

Dated 2019

Parties

- (1) **Bury Metropolitan Borough Council** of the Town Hall, Knowsley Street, Bury, Lancashire BL9 0SW (the **Council**);
 - (2) **Six Town Housing Limited** (company no **04948846**) whose registered office is at 6 Knowsley Place, Angouleme Way, Bury, Lancashire, BL9 0EL (**Six Town**),
- each a **Party** and together, the **Parties**.

Introduction

- (A) Six Town was incorporated in England under the Companies Act on 30 October 2003 and the Council is the sole member of Six Town.
- (B) This Agreement sets out the terms upon which the Council will participate in Six Town as its sole member.
- (C) Other Subsidiaries may execute a Deed of Accession and become party to this Agreement from time to time.

Agreed Terms

1 Definitions and Interpretation

1.1 In this Agreement:

Articles means the articles of association of Six Town;

Business means the business of Six Town as set out in clause 2;

Business Day means a day (other than a Saturday or Sunday) on which the banks in the City of London are open for retail business. **Business Days** shall be construed accordingly;

Business Plan means Six Town's plan for delivery of the Business as updated or amended in accordance with clause 2.3;

Council means the Bury Metropolitan Borough Council and any successor body;

Deed of Accession means the deed of accession in substantially the same form as set out in Schedule 3 to this Agreement;

Director means a director of Six Town;

Group means the Council, Six Town and any other Subsidiary;

Group Member means a member of the Group from time to time;

Group Policies mean the policies set out in Schedule 4;

Initial Subsidiary means Six Town;

Management Agreement means the agreement between the Council and Six Town for the management of the Council's housing stock (amongst other things) dated on or about the date of this Agreement;

Member means the Council;

Member Consent means consent of the Member in accordance with clause 3.53.6;

Member Consent Matters means those matters listed in Schedule 1;

Parent Board means the body established by the Council to exercise the Council's role as Member of Six Town as described in this Agreement;

Partnership Protocol means the protocol set out in Part 1 (Partnership Pledge), part 2 (Partnership Principles) and part 3 (Relationship Principles) of Schedule 5 setting out the values and principles that underpin the relationship between the Member and Six Town;

Right to Manage is the right exercisable pursuant to the Housing (Right to Manage) Regulations 2008 (or predecessor legislation) as amended from time to time;

TMO means a tenant management organisation established pursuant to the Right to Manage;

Subsidiary means any body corporate which is wholly owned by the Member or another Group Member and accedes to this Agreement as a Subsidiary. Six Town is an **Initial Subsidiary**; and

United Kingdom means the geographical area of the United Kingdom of Great Britain and Northern Ireland as at the date of this Agreement.

1.2 A reference to a statutory provision includes a reference to:

1.2.1 a statutory amendment, consolidation or re-enactment (whether before or after the date of this Agreement),

1.2.2 statutory instruments or subordinate legislation (as defined in section 21(1) of the Interpretation Act 1978) or orders made under the statutory provision (whether made before or after the date of this Agreement), and

1.2.3 statutory provisions of which the statutory provision is an amendment, consolidation or re-enactment.

1.3 Reference to:

1.3.1 a person includes a legal or natural person, partnership, trust, company, government or local authority department or other body (whether corporate or unincorporate),

1.3.2 a statutory or regulatory body shall include its successors and any substituted body,

1.3.3 an individual includes, where appropriate, his personal representatives,

1.3.4 the singular includes the plural and vice versa, and

1.3.5 one gender includes all genders.

1.4 Unless otherwise stated, a reference to a clause or schedule is a reference to a clause or schedule to this Agreement and a reference to this Agreement includes its schedules.

1.5 Clause headings in this Agreement are for ease of reference only and do not affect its construction.

1.6 In construing this Agreement the so-called ejusdem generis rule does not apply and accordingly the interpretation of general words shall not be restricted by words indicating a particular class or particular examples.

1.7 Where a provision of this Agreement imposes an obligation, cost or liability on the Parties, that obligation, cost or liability shall be construed as being against those Parties jointly and severally, and where a provision of this Agreement gives a claim, benefit or right to the Parties, that claim, benefit or right attaches to those Parties jointly.

1.8 Where a consent and/or permission is required under this Agreement from one Party to the other that consent and/or permission shall not be unreasonably withheld or delayed.

2 **Business**

2.1 The Parties agree to adhere to the principles set out in the Partnership Protocol.

2.2 The Business of Six Town shall be:

2.2.1 to carry out all housing management activity in relation to the Council's housing stock (other than where alternative arrangements have been made relating to a TMO pursuant to the Right to Manage);

2.2.2 to perform the other functions and activities as set out in the Management Agreement;

2.2.3 to carry out such other activities from time to time as are permitted and/or contemplated within the Business Plan including its activities relevant to its status as a registered provider of social housing,

together with any activities reasonably incidental to the above.

2.3 Six Town shall send the current Business Plan to the Member when available (and in any event not less than once per calendar year) and invite the Member to provide comments on the proposed Business Plan.

2.4 The Member will respond to Six Town on the proposed Business Plan as soon as reasonably practicable (and in any event within three months) following receipt. Subject to the receipt of Member Consent from the Member before the end of each accounting period, Six Town shall (in accordance with this Agreement) consider and, if appropriate, adopt an updated and revised Business Plan. No adoption, variation or replacement of any Business Plan shall take effect unless such adoption, variation or replacement has received Member Consent and followed the review processes described in clauses 5 and 6 of the Management Agreement.

- 2.5 Each Business Plan shall be substantially in the format of the previous Business Plan (unless otherwise stipulated by the Council).
- 2.6 Notwithstanding any other provision of this clause 2, following the requisite approval by the Directors of a new proposed Business Plan or an amended or updated and revised Business Plan, such draft Business Plan shall become, or such amended or updated Business Plan shall become, the Business Plan for the relevant accounting periods. For any period when a proposed Business Plan has not been approved and adopted by the Directors as stipulated in clause 2.4 and otherwise in accordance with this Agreement the relevant existing Business Plan shall continue to be the Business Plan of Six Town.
- 2.7 Six Town shall not acquire any property either within or outside the Council's administrative area or carryout any business that is not in the Business Plan without Member Consent.

3 **Conduct of Six Town's Affairs**

- 3.1 Meetings of the Directors shall be held no less than four times in every year and at not longer than three monthly intervals.
- 3.2 With the exception of those matters requiring Member Consent pursuant to clause 3.5, the management of Six Town shall be vested in the Directors. For the avoidance of doubt, the Directors shall appoint a managing director (or Chief Executive Officer) on such terms as they may think fit (providing that no such appointment shall be made without Member Consent) who shall be responsible for the day to day management of the Business within the terms of the Business Plan and this Agreement and perform such duties as may be delegated to him/her by the Directors. The Directors may also remove such managing director and appoint a replacement on such terms as they may think fit providing that no such removal and appointment shall be made without Member Consent.
- 3.3 Without prejudice to the generality of the foregoing, the Directors will determine the manner in which the Business is to be carried out, subject to the (a) Business Plan, (b) those matters requiring Member Consent pursuant to clause 3.5, (c) requirement for the Business of Six Town to be fully aligned with the Council's own procedures and strategic objectives and (d) any other express provisions of this Agreement. In particular, the Directors shall exercise all voting rights and other powers of control available to them in relation to Six Town so as to procure (in so far as they are able in the exercise of such rights and powers) that, at all times during the term of this Agreement, Six Town shall:
- 3.3.1 carry on and conduct its Business and affairs in a proper and efficient manner, in accordance with both the Business Plan and good business practices, and
 - 3.3.2 transact its Business in a manner commensurate with the Council's strategic objectives and ambitions for growth.
- 3.4 If Six Town requires any approval, consent or licence for the carrying on of its Business in the manner in which it is from time to time carried on or proposed to be carried on, Six Town will obtain and maintain the same in full force and effect.
- 3.5 Six Town shall ensure that none of the Member Consent Matters shall be carried out without the prior consent in writing of the Member.

- 3.6 Six Town shall permit the chair of its board to discuss (or request that another Director discusses) the affairs, finances and accounts of Six Town with any designated officers and executives of the Member at any time. All books, records, accounts and documents relating to the Business and the affairs of Six Town shall be open to the inspection of any such person, who shall be entitled to make any copies thereof as he or she deems appropriate to keep the Member properly informed about the Business and affairs of Six Town or to protect its interests as Member.
- 3.7 Six Town agrees with the Member that it will:
- 3.7.1 maintain effective and appropriate control systems in relation to the financial, accounting and record-keeping functions of Six Town;
- 3.7.2 report to the Parent Board within ten Business Days of each Quarter with:
- (a) such information as may reasonably be required to demonstrate Six Town's delivery of the Services.
- (b) without prejudice to the generality of clause 3.7.2(a), the information referred to in clause 3.7.2(a) will include details of performance against the KPIs, formal complaints made by tenants, leaseholders and other residents directly affected by the Services, and such other information as is considered necessary by the Council (acting reasonably) to assess the compliance with the Management Agreement by Six Town.
- 3.7.3 The parties (acting reasonably) shall from time to time agree the format for the reports required under clause 3.7.2(a) together with the process by which such reports and information will be reviewed by the Parent Board. This process will be notified by the Council to Six Town but will involve direct discussion between Six Town and the Parent Board to review the performance of Six Town in delivering the Services, the compliance with the Partnership Protocol and in particular the Council's growth agenda and include "deep dive" reviews on issues of relevance and importance to the Council and Six Town.
- 3.7.4 Six Town will otherwise keep the Member informed of the progress of Six Town's Business and affairs and in particular will procure that the Member is given such information and such access to the officers, employees and premises of Six Town as it may reasonably require.
- 3.8 Six Town shall not breach nor cause the Council to be in breach of the Local Authorities (Companies) Order 1995.

4 **Group Policies**

- 4.1 The Council shall have the power to adopt such policies and standards (after consultation with the Group Members) which relate to all Group Members and which it shall designate as Group Policies as it shall reasonably consider appropriate from time to time to ensure compliance with: (a) any statutory or regulatory requirements applicable to the Group or any Group Member; (b) financial and business probity and efficiency; (c) good governance practice; (d) risk assessment; and (e) each Group Member carrying on its business in accordance with its own corporate plan which shall recognise the Group's corporate plan, policies and standards. All matters of operational policy relating to a Group Member's

business shall not be a matter for Group Policy and the Group Member shall have the right to set its own operational policies and amend these from time to time.

4.2 The Council will consult with Group Members on all Group Policies and will consider suggestions and recommendations from Group Members for new or revised policies and will consult within the Group on the same and shall act reasonably in consenting to an individual Group Member varying such policies where there are reasonable grounds for doing so ("**Agreed Local Variations**").

4.3 Each Group Member covenants to carry on its business in accordance with the Group Policies subject to Agreed Local Variations from time to time and subject to any individual variation or waiver of such Group Policies given by the Council from time to time.

5 **Covenants**

Six Town covenants to the Member in accordance with the terms of Schedule 2.

6 **Subsidiaries acceding to this Agreement**

Each Subsidiary of the Council (save for the Initial Subsidiary) shall enter into a Deed of Accession and shall have all the rights and obligations as if it were an original party to this Agreement.

7 **Termination**

7.1 This Agreement shall terminate upon:

7.1.1 the written agreement of the Parties in accordance with the terms agreed; or

7.1.2 when a resolution is passed by the Member or creditors of Six Town, or any order made by a court or other competent body or person instituting a process that shall lead to Six Town being wound up and its assets being distributed among the creditors, Member or other contributors; or

7.1.3 Six Town ceasing to carry on its Business; or

7.1.4 Six Town being convicted of a criminal offence; or

7.1.5 the termination of the Management Agreement; or

7.1.6 the Member giving not less than 90 days written notice to Six Town of the date on which all or part of this Agreement will terminate.

8 **No Partnership**

Nothing in this Agreement gives rise to a partnership between the Parties or constitutes one Party being the agent of another.

9 **Contracts (Rights of Third Parties) Act 1999**

9.1 Unless the right of enforcement is expressly granted, it is not intended that a third party, other than a lawful successor in title or a lawful assignee, should have the right to enforce a provision of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

9.2 The Parties may rescind or vary this Agreement without the consent of a third party to whom an express right to enforce any of its terms has been provided.

10 **Waiver**

10.1 The rights of each of the Parties in respect of a breach of this Agreement shall not be affected by completing, by rescinding, or failing to rescind, this Agreement, or by failing to exercise, or delaying in exercising, a right or remedy, or by anything else, except a specific authorised written waiver or release. A single or partial exercise of a right or remedy provided by this Agreement or by law does not prevent its further exercise or the exercise of another right or remedy.

10.2 Waiver of a breach of a term of this Agreement, or of a default under it, does not constitute a waiver of another breach or default nor affect the other terms of this Agreement.

10.3 The rights and remedies provided in this Agreement are cumulative and not exclusive of any other rights or remedies.

11 **Variation**

A purported variation of this Agreement is not effective unless in writing and signed by or on behalf of each of the Parties.

12 **Invalidity**

If a provision of this Agreement is held to be illegal or unenforceable, in whole or in part, under an enactment or rule of law, it shall to that extent be deemed not to form part of this Agreement and the enforceability of the remainder of this Agreement shall not be affected. The Parties agree to negotiate in good faith to agree the terms of a mutually satisfactory provision to be substituted for the provision found to be illegal or unenforceable.

13 **Status of this Agreement**

In the event of any ambiguity or discrepancy between the provisions of this Agreement and the Articles and the Management Agreement, then it is the intention of the Member that the provisions of the Management Agreement shall prevail. Accordingly, the Member shall take all available steps and do all practicable acts and things as may be necessary or desirable, including, without limitation, exercising all voting and other rights and powers of control available to it in relation to Six Town, so as to give effect to the provisions of this Agreement and shall further if necessary procure (insofar as it is able to do so by the exercise of those rights and powers) any required amendment to the Articles.

14 **Consents**

14.1 Consents, notices, approvals or agreements to be given by the Member under this Agreement shall be given in writing.

14.2 Where this Agreement provides that a matter is subject to the consent, approval or Agreement of any Party then (except as expressly provided otherwise), it shall be in the absolute discretion of the Party concerned as to whether (and if so, on what terms and conditions) the consent, approval or agreement is made.

15 **Communications**

15.1 Any notice or other communication under or in connection with this Agreement shall be in writing and shall be delivered personally or sent by first-class post (and by air mail if overseas) or by facsimile or by email as follows:

15.1.1 if to the Council, to:

Address: Town Hall, Knowsley Street, Bury, Lancashire BL9 0SW

Email: P.Patterson@bury.gov.uk

marked for the attention of Paul Patterson

15.1.2 if to Six Town, to:

Address: 6 Knowsley Place, Angouleme Way, Bury, Lancashire, BL9 0EL

Email: S.McCambridge@bury.gov.uk

marked for the attention of Sharon McCambridge

or to such other person, address, or fax number or email as any Party may specify by notice in writing to the other.

15.2 In the absence of evidence of earlier receipt, any notice or other communication shall be deemed to have been duly given:

15.2.1 if delivered personally, when left at the address referred to in clause 15.1;

15.2.2 if sent by mail, other than airmail, two Business Days after posting it;

15.2.3 if sent by email, when sent provided there has been no communication by the recipient to the senders that the email has not been received,

15.2.4 provided always that a notice given in accordance with the above but received on a day which is not a Business Day or after business hours on a Business Day will only be deemed to be given on the next Business Day.

15.3 The original of any notice or other communication by fax shall be forwarded to the recipient(s) but the non-arrival of that original shall not affect the validity of the notice or other communication by fax.

16 **Counterparts**

16.1 This Agreement may be executed in a number of counterparts and by the Parties on different counterparts, but shall not be effective until each Party has executed at least one counterpart.

16.2 Each counterpart, when executed, shall be an original, but all the counterparts together constitute the same document.

17 **Governing Law and Jurisdiction**

17.1 This Agreement and the rights and obligations of the Parties shall be governed by and construed in accordance with the laws of England.

17.2 The Parties irrevocably submit to the exclusive jurisdiction of the courts of England in respect of any dispute or claim arising out of or in connection with this Agreement or any of the documents to be executed pursuant to this Agreement or their subject matter or formation (including non-contractual disputes or claims).

This Deed has been executed as a deed and delivered on the date stated at the beginning of this Deed.

Schedule 1

Member Consent Matters

Six Town shall not, unless it has Member Consent:

- 1 vary in any respect its Articles; or
- 2 permit the registration of any person as a member of Six Town other than the Member; or
- 3 adopt or amend its Business Plan; or
- 4 appoint or remove a managing director or chief executive;
- 5 issue any loan capital or enter into any commitment with any person with respect to the issue of any loan capital; or
- 6 make any borrowing; or
- 7 pass any resolution for its winding up or present any petition for its administration (unless it has become insolvent); or
- 8 engage in any business other than as contemplated by the Business Plan or defray any monies other than in good faith for the purposes of or in connection with the carrying on of such business; or
- 9 form any Subsidiary or acquire shares in any other company or participate in any partnership or joint venture (incorporated or not); or
- 10 close down any business operation, or dispose of any material asset unless in each case such closure or disposal is expressly contemplated by the Business Plan; or
- 11 amalgamate or merge with any other company or business undertaking; or
- 12 alter its name or registered office; or
- 13 enter into any transaction or arrangement of any nature whatsoever (including, for the avoidance of doubt, a service contract) with any of its Directors or any person who is connected (within the meaning of sections 1122 and 1123 of the Corporation Tax Act 2010) to any of its Directors whether or not any other person shall be party to such transaction or arrangement; or
- 14 enter into any arrangement, contract or transaction outside the normal course of its business or otherwise than on arm's length terms; or
- 15 create or permit to be created any mortgage, charge, encumbrance or other security interest whatsoever on any material asset or its business in whole or in part;
- 16 change either:
 - 16.1 its statutory auditors; or
 - 16.2 its financial year end; or

- 17 make or permit to be made any material change in the accounting policies and principles adopted by Six Town in the preparation of its accounts except as may be required to ensure compliance with relevant accounting standards under the CA 2006 or any other generally accepted accounting principles in the United Kingdom; or
- 18 make any loan (otherwise than by way of deposit with a bank or other institution the normal business of which includes the acceptance of deposits) or grant any credit (other than in the normal course of trading) or give any guarantee (other than in the normal course of trading) or indemnity (other than in the normal course of trading); or
- 19 give any guarantee, suretyship or indemnity to secure the liability of any person or assume the obligations of any person outside the scope of its Business Plan; or
- 20 factor or assign any of its book debts; or
- 21 establish or amend any bonus or other incentive scheme of any nature for Directors, officers or employees; or
- 22 establish or amend any pension scheme or grant any pension rights to any Director, officer, employee, former Director, officer or employee, or any member of any such person's family; or
- 23 dismiss any Director; or
- 24 make any agreement with any revenue or tax authorities or make any claim, disclaimer, election or consent for tax purposes if the effect of this is that its solvency may be imperilled, or it may require additional funding in order to undertake its Business Plan; or
- 25 acquire any land or assets not set out in the current Business Plan.

Schedule 2

Six Town Covenants

Six Town covenants with the Member as follows:

- 1 Only to acquire land or assets or carry out additional service from those set out in the Management Agreement if any such acquisition and/or service provision is in accordance with the Business Plan and the Member has given consent.
- 2 It will conduct its Business in a manner commensurate with the Council's strategic objectives.
- 3 To comply with the Financial Regulations, Contracts Standing Orders, Board Member Expenses Policy and an Executive Performance Appraisal Framework.

Schedule 3

Deed of Accession

Deed of Accession

dated [] 20[]

By [] a company incorporated in England and Wales (registered number []) whose registered office is at [] (the **New Subsidiary**) in favour of the persons whose names and addresses are set out in the Schedule to this Deed (the **Continuing Parties**).

Introduction

- (A) This Deed is supplemental to a Member Agreement dated 20[] between [insert details] (the **Member Agreement**) and to [insert details of any subsequent Deeds of Adherence or Amendment].
- (B) Provision is made in the Member Agreement for the New Subsidiary to accede as a party thereto as a further Subsidiary and it has agreed to do so.

Agreed terms

- 1 The New Subsidiary confirms that it has been given a copy of the Member Agreement and covenants with the Continuing Parties to observe, perform and be bound by every provision of the Member Agreement in the capacity of a Subsidiary with effect from the date of this Deed.
- 2 Unless the context requires otherwise, words and expressions defined in the Management Agreement shall have the same meanings when used in this Deed.
- 3 This Deed shall be governed by and construed in accordance with English law.

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

Schedule

[Insert names and addresses of Continuing Parties]

Schedule 4

Group Policies

None at the date of this Agreement

Schedule 5

Part 1

Partnership Pledge

This Partnership Pledge has been agreed by the Council and Six Town to set out how the partnership will work and the key principles to be adopted by all Councillors, board members and staff of both the Council and Six Town.

This is an equal partnership based on the following key values:

- Openness
- Respect
- Honesty
- Trust
- Negotiation
- Accountability

The main partnership objective is that both the Council and Six Town will work together in harmony to achieve the best results for the tenants of Bury Council.

The following key principles will underpin the partnership:

Arm's Length - The Council recognises that Six Town has responsibilities to Company's House and must operate at arm's length but at the same time Six Town recognises that it is wholly owned by the Council and the Council is the sole Shareholder. Six Town recognises the Council has a duty to monitor Six Town in relation to its operational activity, staffing issues and in relation to the delivery programme based on the agreed Management Fee.

Delegation - Both the Council and Six Town will establish and maintain clear lines of delegation.

No surprises - Each party will inform the other of sensitive issues at the outset well before any decision is taken. Each will take account of the others views before a decision is made with the aim of reaching decisions that benefit both the Council and Six Town. Where joint decisions are necessary both the Council and Six Town will consult and take account of each other's' views to mutual benefit and will ensure a free exchange of information on such matters.

Positive attitudes - Each party will promote positive messages and attitudes at all times about each other both inside and outside the Council and Six Town.

Problem solving - The parties will adopt a joint approach to problems solving focused on achieving solutions that work for both the Council and Six Town.

Valuing each other - Each party will openly recognise and acknowledge their contribution to each other's successors.

Joint celebration of success - The Council and Six Town will positively celebrate its individual and shared successes. The Council and Six Town will mutually support each other in terms of publicity and shared success.

Mutual support - Each party will support the other to achieve common and shared objectives.

Honesty and transparency - Each party will be open and transparent in all its dealings with the other.

Sharing information - Each part will share information to enable both the Council and Six Town to make better decisions.

Part 2

Partnership Principles

- 1 The Parties act in accordance with the responsibilities and obligations set out in this Agreement, the Member Agreement and in accordance with all mutually agreed policies and procedures.
- 2 The Parties promote good governance behaviours in accordance with the governance arrangements set out in this Agreement, the Member Agreement and all mutually agreed policies and procedures.
- 3 The Council promises to commit sufficient resources to ensure appropriate oversight and effective governance of Six Town.
- 4 The Council and Six Town acknowledge their parent / subsidiary relationship and agree to co-operate to ensure mutually aligned business and operational plans, including growth strategies and investment plans.
- 5 Six Town will produce accurate and timely performance and monitoring information for review by the Council in line with this Agreement and the Member Agreement.
- 6 Six Town will strive to deliver high quality and efficient HRA services.
- 7 Six Town housing will actively seek areas of commercial growth and the Council commits to directing and supporting this in line with the Council's growth agenda.
- 8 Six Town and the Council will perform their respective obligations under the Management Agreement with reasonable care and appropriate skill and shall behave at all times in a manner which is conducive to achieving the strategic goals and growth objectives of Six Town and the Council.

Part 3
Relationship Principles

In witness whereof the parties have executed this Agreement as a deed.

The **Common Seal** of)
Bury Metropolitan Borough Council)
was hereunto)
affixed in the presence of:)

.....
Authorised Signatory

executed as a deed by)
Six Town Housing Limited)
acting by:)
a director in the presence of:

Director

Witness signature

Name

Address