constitute or imply any partnership, joint venture, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in this Agreement. Each party acknowledges that in fulfilling their obligations hereunder, and save as expressly otherwise provided, each party shall be acting entirely for its own account.

24 ENTIRE AGREEMENT

- 24.1 This Agreement shall constitute the entire agreement and understanding between the parties with respect to all matters which are referred to in it and the subject matter of it and shall supersede any previous agreements, including without limiting the foregoing, prior drafts, undertakings, representations, warranties and arrangements of any nature whatsoever (whether or not in writing) between the parties in connection with the subject matter of this Agreement.
- 24.2 Each of the parties acknowledges and agrees that it has not been induced to enter into this Agreement in reliance upon, and waives all rights in respect of, any warranty, representation, statement, agreement or undertaking of any nature whatsoever other than as expressly set out in this Agreement.

25 SEVERANCE

- 25.1 If any provision of this Agreement (or part of any provision) is found by any court or administrative body of competent jurisdiction to be invalid, illegal or unenforceable that provision or part-provision shall, to the extent required, be deemed not to form part of this Agreement, and the validity and enforceability of the other provisions of this Agreement shall not be affected.

25.2 If any provision of this Agreement (or part of any provision) is found to be invalid, illegal or unenforceable the parties shall negotiate in good faith to amend such provision such that, as amended, it is legal valid and enforceable and achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid, illegal or unenforceable provision.

26 AMENDMENTS

Any amendments or additions to this Agreement must be evidenced in writing and signed by the Representatives of both parties.

27 COUNTERPARTS

This Agreement may be entered into in the form of two counterparts each executed by one of the parties but, taken together, provided that each party duly executed such a counterpart, each of the executed counterparts, when duly exchanged or delivered, shall be deemed to be an original and to constitute one Agreement.

28 THIRD PARTY RIGHTS

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

29 GOVERNING LAW

This Agreement shall be subject to and constructed and interpreted in accordance with English Law and shall be subject to the exclusive jurisdiction of the English courts.

IN WITNESS WHEREOF the parties have executed this document as a deed on the day and year first above written:

The Common Seal of **MONMOUTHSHIRE HOUSING ASSOCIATION LIMITED** was hereunto affixed in the presence of:

Authorised signatory

Authorised signatory

The Common Seal of **MONMOUTHSHIRE COUNTY COUNCIL** was hereunto affixed in the presence of:

Authorised signatory

Authorised signatory

SCHEDULE 1
SERVICES SPECIFICATIONS

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1.0 Introduction

This Appendix details the ground maintenance service to be provided by the Council to the Association (the **Ground Maintenance Service**). This document is to be read in conjunction with the appendices schedules **and the Agreement** for the provision of grounds maintenance services

2.0 Grass Cutting

2.01 General Conditions

The Council shall ensure that the grass area on the property belonging to the Association are treated or kept as specified in Paragraphs 2.0.1 – 2.12.

2.02 Clearance of Grassed Areas

Prior to commencement of mowing activities, the Council shall inspect all grassed areas and remove all items of litter from such areas.

2.03 Weather Conditions

During periods when ground conditions are so wet as to prevent grass cutting without causing damage to the surface or levels of the ground, grass cutting operations shall cease. The Council shall, at the earliest opportunity, report to the Association's nominated officer any suspension of grass cutting operations. Any plots which require grass cutting but which were "missed" due to ground/weather conditions shall be treated as soon as possible by the Council.

2.04 Mowing Around Obstructions

Grass cutting shall be undertaken by the Council in such a manner as to cut the full extent of the areas detailed on the plans and within the schedules to leave the entire area at the specified standard.

Grass cutting shall be carried out as close as possible to fixed obstructions. The use of herbicides shall be permitted when applied to bases of walls, tree bases, fence lines, buildings etc., this to reduce the amount of possible damage to fixed structures, also to reduce risks associated with hand arm vibration syndrome. All application of chemical must be in accordance with COSHH.

Mowing around obstructions, in the proximity of margins and against horticultural beds shall be undertaken to the same standard and frequency as that applied to the main area, using methods, tools and machines as appropriate. The cutting of such areas shall be undertaken on the same day as the cutting of the main areas.

2.05 Commencement/Termination Dates.

In the case of all cutting regimes, grass cutting shall commence and terminate on the dates which may be specified by the Association from time to time. These will normally be mid-March to mid-October for the 16 cut schedules. Other regimes will normally start later and terminate before these dates.

2.06 Bulbs and Shrubs within Grassed Areas.

In certain areas flowering bulbs have been planted or have become naturalized. In such areas the grass is to be left uncut for a minimum period of 7 weeks following flowering. In such areas grass cutting shall be carried out to the specified standard.

A non-residual herbicide shall be permitted for use around shrubs that are planted within grassed areas, this to reduce the amount of damage to the base of the shrub.

2.07 Frequencies.

Where areas are specified to be cut the whole area shall be cut leaving no areas uncut between rows producing an even height of cut over the entire area. The total number of cuts and the height of cut shall be identified for each area.

2.08 Grass Clippings.

Except where otherwise stated, within the cut and collect schedule, grass cuttings shall lie where they fall. However all clippings that fall onto footpaths, drives, car parks etc. shall be removed by brush or blower, so as not to constitute a slip hazard.

2.09 Types of Grass Cutting.

The appropriate machine will be used in accordance with the type and nature of the plot to be cut. Generally larger flatter areas will be undertaken by a cylinder machine with a rotary cut applied to smaller more restricted plots.

2.9.1 Type C – Cylinder Machines – no grass collection.

1. Machines shall be of the cylinder type with a minimum of 6 blades per cylinder.
2. Machines shall be either ride on or tractor mounted.
3. Frequency of cuts, unless otherwise specified, shall be a maximum of 16 cuts per year.
4. Height of cut shall be approx. 15 – 20mm.
5. Working days between cuts will be no greater than 10 days.
6. First cut will be undertaken in mid-March.

2.9.2 Type D – Rotary Machines – no grass collection.

1. Machines shall be of the rotary type which would be either pedestrian operated or ride on.

2. Frequency of cuts, unless otherwise specified, shall be a maximum of 16 cuts per year.
3. Height of cut shall be approx. 20-25mm.
4. Working days between cuts shall be no greater than 10 days.
5. First cut to be undertaken in mid-March.

2.9.3 Type B - Rotary Machines - with grass collection.

Machines shall be either pedestrian operated or ride on with a collection facility; all grass clippings to be moved from site to a suitable recycling facility.

1. Frequency of cuts, unless otherwise specified, shall be a maximum of 16 cuts per year.
2. Height of cut shall be approx. 20-25mm.
3. Working days between cuts shall be no greater than 10 days.
4. First cut to be undertaken in mid-March.

2.9.4 Type E - Flail Operated Machines - no grass collection.

Machines shall be of the flail type, either pedestrian operated or tractor mounted.

1. Frequencies of cuts shall be specified at either 4 or 8 cuts per year.
2. Height of cut shall be approx. 70mm.
3. Working days between cuts shall be no greater than 30 days for the 4 cut regimes and 20 days for the 8 cut regimes.

2.10 Edging off to Grassed Areas

At locations identified within the grass cutting schedule e.g. Sheltered O.A.P Complexes, grassed areas to be edged using a pedestrian operated edging machine or by spade/half-moon. The edge is to be cut cleanly and vertically and all arising to be cleared from site for proper disposal. This will normally be undertaken during the Winter Maintenance period.

2.11 Leaf Collection.

At certain locations, where specified, leaves shall be collected from grassed areas, this operation to be carried out when all leaves have fallen. Leaves that have been collected shall be removed from site for disposal at a suitable recycling facility. Instructions to undertake such works will be issued by the appropriate officer representing Monmouthshire Housing on the basis of quotations received from the

contractor.

2.12 Vandalism

The Association's nominated officer (the Supervising Officer) shall be informed of any vandalism, excess litter, fly tipping or damage caused to grass verges at the time of the visit.

3.0 MAINTENANCE OF HORTICULTURAL FEATURES

3.01 General Requirements

The Council shall maintain any horticultural features as outlined within the Horticultural schedule in the properties belonging to the Association as set out in Paragraph 3.0.1 – 3.0.9.

3.02 Horticultural Practices

All works undertaken in the maintenance of shrubs, roses and annual bedding, shall be carried out in accordance with good horticultural practices. All persons carrying out horticultural operations shall be under the immediate supervision/direction of a person qualified to City & Guilds in Amenity Horticulture levels 1&2.

3.03 Clearance of litter

All shrub and rose beds shall be visited at one occasion per month and all litter collected and removed from site for proper disposal. Any sharps found onsite shall be removed using the correct methods by a suitably qualified person.

The Supervising Officer shall be notified at this time of any vandalism or pest and disease and quotations given on request for any necessary eradication.

3.04 Maintenance Visits (Rose Beds)

The summer maintenance period will commence on the first Monday in April continuing until October. The cycle will comprise of 8 visits.

The winter maintenance period will commence the first Monday in November to the end of March and will comprise of 2 visits. The first to be undertaken in December and the second visit is to be undertaken in February.

3.05 Maintenance of Rose Beds

3.0.5.1 The soil surface of the beds shall be kept weed free by cultivating and weeding.

3.0.5.2 All rose beds within grassed areas shall be edged off using long handled shears.

3.0.5.3 During February the application of a suitable fertilizer will be carried out at 10grms/mtr² and turned in.

3.0.5.4 During early April roses shall be pruned in accordance with good practice.
During December roses will be pruned to ½ their present size to reduce wind rock, and edged with a ½ moon edger.

3.06 Maintenance Visits (Shrub Beds)

All beds shall be visited as specified and kept weed free by suitable chemical application as per the

During December 1/3rd of all shrubs shall be pruned, all debris and leaves shall be removed from the bed.

During February all debris will removed from the bed, the bed shall either be cultivated or a layer of wood bark added following the application of a pre emergence herbicide. The bed shall be edged with a ½ moon edger.

On one occasion during July/August any shrubs interfering with footpaths, roads or windows shall be cut back to a point that alleviates any intrusion. All cuttings to be removed from site.

3.08 General Requirements of Annual Bedding

The Council shall maintain the Association's bedding displays which are planted twice per year, once with summer bedding and once with winter bedding.

Summer bedding shall be ready for planting at the end of May/first week of June.

Winter bedding shall be ready for planting during October.

Prior to planting the bedding plants fertilizer is to be incorporated at 25grms/mtr².

Summer bedding plants are to be arranged in a display which will include one or a number of the following species, with a variation between displays:-

Lobelia, Allyssum, Petunia, Begonia, Ageratum, Marigolds, Antirrhinum, Geraniums.

Winter bedding plants are to be arranged in a display which will include one or more of the following species, with a variation between displays:-

Daffodils, Tulips, Pansy, Viola. Hyacinths

3.09 Maintenance Visits (Annual Bedding)

Following the planting of the summer bedding, beds shall be visited once every 10 working days, the bed shall be cultivated and any weeds removed, the bed shall be edged with a side arm shears.

The bedding shall be removed in readiness for planting winter stock during the last week of September/first week of October.

Following the planting of the winter bedding, beds shall be visited once every 20 working days, the bed shall be cultivated and any weeds removed, the bed shall be edged with a side arm shears.

The bedding shall be removed in readiness for the planting of the summer stock during the first or second week of May.

During periods of hot/dry weather the beds shall be irrigated at a rate to ensure penetration of at least 50mm.

Once every 2 years annual beds are to have mushroom compost incorporated into the surface.

4.00 BENCH MAINTENANCE

4.01 The Council shall be responsible for the maintenance of any benches belonging to the Association as described in Paragraphs 4.02 – 4.03 of this Appendix

4.02 On one occasion per year, 1/5th of all scheduled benches shall be rubbed down and treated with a suitable preservative.

4.03 At the time of the visit any vandalism or defects are to be reported to the supervising officer.

5.00 HERBICIDE APPLICATION

5.01 The Council shall apply herbicide as described in Paragraphs 5.02 – 5.09

5.02 The Association will issue work instructions to apply a suitable herbicide to scheduled communal hard surfaces, roads and footpaths. This will be carried out at two occasions per year between the months of May and September.

5.03 All herbicides and fungicides are to be used and stored in accordance with legislation arising from the Food and Environment Act 1985, and the COSHH regulations.

5.04 All operatives shall be qualified to PA1 and PA6 standards.

5.05 Protective clothing used to be in accordance with the relevant chemical data sheet.

5.06 All spraying equipment is to be in good working order.

5.07 The timing of any spraying activities shall be such that no spraying takes place during periods of rainfall.

5.08 Chemical logs are to be kept, noting the chemical applied, date and location.

5.09 All chemicals are to be applied in accordance with the relevant chemical data sheet.

6.00 HEDGE CUTTING AND MAINTENANCE

6.01 The Council shall cut and maintain any hedges on the Association's property as described in Paragraphs 6.02 – 6.03

6.02 General Requirements

All hedges specified within the schedules shall be cut with either side arm flail or hand held hedge cutters.

All work shall be in accordance with all Health and safety Regulations.

All growth shall be removed to the previous year's growth.

All arisings shall be removed from site for disposal.

6.03 Frequency of Hedge Cutting.

Beech, Hawthorn and Hornbeam hedges shall be cut on one occasion per year from September to end of October.

Leylandii and Laurel hedges shall be cut on one occasion per year in June.

Privet and Lonicera hedges shall be cut on 4 occasions per year in June, July, September and

Box and Yew hedges shall be cut on 2 occasions per year in June and late August/September.

7.0 PLAYGROUNDMAINTENANCE

The Council shall be responsible for maintenance of the Association's playground areas as described in Paragraphs 7.02 - 7.12

7.01 General Requirements

Shown within the schedules are play areas containing items of equipment of steel and/or timber construction. These will be inspected and maintained in accordance with the specification set out below and in accordance with EN1176 Playground Equipment Standard:

The Council shall ensure that a suitably qualified manager, (is registered to a minimum of Register of Play Inspectors International exam for Routine Inspections and/or B tech level 3 in Playground Installation and Inspections) supervise all playground related activities.

The designated Play Ground Inspector shall be qualified to a minimum of ROSPA – Playground Inspection and Maintenance. .

7.02. Inspections

Once every four weeks a suitably qualified person shall visit each site shown, and inspect all items of equipment, surfacing, fencing, litter bins and benches in accordance with the EN 1176 and EN 1177. During his inspection the inspector shall pay particular attention to:

- (a) The security of all bolts, welds and other components subject to wear, breakage or interface.

- (b) Any vandalism which might result in injury to any person using the equipment, including any malicious acts such as the placement of razor blades or broken glass on or into the surfaces of play equipment or the partial cutting of chains. All inspections to be carried out in a careful, and exhaustive manner paying particular attention to the points set out below.
- (c) The inspector shall release all twisted or tied swing chains freeing them for proper use.
- (d) The inspector shall then pay specific attention to the points set out below:
 - (i) Structure - bending, warping, cracking, loosening, breaking etc.
 - (ii) Surface finish - protective coating missing, rust or other corrosion, cracks, or splinters.
 - (iii) Consumable items - missing, bent, broken, loosened, worn, open hooks etc.
 - (iv) Edges- protrusions, sharp points, or edges.
 - (v) Pinch or crush points - exposed mechanisms, junctures, or moving components etc.
 - (vi) Mechanical devices and other moving parts - worn bearings, lack of lubrication, seizure or excessive motion, unduly noisy motion, missing covers etc.
 - (vii) Guard or handrails - missing, bent, broken, loosened etc.
 - (viii) Access - missing, bent, broken rungs, steps or treads, loosening etc.
 - (ix) Swing and other - missing, damaged, loosened, seat, sharp corners, insecure fittings etc.
 - (x) Foundations - cracked, loose in ground etc.
 - (xi) Protective surfacing under equipment - compacted, displaced to surfacing level, not extensive enough to cover possible impact area, fouled, missing, worn etc.
- (e) In addition, the inspector shall visit each site once each week between four weekly visits for a visual check of all the equipment. At the weekly inspection any equipment deemed unsafe shall be rectified immediately where able to do so, or immobilized as necessary. All defects will be reported to the Supervising officer together with costs/ quotations for remedial works.
- (f) The inspector will be required to carry a stock of spares of minor items such as swing seats, shackles, bolts, etc. to enable minor repairs to be carried out during maintenance visits.

7.03 Sweeping

At the time of the four weekly inspection the inspector shall sweep the surface of the play area as necessary to remove any litter glass or other debris this being taken away for disposal, all litter bins in the proximity of the play area shall be emptied, and litter carted from site.

7.04 Forms for Inspections

The inspector shall produce forms on which to record his inspections this detailing the specific items and points to be inspected for each site. Such inspection forms shall be presented to the Supervising Officer at the end of each 5 working day period.

7.05 Lubrication of Equipment

On 4 occasions per year during the months of March, June, September and December all items of play equipment shall be lubricated using approved greases or oils, this work being recorded on a report form produced by the inspector. In carrying out the lubrication of equipment all pivots or bearing surfaces shall be treated. Items equipped with grease nipples shall be greased with high pressure grease gun sufficient grease being used to ensure that clean, fresh, grease escapes from the bearing.

1. After lubrication has been completed and prior to leaving the site the inspector shall remove all excess lubricants and shall completely clean all surfaces to ensure that no user of the play equipment can become contaminated with lubricants.
2. During all lubricating operations the inspector shall take steps to ensure that the surfaces of the play area remain free of oil and grease spillage or drips.

7.06 Dangerous or Damaged Equipment

Should as a result of his inspections, or other work on site, the inspector become aware of any damaged or dangerous equipment the inspector shall immediately (ie. before the completion of the days work), take steps to fence or immobilize the items of equipment affected. The inspector shall notify the Supervising Officer of his action within 24 hours of his having taken such action.

7.07 Painting Generally

Once every year the Council shall undertake the following painting operations on one third of sites indicated within the schedule.

During all painting operations the Council shall take steps to ensure that the surfaces of the play area remain free of paint spillages or drips, and that the public are advised of the presence of wet paint, barriers being erected around wet items of equipment until dry. All debris produced during the painting operations shall be removed before leaving site on each occasion.

7.08 Painting of Wooden Equipment

All rough or splintered areas shall be sanded down. Treat with one generous coat of an approved quick drying preservative.

7.9 Painting of Steel Equipment

The Council shall wire brush or rub down all areas that need to be painted and remove all loose paint or rust and grease or oil from such areas prior to painting.

The equipment shall then be painted using an approved lead free specialist paint, equipment being painted to pattern where so specified. All areas of joining colours should be in the form of a clear line and all finished paint work should be “feathered” to give a smooth, free of runs surface.

7.10 Safety Surfacing

Safety surfacing has been installed around play equipment. Such safety surfacing may comprise of one or more of the following: Childs play, rubber tiles, bark or wet pour.

The inspector shall include in his weekly inspections for checking the condition of such surfacing, a suitably qualified person shall be available for carrying out any necessary repairs to the various types of surfaces.

All contaminates, glass, litter etc. are to be removed from the surfacing, check for wear, movement and for signs of damage or deterioration.

7.11 Measurement of Play Items

- The Council shall inspect on a four weekly basis how: the inspections are carried out and reporting requirement is complied with.
- The safety requirements are complied with
- The areas are swept
- The litter bins are emptied.
- The Council shall also undertake visual inspections weekly checking how reporting, safety, sweeping responsibilities are complied with.

The quality of service provided by the Council shall be measured by number of items that comply with the requirements of this Appendix.

7.12 Inspection date information

MCC are to provide MHA with the intended playground inspection dates for the forthcoming year to enable MHA to monitor and check to aforementioned requirements are undertaken to MHA satisfaction.

8.0 Gritting and Snow clearance

The council shall provide a gritting and snow clearance service upon request by MHA . A gritting costing schedule is to be provided to MHA each year . Any price increases are not subject to the section 10 of this SLA fees and charges and will be negotiated separately . The snow clearance prices shall be on an individual one off basis as and when required.

9.0 Health and Safety

The Council shall appoint a safety representative who shall be available during working hours and be responsible for:-

- a. Ensuring safe working practices.
- b. Ensuring compliance with the Association’s Health and Safety Policy.

- c. Informing the association of any hazards that may exist or arise on land covered by the contract.
- d. Ensuring correct safety equipment used for the various tasks.
- e. Ensuring that a person employed holds a current first aid certificate.
- f. Ensuring that all persons handling equipment are competent and have attended the relevant training course.
- g. Ensuring risk assessments are kept up to date for all the relevant tasks.
- h. Ensuring that all equipment is checked and complies with the current Noise at Work regulations.

10.0 Added Value

MCC will incorporate the added value benefits as set out in Paragraph 10.1 – 10.2

10.1 Targeted Recruitment and Training

Level	Outcome	Activity
1	Minimum of 3 number volunteering positions per annum are provided	The contractor offers MHA tenants with volunteering opportunities usually 2 weeks per placement.
2	1 number new apprenticeships are created for young people within the 35 year term	The contractor employs one or more apprentices either directly or as part of a shared apprenticeship scheme
3	1 number employment opportunities are created for local community over the 35 year term	MCC employs in addition to the apprentice one or more people directly, who live in one of Monmouthshire's communities, providing them with a waged position of not less than 3 months

10.2 General Added value Benefits

GROUND MAINTAINENCE – ADDED VALUE BENEFITS	
Tree risk assessment	Carried out every 2/3 year period
Leaf collection to sheltered complexes only	Carried out on x1 occasion per year in Nov/Dec
Provide Christmas trees to Nantypia House	Supplied in December
Playground consultation	Provide consultation regarding installation of new play areas and items.
Various advisory site visits	To undertake advisory site visits with MHA neighbourhood staff to advise on Trees, Hedges and overgrown areas and recommend suitable method for managing effectively.
Supporting local communities	To contribute to MHA local community groups by providing a lump sum investment of £500 per year . This will be invested in supporting local communities.
To support MHA environmental policy	By working with MHA to identify suitable “wild grass” areas improving pollination and the management of the grassed areas.

11.0 Monitoring information

MCC is to provide information, starting on the 01.08.15 and quarterly thereafter, on the following

How many volunteers from MHA work wise project have been involved in working with MCC for the previous quarter?

Any employment including if these persons live within Monmouthshire and if they are an MHA tenant

Types of added value benefits undertaken and an estimated monetary value

[How many complaints have been received and how ere they resolved](#)

A grass cutting programme of works is to be provided to MHA prior to March for each year of this agreement. The programme is to identify the grass areas to be cut with expected dates of each cut. An agreed process to measure the quality is to be agreed with MCC and MHA including any forms required to monitor .

12.0 Omissions and Inclusions

12.1 This schedules included within this SLA are subject to an initial 6 monthly review from the start of this agreement and on an annual basis thereafter . The schedules which form part of this agreement will be reviewed before the 1st March on each year to enable correct pricing for any uplift due. This is to due to items and areas which may require omission or inclusion .

SCHEDULE 2

THE FEE

- 1** The Fee shall be the lump sum fee of £[] per annum (excluding VAT), subject to review in accordance with the terms of this Agreement.
- 2** The Fee shall be paid in twelve equal monthly instalments.

SCHEDULE 3

TUPE

1 INTERPRETATION

1.1 In this Schedule, unless the context otherwise requires:

New Service Provider	means MHA or such other organisation as MHA engages to perform the Services with effect from the Service Transfer Date.
Service Transfer Date	means the date on which the Services (or any part of the Services) for whatever reason transfer from the Council to MHA or any New Service Provider
Transferring Employees	means those persons who immediately prior to the Service Transfer Date are employed by the Council in the performance of the Services who have a right under TUPE to transfer to the New Service Provider.
TUPE	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended).

2 COMMENCEMENT OF THE SERVICES

2.1 The parties agree that no employees will transfer from MHA to the Council on commencement of the Services.

3 TERMINATION

3.1 The provisions of this Paragraph 3 will continue notwithstanding the termination of this Agreement.

3.2 If this Agreement is terminated or determined (in whole or in part) in circumstances in which TUPE applies the following provisions will apply:

3.2.1 With effect from the Service Transfer Date the New Service Provider will become the employer of the Transferring Employees.

3.2.2 The Council shall be liable for all salaries, wages, bonuses, pension contributions, income tax and National Insurance contributions or other emoluments relating to the Transferring Employees up to and including the Service Transfer Date and shall indemnify MHA or the New Service Provider, as the case may be, in respect thereof.

- 3.2.3 The Council will pay to MHA or, as the case may be, the New Service Provider a sum equal to the cost (including National Insurance Contribution and pension contributions) of paying each Transferring Employee for holiday accrued at the Service Transfer Date but which remains untaken at that date.
 - 3.2.4 The Council will indemnify MHA and/or the New Service Provider against any loss, damage, expenses, costs (including reasonable legal fees) suffered or incurred by reason of any proceeding, claim or demand by or on behalf of any Transferring Employee relating to any act or omission by the Council in relation to the employment and or its termination.
 - 3.2.5 The Council will indemnify MHA and/or the New Service Provider against any loss, damage, expenses, costs (including reasonable legal fees) suffered or incurred by reason of any proceeding, claim or demand by or on behalf of any person employed or formerly employed by the Council other than a Transferring Employee for which it is alleged MHA or any New Service Provider may be liable by virtue of this Agreement and/or TUPE.
 - 3.2.6 The Council warrants that it will comply in full with its obligations under Regulations 11 and 13 of TUPE and will indemnify MHA and/or the New Service Provider against any loss, damage, expenses, costs (including reasonable legal fees) suffered or incurred by MHA or the New Service Provider as a result of a breach of this warranty except to the extent that the liability arises from MHA or the New Service Provider's failure to comply with Regulation 11 of TUPE.
- 3.3 6 months prior to the expiry of this Agreement, following notice to terminate this Agreement (in whole or in part) or whenever the Council is on notice that MHA will terminate this Agreement (in whole or in part), whichever is the earlier in time, the Council shall:
- 3.3.1 not vary any terms or conditions of employment of any employee employed in the performance of the Services at that time (the **Assigned Employees**) without MHA's prior written consent;
 - 3.3.2 be precluded from making any material increase or decrease in the numbers of, or from replacing any Assigned Employee(s) save in circumstances where an Assigned Employee resigns and then only with MHA's prior written consent;
 - 3.3.3 not terminate or give notice to terminate the employment or contract of any Assigned Employee without MHA's prior written consent;
 - 3.3.4 be precluded from transferring any Assigned Employee to another part of its business or moving other employees from elsewhere in its business who have not previously been employed or engaged in providing the Services to provide the Services, or from materially decreasing/increasing the number of hours worked by any Assigned Employee in connection with the Services save with MHA's prior written consent.
- 3.4 The Council agrees that on request by MHA during any time within the 6 months prior to expiry of this Agreement, following notice to terminate this Agreement (in whole or in part) or whenever the Council is on notice that MHA will terminate this Agreement (in

whole or in part) whichever is the earlier, the Council shall provide to MHA or at MHA's direction, to the New Service Provider, copies and/or allow it access to such employment records and/or employee information in relation to the Assigned Employees as MHA reasonably requests.

- 3.5 The Council warrants that all and any information provided under Clause 3.4 or otherwise in respect of the Assigned Employees will be true and accurate in all material respects.
- 3.6 MHA will indemnify the Council against all claims arising from MHA's or the New Service Provider's failure to perform and discharge any obligation and against any claims in respect of any Transferring Employees arising from or as a result of:
 - 3.6.1 any act or omission by MHA or the New Service Provider relating to a Transferring Employee occurring on or after the Service Transfer Date; and
 - 3.6.2 all and any claims in respect of all emoluments and outgoings in relation to the Transferring Employees (including without limitation all wages, bonuses, PAYE, National Insurance contributions, pension contribution and otherwise) accrued and payable after the Service Transfer Date.