

**DATED 15 September 2006**

**(1) THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF ISLINGTON**

**(2) PARTNERS FOR IMPROVEMENT IN ISLINGTON 2 LIMITED**

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**AGREEMENT  
FOR ISLINGTON HRA PFI STREET  
PROPERTIES  
PROJECT TWO**

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**THIS AGREEMENT** is made on [                      ]

**BETWEEN:-**

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF ISLINGTON** of The Town Hall, Upper Street, London N1 2UD ("the **Authority**"); and
- (2) **PARTNERS FOR IMPROVEMENT IN ISLINGTON 2LIMITED** (Registered in England and Wales under Company No. 5884160 whose registered office is at United House, Goldsel Road, Swanley, Kent BR8 8EX ("the **Contractor**").

**WHEREAS:-**

- (1) The Authority is a Local Housing Authority for the purposes of inter alia the Housing Act 1985 and as a consequence is responsible for the management and maintenance of certain street properties within the Authority's administrative area comprising the Properties which are held by the Authority under Part II Housing Act 1985.
- (2) The United Kingdom Government desires to have the private sector invest and participate in the provision, refurbishment, servicing and maintenance of local authority owned social housing, pursuant to the PFI.
- (3) In accordance with the foregoing policy, the EU Works Directive (93/37/EEC) and the Public Works Contracts and Regulations 1991 (S1991 No. 2680), interested persons were invited to submit proposals for investing in the Project following an advertisement in the Supplement to the Official Journal of the European Union dated 2 February 2002 and the various negotiated procedures thereafter.
- (4) The Project relates to the refurbishment of certain housing accommodation comprising street properties located within the administrative area of the Authority and the maintenance and operation of that accommodation pursuant to the PFI.
- (5) Proposals were submitted by the Contractor for the financing, design and refurbishment, operation and maintenance of the Properties during the Contract Term.
- (6) The Authority and the Contractor have reached agreement as set out in this Contract for the procurement of the services of the Contractor to design and refurbish the Properties and to thereafter operate and maintain services to the Properties as specified herein.
- (7) The parties intend that this Contract will be a certified contract for the purposes of the Local Government (Contracts) Act 1997, and the Relevant Discharge Terms are set out in Schedule 12 (**Relevant Discharge Terms**) of this Contract.
- (8) The Secretary of State has given his approval to the entering into of this Contract under Section 27 of the Housing Act 1985 and this Contract is a "**Management Agreement**" for the purposes of that Section.
- (9) The Authority is a Best Value Authority under the Local Government Act 1999 and the functions in respect of which the Authority wishes to procure the Services are Best Value functions.

**IT IS AGREED** as follows:-

## PART 1

### PRELIMINARY

#### 1. DEFINITIONS AND INTERPRETATION

##### 1.1 Definitions

In this Contract unless the context otherwise requires the following terms shall have the meanings given to them below:-

<b>"1985 Act"</b>	the Housing Act 1985;
<b>"1999 Act"</b>	the Local Government Act 1999;
<b>"Abandon"</b>	wholly or substantially wilfully ceases to carry out the Works contemplated by the Refurbishment Programme for twenty (20) consecutive Working Days or during sixty (60) Working Days (whether consecutive or not) in any Contract Year and/or wilfully ceases to provide substantially all the Services for fifteen (15) consecutive Working Days or during thirty (30) Working Days (whether consecutive or not) in any Contract Year except when relieved of the obligation to do so by the express provisions of this Contract;
<b>"Access Protocol"</b>	the protocol defining the procedure giving access to the Dwellings during the Works Period in the form set out in Schedule 9 ( <b><i>Authority's Protocols</i></b> );
<b>"Access Failure Event"</b>	has the meaning given to it in paragraph 1.1 of the Access Protocol;
<b>"Access Failure Event List"</b>	the waiting list to be maintained by the Contractor of the Dwellings subject to an Access Failure Event in accordance with the Access Protocol;
<b>"Account Bank"</b>	the Governor and Company of the Bank of Scotland operating from its branch at 115 Bishopsgate, London EC2M or such replacement or substitute as may be agreed in accordance with the Accounts Agreement (as defined in the Senior Financing Agreement);
<b>"Actual Relevant Insurance Cost"</b>	the aggregate of the annual insurance premiums reasonably incurred by the Contractor to maintain the Relevant Insurance during the Insurance Review Period including insurance premium tax thereon at the rate in force as at the Execution Date but excluding any subsequent increase in the rate of insurance premium tax and all broker's fees and commissions
<b>"Additional H &amp; S Works"</b>	have the meaning given in the Call Off Protocol;

**"Additional Permitted Borrowing"**

on any date, the amount equal to any amount of principal outstanding under the Senior Financing Agreements (as the same may from time to time be amended, whether or not with the approval of the Authority) in excess of the amount of principal scheduled under the Senior Financing Agreements at Financial Close to be outstanding at that date, but only to the extent that:

- (a) this amount is less than or equal to the Additional Permitted Borrowings Limit; and
- (b) in respect of any Additional Permitted Borrowing the Agent is not in material breach of its obligations under Clause 10.4.3 of the Direct Agreement as it applies to such Additional Permitted Borrowing

and provided further that any such excess amount of principal which is (i) invested as part of any Qualifying Variation or (ii) outstanding from time to time as a result of any drawing under the Senior Financing Agreements as entered into at the date of this Contract, disregarding any subsequent amendment or (iii) outstanding from time to time as a result of any amendment to the Senior Financing Agreements in respect of which the Authority has agreed that its liabilities on a termination may be increased pursuant to Clause 47.3.1 (***Changes to the Financing Agreements and Ancillary Documents***) shall not be counted as Additional Permitted Borrowing.

**"Additional Permitted Borrowings Limit"**

an amount equal to:

- (a) 10% of the Original Senior Commitment, for any Additional Permitted Borrowing subsisting in the period from the date of Financial Close to the date on which the amount outstanding under the Senior Financing Agreements is 50% or less of the Original Senior Commitment; and thereafter
- (b) the higher of:
  - (i) 5% of the Original Senior Commitment; and
  - (ii) the amount of any Additional Permitted Borrowing outstanding on the last day of the period referred to in (a)

**"Additional Recoverable Leaseholder Costs"**

the amounts which represent the costs of the Management Fee and the insurance premiums in relation to the Leasehold Dwellings provided

	that such amounts have been notified to the Contractor in accordance with Clause 27.1.9;
"Adjudicator"	has the meaning given to it in Clause 60.4 ( <b><i>Identity of Adjudicator</i></b> );
"Adjusted Estimated Fair Value of the Contract"	<p>the Estimated Fair Value of the Contract, less an amount equal to the aggregate of:-</p> <ul style="list-style-type: none"> <li>(a) where relevant any Post Termination Service Amounts paid to the Contractor (if a positive number);</li> <li>(b) the Tender Costs; and</li> <li>(c) amounts that the Authority is entitled to set off or deduct under Clause 30.8 (<b><i>Rights of Set-Off</i></b>)</li> </ul> <p>plus an amount equal to the aggregate of:-</p> <ul style="list-style-type: none"> <li>(i) all credit balances on any bank accounts held by or on behalf of the Contractor on the date that the Estimated Fair Value is calculated;</li> <li>(ii) any insurance proceeds and other amounts owing to the Contractor (and which the Contractor is entitled to retain), to the extent not included in (i); and</li> <li>(iii) any Post Termination Service Amounts (if a negative number)</li> </ul> <p>to the extent that:-</p> <ul style="list-style-type: none"> <li>(aa) (i), (ii) and (iii) have not been directly taken into account in calculating the Estimated Fair Value of the Contract; and</li> <li>(bb) the Authority has received such amounts in accordance with the Contract or such amounts are standing to the credit of the Joint Insurance Account;</li> </ul>
"Adjusted Highest Compliant Tender Price"	<p>the Highest Compliant Tender Price, less the aggregate of:-</p> <ul style="list-style-type: none"> <li>(a) any Post Termination Service Amounts paid to the Contractor to date;</li> <li>(b) the Tender Costs; and</li> <li>(c) amounts that the Authority is entitled to set-off or deduct under Clause 30.8 (<b><i>Rights of Set-Off</i></b>)</li> </ul> <p>plus an amount equal to the aggregate of:-</p>

- (i) all credit balances on any bank accounts held by or on behalf of the Contractor on the date that the highest priced Compliant Tender is received;
- (ii) any insurance proceeds and other amounts owing to the Contractor (and which the Contractor is entitled to retain) to the extent not included in (i);
- (iii) the Post Termination Service Amounts (if a negative number);

to the extent that:-

- (aa) (i), (ii) and (iii) have not been directly taken into account in that Compliant Tender; and
- (bb) the Authority has received such amounts in accordance with the Contract;

**"Administering Authority"**

the Authority acting in its capacity as administrator of the Scheme

**"Admitted Body"**

has the meaning given to it in Clause 28A.1 (Contractor to Become Admitted Body);

**"Adverse Rights"**

means all (if any) interests, rights, easements and covenants whatever (including any rights and easements in respect of conduits) and other Restrictions enjoyed over the Sites excluding rights of light and air affecting the Sites which actually prevent or disrupt the provision of the Works and/or the Services in accordance with this Contract;

**"Affected Party"**

has the meaning set out in the definition of Force Majeure Event;

**"Affiliate"**

in relation to any person, any holding company or subsidiary of that person or any subsidiary of such holding company and "holding company" and "subsidiary" shall have the meaning given to them in Section 736 of the Companies Act 1985 but shall also include in respect of Uberior Infrastructure Investments Limited ("**Uberior**") or any of its Affiliates only, any investment fund, partnership (limited or otherwise) or trust in which Uberior or any Affiliate of Uberior has a direct or indirect interest of fifty per cent (50%) or more;

**"Agent"**

The Governor and Company of the Bank of Scotland in its capacity as agent for the Senior Lenders under the Senior Financing Agreements

**"Agreed Form"**

in relation to any document, the form of the document agreed between the parties as may be amended from time to time with the

	agreement of the parties;
"Allocations and Nominations Protocol"	the protocol relating to the parties' responsibilities in respect of the allocation and nomination of tenants for Dwellings in the form set out in Schedule 9 ( <b>Authority's Protocols</b> );
"Allocations Policy"	the Authority's policy for the allocation of tenants to the Dwellings (other than Leasehold Dwellings) as contained in Part 1 of Appendix 3 ( <b>Authority's Policies</b> );
"Ancillary Documents"	the Refurbishment Contract, the Housing Management Contract, the Responsive and Cyclical Maintenance Contract, the Heating Services Contract and any Subcontract Guarantees;
"Ancillary Rights"	<p>(a) such rights as are excepted and reserved to the Authority as landlord under a Leaseholder Lease or Tenancy Agreement;</p> <p>(b) save as mentioned in (a) above such rights of access to, passage over, in and through each Property which the Authority has the benefit of and as are necessary for the Contractor to comply with its obligations under this Contract;</p>
"Annual Debt Service Cover Ratio"	means the Forecast Annual Debt Service Cover Ratio and the Historic Annual Debt Service Cover Ratio as such terms are defined in the Senior Financing Agreement;
"Annual Service Plan"	has the meaning given in Clause 32.3.4 ( <b>Annual Service Report</b> )
"Annual Service Report"	has the meaning given in Clause 32.3.1 ( <b>Annual Service Report</b> )
"Annual Service Report Date"	30 April in each year of the Contract Period;
"Anticipated Senior Debt Outstandings"	means at any time the aggregate amount anticipated to have been made available and then outstanding under the Senior Financing Agreements as set out in the Financial Model;
"APB Distribution"	for the period during which the Additional Permitted Borrowing subsists, an amount equal to the aggregate of all Distributions made during that period up to an amount equal to the principal of the Additional Permitted Borrowing on the first day of that period
"Approved Purposes"	has the meaning given to it in Clause 62.1 ( <b>Use of Project Data</b> );
"Approved Submitted Item"	any Submitted Item under paragraph 1.4.1 of Schedule 8 ( <b>Review Procedure</b> ) which has

been returned or deemed to have been returned marked 'no comment' in accordance with paragraphs 1.4.1 or 1.4.2 of Schedule 8 (**Review Procedure**) or amended to comply with "objections" under paragraph 3 of Schedule 8 (**Review Procedure**) or where "objections" have been made, it has been determined under the Disputes Resolution Procedure that such "objections" do not fall within the grounds for "objections" contained in paragraph 3 of Schedule 8 (**Review Procedure**);

**"Assets"**

means all assets and rights to enable the Authority or a successor contractor to own, operate and maintain the Project in accordance with this Contract including:-

- (a) any land or buildings;
- (b) any equipment;
- (c) any books and records (including operating and maintenance manuals, health and safety manuals and other know how);
- (d) any spare parts, tools and other assets (together with any warranties in respect of assets being transferred);
- (e) any revenues and other contractual rights;
- (f) any Intellectual Property Rights;

but excluding any assets and rights in respect of which the Authority is full legal and beneficial owner;

**"Assigned Employees"**

has the meaning given to that term in Clause 28.15.1(a) (**Retendering**);

**"Associated Company"**

in respect of a relevant company, a company which is a subsidiary, a Holding Company or a company that is a subsidiary of the ultimate Holding Company of that relevant company, and in the case of the Contractor shall include Holdco and each of the Shareholders

**"Authority Change"**

a change in the Works and/or Services, Authority's Protocols, Authority's Policies, Leaseholder's Leases and/or Tenancy Agreement requested by the Authority which the Contractor is obliged to implement under Clause 52.1 (**Authority Changes**)

**"Authority Default"**

any one of the following events:-

- (a) an expropriation, sequestration or requisition of a material part of the Assets and/or shares of the Contractor, Holdco, the Housing Management Contractor, the

Refurbishment Contractor, the Responsive and Cyclical Maintenance Contractor or the Heating Services Contractor by the Authority or other Relevant Authority;

- (b) a failure by the Authority to make payment of any amount of money exceeding £ (indexed) that is due and payable by the Authority under this Contract within twenty (20) Working Days of service of a formal written demand by the Contractor, where the amount fell due and payable thirty (30) Working Days prior to the date of service of the written demand;
- (c) a breach by the Authority of any of its obligations under this Contract which substantially frustrates, or renders it impossible for the Contractor, to perform its obligations under this Contract for a continuous period of six weeks; or
- (d) a breach by the Authority of Clause 63.1 (***Restriction on the Authority***) occurs;

**"Authority Notice of Change"**

has the meaning given to it in Clause 52.1.3 (***Authority Changes***);

**"Authority Related Party"**

- (a) an officer, agent or employee of the Authority;
- (b) any contractor or sub-contractor of any tier of the Authority including any Third Party Manager and any of their officers, agents or employees;
- (c) any person on or at any of the Dwellings or Properties at the express or implied invitation of the Authority; and or
- (d) Homes for Islington,

but excluding in each case the Contractor and any Contractor Related Parties and for the avoidance of doubt any Tenant and any Leaseholder;

**"Authority's Capital Contribution Sum"**

**"Authority's Capital Contribution Sum Instalments"**

has the meaning given to it in Schedule 10 (Authority's Capital Contribution Sums);

**"Authority's Capital Contribution Sum Instalments Date"**

has the meaning given to it in Schedule 10 (Authority's Capital Contribution Sums);

**"Authority's Compensation"**

the liability of the Authority to pay any compensation on and/or as a result of

<b>Liabilities"</b>	termination of this Contract;
<b>"Authority's Policies"</b>	means those policies set out at Part 1 and Part 2 of Appendix 3 (Authority's Policies)
<b>"Authority's Protocols"</b>	<p>together the:-</p> <ul style="list-style-type: none"> <li>(a) Home Ownership Protocol;</li> <li>(b) Disrepair Protocol;</li> <li>(c) Allocations and Nominations Protocol;</li> <li>(d) ICT Protocol;</li> <li>(e) Trees Protocol;</li> <li>(f) Leaseholder Works Protocol;</li> <li>(g) Access Protocol;</li> <li>(h) Temporary Moves Protocol;</li> <li>(i) Handover Protocol;</li> <li>(j) Tenant Waiver Protocol;</li> <li>(k) Performance Monitoring Protocol;</li> <li>(l) Call Off Protocol;</li> <li>(m) Boundary Wall Protocol; and</li> <li>(n) Voids Protocol;</li> </ul>
<b>"Authority's Representative"</b>	the representative appointed by the Authority pursuant to Clause 11 ( <b>Representatives</b> );
<b>"Authority's Share"</b>	the percentage of the amount of Cumulative Capital Expenditure payable by the Authority, as shown in the table set out in Schedule 4 ( <b>Change in Law</b> );
<b>"Authority Warranted Data"</b>	the information contained in Part 1 of Schedule 11 ( <b>Warranted Data</b> );
<b>"Authority Works"</b>	works and/or services and/or improvement carried out at the Properties and/or Dwellings by or on behalf of the Authority or by or on behalf of a Tenant or other occupier of any Dwelling (excluding a Leaseholder) after the date on which the Stock Condition Survey relating to that Property and/or Dwelling was undertaken;
<b>"Availability Standards"</b>	each or all of the Availability Standards Rented (Initial), Availability Standards Leasehold (Initial), Availability Standards Rented (Interim), Availability Standards Rented (Full) and

	Availability Standards Leasehold (Full);
"Availability Standards Rented (Full)"	the full standards applicable to Rented Dwellings set out in paragraph 2.12 of the Output Specification and in the Availability Standards Table;
"Availability Standards Rented (Initial)"	the initial standards applicable to Rented Dwellings set out in paragraph 2.10 of the Output Specification and in the Availability Standards Table;
"Availability Standards Rented (Interim)"	the interim standards applicable to the Rented Dwellings set out in paragraph 2.11 of the Output Specification and in the Availability Standards Table and the Availability Standard Rented (Interim) Internal or the Availability Standard Rented (Interim) External shall be construed in accordance with paragraph 2.11 of the Output Specification and the Availability Standards Table;
"Availability Standards Leasehold (Full) "	the full standards applicable to Leasehold Dwellings set out in paragraph 2.12 of the Output Specification and in the Availability Standards Table;
"Availability Standards Leasehold (Initial)"	the initial standards applicable to Leasehold Dwellings set out in paragraph 2.10 of the Output Specification and in the Availability Standards Table;
"Availability Standards Table"	the table containing the output requirements for the Availability Standards at Appendix A to the Output Specification;
"Available"	in relation to any Dwelling or Property that the applicable Availability Standard is met in relation to that Dwelling or Property and " <b>Availability</b> " shall be construed accordingly;
"Available Rented Dwelling"	a Dwelling which on the date of the commencement of a Tenancy Agreement will be Available;
"Base Case"	the financial model in the Agreed Form (as updated from time to time in accordance with Clauses 26 ( <b>Market Testing and Benchmarking</b> ), 32 ( <b>Best Value</b> ), 50 ( <b>Change in Law</b> ), and 52 ( <b>Variations</b> ) for the purpose of calculating the Unitary Charge ;
"Base Case Equity IRR"	14.58 %

**"Base Cost"**

£ being the amount which represents the insurance costs (which includes insurance premium tax at the rate in force as at the Execution Date but excludes any subsequent increase in the rate of insurance premium tax and all brokers' fees and commissions) which are proposed to be incurred to maintain the Relevant Insurance in each year following the date of this Contract;

**"Base Relevant Insurance Cost"**

the aggregate of the Base Costs which were (at Financial Close) projected to be incurred to maintain the Relevant Insurance during the Insurance Review Period indexed by actual RPI from Financial Close up to the dates on which the Relevant Insurance was placed or renewed either immediately before or during the Insurance Review Period (as applicable in respect of the year in question) less any Base Relevant Insurance Reduction;

**"Base Relevant Insurance Reduction"**

the reduction to be made to the Base Relevant Insurance Cost in respect of a risk which has become Uninsurable or a term or condition which is no longer available and shall be an amount that is either:

- (a) the amount by which the Base Relevant Insurance Cost would have been a lesser amount had such a risk been Uninsurable or such a term or condition been unavailable at the date of this Contract (which amount, for the avoidance of doubt, can be £0); or
- (b) if it is impossible to determine an amount pursuant to paragraph (a) above, an amount that is reasonable to be deducted from the Base Relevant Insurance Cost having due regard to:
  - (i) the amount by which the Actual Relevant Insurance Cost is less than it would have been as a result of the risk becoming Uninsurable, or the term or condition becoming unavailable (the "Actual Reduction");
  - (ii) the size of the Actual Reduction as a percentage of the Actual Relevant Insurance Cost immediately prior to the risk becoming Uninsurable, or the term or condition becoming unavailable; and

- (iii) the effects of indexation in accordance with the Contract since the Execution Date

**"Base Senior Debt Termination Amount"**

means, subject to Clause 47.3 (***Changes to the Financing Agreements and Ancillary Documents***):-

- (a) all amounts outstanding at the Termination Date, including interest and Default Interest accrued as at that date, from the Contractor to the Senior Lenders and in respect of Permitted Borrowing (other than in respect of Additional Permitted Borrowing); and
- (b) all amounts including costs of early termination of interest rate hedging arrangements and other breakage costs, payable by the Contractor to the Senior Lenders as a result of a prepayment in respect of Permitted Borrowing (other than in respect of Additional Permitted Borrowing) subject to the Contractor and the Senior Lenders mitigating all such costs to the extent reasonably possible;

less, to the extent it is a positive amount, the aggregate of (without double counting in relation to the calculation of the Base Senior Debt Termination Amount or the amounts below):

- (i) all credit balances on any bank accounts (but excluding the Joint Insurance Account and the Leaseholder Recovery Account) held by or on behalf of the Contractor on the Termination Date;
- (ii) any amounts claimable on or after the Termination Date in respect of Contingent Funding Liabilities;
- (iii) all amounts, including costs of early termination of interest rate hedging arrangements and other breakage costs, payable by the Senior Lenders to the Contractor as a result of prepayment of amounts outstanding in respect of Permitted Borrowing (other than in respect of Additional Permitted Borrowing); and
- (iv) all other amounts received by the Senior Lenders on or after the Termination Date and before the date on which any compensation is payable by the Authority to the Contractor as a result of enforcing

	any other rights they may have
"Best Value Duty"	the duty imposed on the Authority by Section 3 of the 1999 Act in relation to the Services
"Best Value Inspector"	an officer, agent or employee of the Audit Commission or other Relevant Authority empowered to inspect the Authority's compliance with Part 1 of the 1999 Act;
"Best Value Performance Indicators"	has the meaning set out in the Local Government (Best Value) Performance Indicators and Performance Standards Order 2005 (SI 2005/598) as amended and as supplemented by the Department for Communities and Local Government's guidance document "Best Value Performance Indicators 2005/06";
"Best Value Performance Plans"	the best value performance plans which are required to be provided by the Authority each financial year in accordance with Section 6 of the 1999 Act;
"Best Value Review"	the review which is required to be conducted by the Authority in accordance with Section 5 of the 1999 Act;
"Best Value Review Date"	the date or dates for a Best Value Review as the Authority may specify in a Best Value Performance Plan;
"Best Value Review Plan"	has the meaning given to it in Clause 32.4.6 ( <b>Best Value Review</b> );
"Best Value Service Change Notice"	has the meaning given in Clause 32.3.3 ( <b>Annual Service Report</b> );
"Benchmarking Exercise"	benchmarking in accordance with Clause 26.1 ( <b>Benchmarking</b> );
"Best Value Change in Law"	<p>a Change in Law which comprises:-</p> <ul style="list-style-type: none"> <li>(a) an order made by the Secretary of State in the exercise of powers conferred upon him by Section 4 of the Act 1999 the substance of which amounts to a change in a performance standard or a change in the definition of or details of a performance indicator (as opposed to a change in the description of a performance indicator);</li> <li>(b) an order or a direction made by the Audit Commission in the exercise of powers conferred upon it by Sections 44 and 46 of the Audit Commission Act 1998 which in substance is similar to an order referred to in (a) above;</li> </ul>

	(c) Guidance issued by the Secretary of State or the Audit Commission or other competent Authority in respect of (a) or (b);
<b>"BMI"</b>	means the All-In Maintenance Cost Index – Table 4.4 General Maintenance published in the BMI Quarterly Cost Briefing or, if such index shall cease to be published, such replacement index as may be published as a substitute or in the event that there is no direct substitute such index as the parties agree or it is determined pursuant to Clause 60 (Dispute Resolution) produces as nearly as possible the same result;
<b>"Business Interruption Cover"</b>	shall bear the meaning ascribed to it in Schedule 14 (Required Insurances);
<b>"BVPI 78a"</b>	the Best Value Performance Indicator 78a as regularly published by the Audit Commission;
<b>"BVPI 78c"</b>	the Best Value Performance Indicator 78c as regularly published by the Audit Commission;
<b>"Call Off Event"</b>	has the meaning given in the Call Off Protocol;
<b>"Call Off Services"</b>	means the provision of H & S Works, Additional H & S Works and/or other works or services to be provided by the Contractor arising from the occurrence of a Call Off Event in accordance with the Call Off Protocol;
<b>"Call Off Services Refusal"</b>	means a refusal or deemed refusal by the Authority under Clause 20 ( <b>Call Off Services</b> ) to allow the Contractor to carry out any Call Off Services to the extent such refusal or deemed refusal is the direct cause of a failure to meet the relevant Availability Standards;
<b>"Capital Expenditure"</b>	any expenditure which falls to be treated as capital expenditure in accordance with generally accepted accounting principles in the United Kingdom from time to time;
<b>"Certificate of Availability"</b>	a Certificate of Availability Rented (Interim Standard) Internal, a Certificate of Availability Rented (Interim Standard) External or a Certificate of Availability Rented (Full Standard) or a Certificate of Availability Leasehold (Full Standard) as the case may be;
<b>"Certificate of Availability Rented (Full Standard)"</b>	a certificate stating the satisfaction, in relation to any Rented Dwelling referred to in the certificate, of the Availability Standards Rented (Full);
<b>"Certificate of Availability Rented (Interim Standard) Internal"</b>	a certificate stating the satisfaction, in relation to any Rented Dwelling referred to in that certificate, of the Availability Standards Rented (Interim) Internal;

<b>"Certificate of Availability Rented (Interim Standard) External "</b>	a certificate stating the satisfaction, in relation to any Rented Dwelling referred to in that certificate, of the Availability Standards Rented (Interim) External;
<b>"Certificate of Availability Leasehold (Full Standard)"</b>	a certificate stating the satisfaction, in relation to any Leasehold Dwelling referred to in the certificate, of the Availability Standards Leasehold (Full);
<b>"Certificate of Eligible Expenditure"</b>	has the meaning given to it in Schedule 10 (Authority's Capital Contribution Sums);
<b>"Certification Requirements"</b>	the requirements which must be satisfied for a contract to be a certified contract for the purposes of the Local Government (Contracts) Act 1997;
<b>"Cessation Date"</b>	any date (other than the date of termination or expiry of this Contract) on which the Contractor or the relevant Sub-Contractor ceases to be an Admitted Body;
<b>"Change in Costs"</b>	<p>in respect of any Relevant Event, the effect of that Relevant Event (whether of a one-off or recurring nature, and whether positive or negative) upon the actual or anticipated costs, losses or liabilities of the Contractor and/or any Sub-Contractors (without double counting), including, as relevant, the following:</p> <ul style="list-style-type: none"> <li data-bbox="858 1144 1436 1391">(a) the reasonable costs of complying with the requirements of Clauses 15 (<b><i>Extensions of Time</i></b>), 50 (<b><i>Change in Law</i></b>), 52.1 (<b><i>Authority Changes</i></b>); 53 (<b><i>Authority Step-In</i></b>) and/or 31 (<b><i>Financial Adjustments</i></b>), including the reasonable costs of preparation of design and estimates;</li> <li data-bbox="858 1420 1436 1514">(b) the costs of continued employment of, or making redundant, staff who are no longer required;</li> <li data-bbox="858 1543 1436 1572">(c) the costs of employing additional staff;</li> <li data-bbox="858 1601 1436 1630">(d) reasonable professional fees;</li> <li data-bbox="858 1659 1436 1906">(e) the costs to the Contractor of financing any Relevant Event (and the consequences thereof) including commitment fees and capital costs interest and hedging costs, lost interest on any of the Contractor's own capital employed and any finance required pending receipt of a lump sum payment or adjustments to the Unitary Charge;</li> <li data-bbox="858 1935 1436 2036">(f) the effects of costs on implementation of any insurance reinstatement in accordance with this Contract, including any adverse</li> </ul>

effect on the insurance proceeds payable to the Contractor (whether arising from physical damage insurance or business interruption insurance (or their equivalent)) in respect of that insurance reinstatement and any extension of the period of implementation of the insurance reinstatement;

- (g) operating costs, or life cycle, maintenance or replacement costs;
- (h) Capital Expenditure (or, in the case of a Relevant Event which is a Qualifying Change in Law, Capital Expenditure for which the Authority is responsible);
- (i) the costs required to ensure continued compliance with the Financing Agreements;
- (j) any deductible or increase in the level of deductible, or any increase in premium under or in respect of any insurance policy; and
- (k) Direct Losses or Indirect Losses including reasonable legal expenses on an indemnity basis;

**"Change in Law"**

the coming into effect after the date of this Contract of:-

- (a) Legislation, other than any Legislation which on the date of this Contract has been published;
  - (i) in a draft Bill as part of a Government Departmental Consultation Paper;
  - (ii) in a Bill;
  - (iii) in a draft statutory instrument; or
  - (iv) published as a proposal in the Official Journal of the European Union;
- (b) any Guidance; or
- (c) any applicable judgement of a relevant court of law which changes a binding precedent;

**"Change in Revenue"**

in respect of any Relevant Event, the effect of that Relevant Event (whether of a one-off or recurring nature and whether positive or negative) upon the actual or anticipated income of the Contractor and/or any Sub-Contractors

	(without double costing);
"Change to Number of Dwellings by Tenure or CNDT"	a Statutory Reduction of Dwellings or a Voluntary CNDT;
"Channel Tunnel Works Event"	damage to any Dwelling or Property as a consequence of the construction and/or use of the Channel Tunnel Rail Link;
"CNDT Adjustment Date"	the Services Commencement Date and every six months thereafter until the earlier of the Expiry Date and the Termination Date;
"CNDT Compensation"	shall, in respect of each Dwelling which is the subject of CNDT, be the sum calculated in accordance with Clause 27.7 (Changes to Numbers of Dwellings by Tenure);
"CNDT Date"	the date upon which the CNDT actually occurs in respect of a Dwelling
"CNDT Model"	the financial model in the Agreed Form at Financial Close for the collection of CNDT Compensation as updated from time to time in accordance with this Contract;
"CNDT Notice"	a notice serviced (and not withdrawn) by the Authority under Clause 27.7 ( <b>Change to Numbers of Dwellings by Tenure</b> ) where a Dwelling is subject to a Statutory CNDT or Voluntary CNDT
"CNDT Review Date"	1st October 2006 and every 6 months thereafter during the Contract Period
"Code"	the Code of Practice on Workforce Matters in Local Authority Service Contracts as currently drafted in ODPM Circular 3/2003 Annex D;
"Code Dispute Resolution Procedure"	the procedure set out in Schedule 26 (Code Dispute Resolution Procedure);
"Code Obligations"	the express obligations of the Contractor in Clause 28.14 ( <b>Compliance with Code Obligations</b> ) (other than that in Clause 28.14.1 and any other express obligations in this Contract which derives from the Code;
"Collectable Leaseholder Costs"	the aggregate of: <ul style="list-style-type: none"> <li>(a) the Recoverable Leaseholder Costs</li> <li>(b) the Additional Recoverable Leaseholder Costs; and</li> <li>(c) any ground rent properly charged under the Leaseholder Leases</li> </ul>
"Collected Leaseholder Costs"	the Collectable Leaseholder Costs which the Contractor has collected from Leaseholders in

the relevant Contract Year and the Irrecoverable Leaseholder Costs paid into the Leaseholder Recovery Account;

**"Commercially Sensitive Information"**

means to the extent contained in any of the Project Documents each of the following:-

- (a) pricing or invoicing information (including pursuant to any Market Testing);
- (b) Deduction triggers, calculation of Deductions and amounts of Deductions pursuant to Schedule 6 (**Payment Mechanism**) of the Project Agreement or any of the Sub-Contracts or any other Project Document;
- (c) paragraphs (l), (m), (o) and (p) of the definition of Contractor Default in the Project Agreement and to the extent relevant the equivalent paragraphs in any of the Sub-Contracts;
- (d) any caps on liability and any directly related default trigger under any Project Document;
- (e) the Leaseholder service charge recovery mechanism detailed in Clause 27.1 of the Project Agreement and Clause 27.1 of the Housing Management Contract and any directly associated information
- (f) any liquidated damages payable pursuant to any Project Document;

in each case for the longer of (i) 5 years from Financial Close and (ii) the Expiry Date or, if earlier, the Termination Date.

**"Committed Stand-by Facility"**

a standby facility committed to by the Senior Lenders at the date of this Agreement for the purposes of funding any unforeseen cost overruns, increased expenses or loss of revenues to be incurred by the Contractor

**"Common Parts"**

any:-

- (a) drains, channels, ducts, cables, pipes, wires and heating systems or other services installations;
- (b) accesses, entrances, passages, landings, staircases, gardens, refuse areas and pathways; and
- (c) roofs, walls, floors, ceilings, foundations, timbers, joists, beams, chimney stacks, gutters and rain water and soil pipes,

used in common by residents of one or more Dwellings;

**"Compensation Date"**

either:-

- (a) if Clauses 41.1 (***Retendering Election***) and 41.2 (***Retendering Procedure***) apply, the earlier of:-
  - (i) the date that the New Contract is entered into; and
  - (ii) the date on which the Authority pays the Adjusted Highest Compliant Tender Price to the Contractor; or
- (b) if Clause 41.3 (***No Retendering Procedure***) applies, the date that the Adjusted Estimated Fair Value of the Contract has been agreed or determined;

**"Compensation Event"**

- (a) a breach by the Authority of any of its obligations and/or warranties under this Contract;
- (b) the occurrence of an Excessive Void Turnover Event;
- (c) gas and/or water type and/or pressure being outside the type and/or range of pressures (as applicable) referred to in the Output Specification;
- (d) any other matter or event expressly referred to as required to be treated as or deemed to be a Compensation Event within this Contract;

**"Compensation Regulations"**

the Local Government (Discretionary Payments) Regulations 1996;

**"Completion Points"**

means those points as allocated below which (i) accrue on the date on which the relevant Certificate of Availability is issued (or deemed to be issued) or Property Completion occurs (ii) are deemed to accrue in accordance with Clause 19.4C:

- (a) Certificate of Availability Rented (Interim Standard) Internal – 1 point;
- (b) Certificate of Availability Rented (Interim Standard) External – 1 point;
- (c) Certificate of Availability Leasehold (Full Standard) – 1 point;
- (d) Property Completion – 1 point;

**"Compliant Tender"**

any tender submitted by a Compliant Tenderer

	that meets the qualification criteria notified under Clause 41.2 ( <b>Retendering Procedure</b> );
<b>"Compliant Tenderer"</b>	a tenderer who is a Suitable Substitute Contractor;
<b>"Comprehensive Performance Assessment"</b>	any comprehensive performance review of the Authority's services (including the Services) undertaken by the Audit Commission or any other Relevant Authority pursuant to Section 97 of the Local Government Act 2003 or otherwise;
<b>"Confidential Information"</b>	<p>(a) information that ought to be considered as confidential (however it is conveyed or on whatever media it is shared) and may include information whose disclosure would or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either party and all personal data and sensitive personal data within the meaning of the DPA; and</p> <p>(b) Commercially Sensitive Information;</p>
<b>"Consents"</b>	all permissions, consents, approvals, certificates, permits, licenses and authorisations of a Relevant Authority required for the performance of any of the Contractor's obligations under this Contract;
<b>"Construction Period Insurance"</b>	the Required Insurances specified in Part 1 of Schedule 14 (Required Insurances);
<b>"Contamination"</b>	all or any pollutants or contaminants, including any biological, chemical or industrial, radioactive, dangerous, toxic or hazardous substance, water or residue (whether in solid, semi-solid or liquid form or a gas or vapour) and including without limitation genetically modified organisms;
<b>-"Contract Month"</b>	<p>any month in a Contract Year provided that:-</p> <p>(a) the first Contract Month shall commence on the Service Commencement Date and end on the last day of the month in which the Service Commencement Date occurs; and</p> <p>(b) the last Contract Month shall begin on the first day of the month in which the last day of the Contract Period occurs and end on that day;</p>
<b>"Contract Period"</b>	the period commencing on the Service Commencement Date to (and including) the Expiry Date or, if earlier, the Termination Date;
<b>"Contract Year"</b>	a period of twelve (12) months commencing on

1 April, provided that:-

- (a) the first Contract Year shall be the period commencing on the Service Commencement Date and ending on the day immediately following 31 March; and
- (b) the final Contract Year shall be the period commencing on 1 April immediately preceding the last day of the Contract Period and ending on that day;

**"Contract"**

this contract (including its Schedules, Appendices and Annexures);

**"Contractor Change"**

a change to the Works and/or the Services pursuant to Clause 52.2 (***Contractor Changes in Service***);

**"Contractor Default"**

the following events:-

- (a) a breach by the Contractor of any of its obligations under this Contract which materially and adversely affects the performance of the Services;
- (b) a Persistent Breach occurs;
- (c) a Court makes an order that the Contractor or Holdco be wound up or a resolution for a voluntary winding up of the Contractor or Holdco is passed;
- (d) any receiver or manager in respect of the Contractor or Holdco is appointed or possession is taken by or on behalf of any creditor of any property that is the subject of a charge;
- (e) any voluntary arrangement is made for a composition of debts or a scheme of arrangement is approved under the Insolvency Act 1986 or the Companies Act 1985 in respect of the Contractor or Holdco;
- (f) an administration order is made or an administrator is appointed in respect of the Contractor or Holdco;
- (g) a breach of Clauses 63.3 (***Restriction on the Contractor***) and 63.2 (***Contractor's Permitted Sub-Contractors***);
- (h) a breach by the Contractor of its obligations in Clause 64.3 (***Restricted Share Transfer***);
- (i) the Contractor Abandons the project at any

time;

- (j) the Contractor has not commenced the Works by the date six (6) months after the Services Commencement Date;
- (k) the Refurbishment Works Completion Date is not achieved before the Longstop Date;
- (l) a failure to carry out limb (a) of the Milestone Works by the Milestone Works Completion Date A;
- (m) failure to carry out limb (b) of the Milestone Works by the Milestone Works Completion Date B;
- (n) a breach by the Contractor of its obligation to take out and maintain any of the Required Insurances (except those Required Insurances which become Uninsurable);
- (o) in any period of eight consecutive months the Authority has been entitled to reduce the amount of the Unitary Charge payable in respect of such period by more than 23 per cent through the Unavailability Deductions;
- (p) in any period of seven consecutive months the Authority has been entitled in each and every month during such period to reduce the amount of the Unitary Charge payable in such month by more than 15 per cent through the Performance Deductions;

- (q) the Contractor committing a material breach of its obligations under this Contract (other than as a consequence of a breach by the Authority of its obligations under this Contract) which results in a criminal investigation, prosecution and conviction of the Contractor or any Contractor Related Party or the Authority under the Health and Safety Regime (a "H&S Conviction") provided that a H&S Conviction of a Contractor, Contractor Related Party or the Authority shall not constitute a Contractor Default if, within ninety (90) Working Days from the date of the H&S Conviction (whether or not the H&S Conviction is subject to an appeal or any further judicial process), the involvement in the Project of each relevant Contractor Related Party (which in the case of an individual director, officer or employee shall be deemed to include the Contractor Related Party of which that person is a director, officer or employee) is terminated and a replacement is appointed by the Contractor in accordance with Clause 63.2 (Subcontracting) provided always that in determining whether to exercise any right of termination or right to require the termination of the engagement of a Contractor Related Party under this limb (q) the Authority shall:-
  - (i) act in a reasonable and proportionate manner having regard to such matters as the gravity of any offence and the identity of the person committing it; and
  - (ii) give all due consideration, where appropriate to action other than termination of this Contract.

**"Contractor Notice of Change"**

as described in Clause 52.2.2 (***Contractor Changes in Service***);

**"Contractor Related Party"**

any:-

- (a) officer, agent or employee of the Contractor, or any Affiliate of the Contractor and any officer, agent or employee of an Affiliate of the Contractor;
- (b) a Sub-Contractor and any of their officers, agents or employees;
- (c) person on or at any of the Dwellings or Properties at the express or implied invitation of the Contractor

	and for the avoidance of doubt excluding any Leaseholder and any Tenant;
"Contractor Scheme"	the retirement benefits schemes established or to be established under Clause 28A.15 ( <b>Contractor Scheme</b> ) of this Contract;
"Contractor Termination Notice"	has the meaning given to it in Clause 34.4.1 ( <b>Authority Default Termination</b> );
"Contractor Warranted Data"	the information relating to the Contractor and its Affiliates contained in Part 3 of Schedule 11 ( <b>Warranted Data</b> );
"Contractor's Contractual Method Statements"	those of the Contractor's method statements for the provision of the Works and Services to satisfy the Output Specification and as referred to in Schedule 3 ( <b>Contractor's Contractual Method Statements</b> ) and set out in Appendix 4, any proposed variation to which the Authority may raise objections in accordance with the Review Procedure;
"Contractor's Representative"	the person to be appointed by the Contractor pursuant to Clause 11.1 ( <b>Representatives</b> );
"Contractor's Share"	the percentage figure corresponding to the amount of Cumulative Capital Expenditure at the relevant time, as shown in the table set out in Schedule 4 ( <b>Change in Law</b> );
"Convictions"	other than in relation to minor road traffic offences, any previous or pending prosecutions, convictions, cautions or binding overs (including any spent convictions as contemplated by Section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order) which are required to be disclosed under the Protection Legislation;
"Cumulative Capital Expenditure"	the aggregate of:- <ul style="list-style-type: none"> <li>(d) all Capital Expenditure that has been incurred as a result of each General Change in Law that has come into effect during the Operational Period; and</li> <li>(e) the amount of Capital Expenditure that is agreed, or determined to be required, as a result of a General Change in Law under Clause 50 (<b>Change in Law</b>);</li> </ul>
"Cyclical Maintenance and Replacement Programme"	the programme of works relating to the maintenance of and replacement or redecoration of elements of the Dwellings or Properties required to satisfy the Output Specification;

<b>"Damage from a Non PFI Property"</b>	means damage to a Dwelling and/or a Property caused or being caused by the state of and/or any event(s) occurring at a Non PFI Property which adjoins a Dwelling and/or Property which is part of the Project to the extent that any such damage is the direct cause of a failure to meet the relevant Availability Standards and, further, provided that such damage is not caused or otherwise directly related to a Party Wall issue or other matter which is a Contractor responsibility;
<b>"Data Room"</b>	the data room located at Highbury House, 5 Highbury Crescent, London N5 1RN;
<b>"Decant"</b>	to carry out the removal of a Tenant from a Dwelling into Suitable Alternative Accommodation followed by the option for that Tenant to return to the same Dwelling as a result of carrying out the Refurbishment Works or the Services and the expressions <b>"Decanting"</b> and <b>"Decanted"</b> shall be construed accordingly;
<b>"Decant Void"</b>	has the meaning given to it in Clause 27.5 ( <b>Decant</b> );
<b>"Deductions"</b>	together the Unavailability Deductions and Performance Deductions;
<b>"Deemed Collected Leaseholder Costs"</b>	<p>the sum which represents the costs which are or become irrecoverable from Leaseholders as a consequence of:</p> <ul style="list-style-type: none"> <li>(a) failure to comply with Sections 19 and/or 20 of the Landlord and Tenant Act 1985 due to the act, omission or default of the Authority;</li> <li>(b) compliance with Authority Policy (r) of Appendix 3 provided that the original estimate accurately reflects the survey most recently carried out at the time such estimate was made and that such survey was carried out in accordance with Good Industry Practice;</li> <li>(c) failure of any Works or Services to meet the relevant Availability Standards Leasehold due to the act, omission or default of the Authority;</li> <li>(d) a defective notice served under Section 125 of the Housing Act 1985 at any time prior to or on the Service Commencement Date;</li> <li>(e) a defective notice served under Section 125 of the Housing Act after the Service Commencement Date due to the act,</li> </ul>

omission or default of the Authority;

- (f) a charge being taken over the relevant Leasehold Dwelling in the name of the Authority in accordance with the terms of the policy set out at limb (r) of Part 1 of Appendix 3;
- (g) any lateral conversion to any Dwelling or Property not listed or referred to within Appendix 2 due to any act, omission or default of the Authority prior to the date of this Contract;
- (h) any reasonable costs and expenses (including legal expenses) and any loss of or reduction in service charge recovery incurred or suffered by the Contractor or any Contractor Related Party arising from:
  - (i) in relation to legal proceedings any claim or counter claim by a Leaseholder arising in relation to legal proceedings from the lack or inadequacy of sound insulation in any Leasehold Dwelling;
  - (ii) in relation to legal proceedings any claim that due to the manner of the Works and Services (and other works and services) having been procured under a PFI contract structure that such costs (in whole or part) are not or have not, or are or have been deemed not to have been incurred by the Authority;
  - (iii) in relation to legal proceedings any claim that the Contract is not a qualifying long term agreement as defined in the Landlord and Tenant Act 1985;
  - (iv) the purchase or acquisition of a freehold interest in a Dwelling or Property subject to informing the Authority of such costs (including any outstanding service charge or other debts due) prior to disposal in accordance with the relevant timescales set out in the Home Ownership Protocol;
  - (v) any relevant act or omission of the Authority prior to the date of this Contract which entitles a Leaseholder to make a deduction

or withholding from any amounts which would otherwise be recoverable from such Leaseholder;

- (vi) in relation to legal proceedings any relevant decision by a Relevant Authority that the Works and/or Services (or any other works or services) have not been provided to a sufficient standard (provided that the relevant Availability Standard Leasehold has been satisfied) so as to entitle a Leaseholder to make a deduction or withholding from any amounts which would otherwise be recoverable from such Leaseholder;
- (vii) a Compensation Event
- (viii) a Leaseholder Lease not being in the forms referred to within the Authority Warranted Data to the extent that such costs and expenses exceed £ in aggregate in relation to the Works (including for the avoidance of doubt as a result of any agreed variation thereto);

save when such costs and expenses have been recovered by the Contractor or Contractor Related Party from third parties or to the extent that such failure is attributable to the act, omission or default of the Contractor or any Contractor Related Party following the date of this Contract;

**"Deemed New Contract"**

an agreement on the same terms and conditions as this Contract, as at the Termination Date, but with the following amendments:-

- (a) if this Contract is terminated during the Works Period, then the Planned Refurbishment Works Completion Date shall be extended by a period to allow a New Contractor to achieve completion of the Works to the Properties in question;
- (b) any accrued Deductions and/or Warning Notices shall for the purposes of termination only, and without prejudice the Authority to make financial deductions be cancelled; and
- (c) the term of such agreement shall be for a period equal to the term from the

	Termination Date to the Expiry Date;
"Default Interest"	any increased margin that is payable to the Senior Lenders not being made on the date on which it is due;
"Default Interest Rate"	2 per cent above the base rate from time to time of the Governor and Company of the Bank of Scotland;
"Defect"	<p>any defect in any Properties and/or Dwellings, or any part of them, attributable to:-</p> <ul style="list-style-type: none"> <li>(a) defective design;</li> <li>(b) defective workmanship or defective materials, plant or machinery used in the construction of such building(s) having regard to Good Industry Practice and to applicable British standards and codes of practice current at the date of construction of the building comprising the relevant Property or part thereof;</li> <li>(c) defective installation of anything in or on a Property having regard to Good Industry Practice and to applicable British standards and codes of practice current at the date of such installation;</li> <li>(d) defective preparation of the Site on which a Property is constructed; or</li> <li>(e) adverse ground conditions at the Site except where such defect arises from a Relief Event as described in paragraph (g) and/or as described in paragraph (i) of that definition</li> </ul>
"Design Data"	all drawings, reports, documents, plans, software, formulae, calculations and other data relating to the design, construction, testing or operation of the Dwellings and/or Properties;
"Direct Agreement"	the direct agreement dated on or about the date of this Contract and made between the Authority, Contractor and the Security Trustee in the form set out in Part 5 of Schedule 7 ( <b>Direct Agreements</b> );
"Direct Agreement (Sub-Contractor)"	a direct agreement to be made between the Authority, the Contractor and each of (as the case may be) the Refurbishment Contractor, the Housing Management Contractor, the Responsive and Cyclical Maintenance Contractor or the Heating Services Contractor in the form set out in Parts 1-4 of Schedule 7 ( <b>Direct Agreements</b> ) as may be amended in

	accordance with this Contract;
<b>"Direct Losses"</b>	all damage, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an agent/client, client paying basis), proceedings, demands and charges whether arising under statute, contract or at common law but, to avoid doubt, excluding Indirect Losses;
<b>"Disclosed Adverse Rights"</b>	those Adverse Rights contained or referred to in any of the documents disclosed to the Contractor;
<b>"Disclosed Data"</b>	all information relating to the Project disclosed to the Contractor, its shareholders and its advisers prior to the date of this Contract (including all the information and documents contained in the Data Rooms) but excluding Authority Warranted Data;
<b>"Discriminatory Change in Law"</b>	<p>a Change in Law, the terms of which apply expressly to:-</p> <ul style="list-style-type: none"> <li>(a) the Project and not to similar projects procured under the PFI;</li> <li>(b) the Contractor and not to other persons; and/or</li> <li>(c) PFI Contractors and not to other persons;</li> </ul>
<b>"Dispute Resolution Procedure"</b>	the procedure for the resolution of disputes set out in Clause 60 ( <b><i>Dispute Resolution</i></b> );
<b>"Disrepair Action"</b>	the service of any Disrepair Notice or the commencement of any other legal action by a Tenant, Leaseholder or other legal occupier of a Dwelling in relation to the disrepair of a Dwelling whether under the terms of a Tenancy Agreement or Long Lease or otherwise;
<b>"Disrepair Action Cut Off Date"</b>	in relation to actions, claims, demands, costs, damages, compensation, expenses (including legal expenses), fines and penalties due in connection with Disrepair Actions, the Planned Refurbishment Works Completion Date or if earlier the date upon which Dwellings and/or Properties have reached the Availability Standards Rented (Full), Availability Standards Rented (Interim) or the Availability Standards Leasehold (Full) (as appropriate) where the relevant Disrepair Action relates to work undertaken, or which should (in accordance with this Contract) have been undertaken by the Contractor prior to the achievement by the relevant property of the Availability Standards Rented (Full), Availability Standards Rented (Interim) or Availability Standards Leasehold

(Full) (as appropriate).

**"Disrepair Notice"**

any report made or notice served and/or any other legal action taken (whether by way of claim or counterclaim) by a Tenant or other legal occupier of a Dwelling under Section 82 of the Environmental Protection Act 1990, Section 11 Landlord and Tenant Act 1985 or any other Legislation alleging or giving rise to any claim by a Tenant or other legal occupier of a Dwelling against the Authority as landlord in relation to the disrepair or purported disrepair of a Dwelling;

**"Disrepair Protocol"**

the protocol relating to the parties' responsibilities in respect of the management of Disrepair Actions in the form set out in Part 3 of Schedule 9 (**Authority's Protocols**);

**"Distribution"**

(a) whether in cash or in kind any:

- (i) dividend or other distribution in respect of share capital;
- (ii) reduction of capital, redemption or purchase of shares or any other reorganisation or variation to share capital;
- (iii) payments under the Subordinated Financing Agreements (whether of principal, interest, breakage costs or otherwise);
- (iv) payment, loan, contractual arrangement or transfer of assets or rights to the extent (in each case) it was put in place after Financial Close and was neither in the ordinary course of business nor on reasonable commercial terms;
- (v) the receipt of any other benefit which is not received in the ordinary course of business and on reasonable commercial terms; or

(b) the early release of any Contingent Funding Liabilities, the amount of such release being deemed to be a gain for the purposes of any calculation of Refinancing Gain

**"DPA"**

the Data Protection Act 1998;

**"Dwelling"**

the flats or houses listed by address in Schedule 5 (**Housing Accommodation**) (but excluding any Dwelling in respect of which the freehold interest in that Dwelling has been disposed of);

"EEA "	from time to time the European Economic Area as created by the Agreement on the European Economic Area 1992 or any successor or replacement body, association, entity or organisation which has assumed either or both the function and responsibilities of the European Economic Area;
"Eligible Costs"	shall have the meaning as that given to it in the Senior Financing Agreement;
"Eligible Employees"	the Relevant Employees who are active members of the Scheme on a Relevant Transfer Date and any other individuals nominated by the Contractor for so long as they are employed in connection with the provision of the Services or part of such Services. For the purpose of this definition "employed in connection with" shall have the same meaning as in Regulation 5(7)(b) of the Local Government Pension Scheme Regulations 1997 (as amended);
"Emergency"	an event causing or, in the reasonable opinion of a party, threatening to cause death or injury to any individual, or serious disruption to the lives of number of people or extensive damage to property, or contamination of the environment, in each case on a scale beyond the capacity of the emergency services and/or an event preventing the provision of the Services under normal circumstances and requiring the mobilisation and organisation of the emergency services;
"Employee Information"	the information provided by the Authority to the Contractor in respect of Relevant Employees set out or described in Part 2 of Schedule 11 ( <b>Warranted Data</b> );
"Employer's Certifier"	Faithorn Farrell Timms LLP or such other person appointed by the Contractor with the approval of the Authority (such approval not to be unreasonably withheld or delayed) to act as employer's certifier to the Project;
"Employer's Certifier's Warranty"	the collateral warranty to be made between the Authority and the Employer's Certifier in the form set out in Schedule 7 ( <b>Direct Agreements</b> );
"Environmental Information Regulations"	the Environmental Information Regulations 2004 together with any guidance and/or codes of practice set out at Schedule 30 ( <b>FOIA/EIR Codes</b> );
"Equity IRR"	the projected blended rate of return to the Relevant Persons over the full term of the Contract, having regard to Distributions made and projected to be made;

"Estimate"	as defined in Clause 52.1.4(a) ( <b>Authority Changes</b> );
"Estimated Change in Project Costs"	in respect of any Relevant Event the aggregate of any Change in Costs and/or Change in Revenue (as relevant);
"Estimated Fair Value of the Contract"	the amount determined in accordance with Clause 41.3 ( <b>No Retendering Procedure</b> ) that a third party would pay to the Authority as the market value of the Deemed New Contract [and on the assumption that a Consent under Section 27 Housing Act 1985 has been given in respect of any Management Agreement (as defined in Section 27) which the Deemed New Contract may constitute;
"euro"	<p>the single or unified European currency (whether known as the "euro" or otherwise) adopted as their lawful currency by certain member states of the European Union in accordance with:-</p> <p>(a) the Treaty on European Union; and</p> <p>(b) any legislative measures for the introduction of, change over to or operation of such currency,</p> <p>being in part the implementation of the third stage of Economic and Monetary Union as contemplated in the Treaty on European Union;</p>
"Exceptional Cost"	for an Insurance Review Period, the extent to which there is an Insurance Costs Increase which exceeds in amount 30% of the Base Relevant Insurance Cost for that Insurance Review Period;
"Exceptional Saving"	for an Insurance Review Period, the extent to which there is an Insurance Cost Decrease which exceeds in amount 30% of the Base Relevant Insurance Cost for that Insurance Review Period;
"Excessive Void Turnover Event"	as shall be first calculated from Services Commencement Date and thereafter on an annual basis, the amount by which the Void Turnover Rate for any Contract Year exceeds 5%;
"Excusing Events"	<p>to the extent that such impacts upon Availability of a Dwelling and/or the performance of the Services any of:-</p> <p>(a) an Authority Default;</p> <p>(b) a Compensation Event;</p> <p>(c) the events in paragraphs (b), (g), (i) and</p>

- (m) in the definition of Relief Events;
- (d) the implementation of an Authority Change, Small Works Change or a Contractor Change;
- (e) the carrying out of Works or Services to remedy any matters that are the subject of a Disrepair Action prior to the Disrepair Action Cut Off Date;
- (f) an event of Tenant Damage and/or Third Party Damage;
- (g) an Emergency (which is not a breach of the obligations of the Contractor under this Contract);
- (h) the carrying out of Cyclical Maintenance and Replacement Work;
- (i) as a result of the Contractor acting in accordance with a written instruction of the Authority issued in accordance with this Contract;
- (j) the occurrence of a Refurbishment Works or Services Denial Event;
- (k) when Suitable Alternative Accommodation has been secured for the Tenant and Leaseholder by the Contractor;
- (l) unforeseen ground conditions or a Defect being revealed or asbestos or contamination being found for which the Authority is responsible under the Contract;
- (m) incorrectly positioned gas meters preventing the issue of a CP12 certificate;
- (n) any Out of Sequence Works required over and above the Out of Sequence Works Caps;
- (o) where a repair to a pre-refurbishment heating system requires a part to a boiler which is no longer in production and the Contractor cannot source such part;
- (p) a Call Off Services Refusal, a Leaseholder Non Standard Works Refusal or Damage from a Non-PFI Property;

- (q) where consultation with Leaseholders is required to be undertaken prior to carrying out any Works and/or Services, for the period of such consultation to the extent that the Contractor is carrying out such consultation in accordance with the time periods set out in the Landlord and Tenant Act 1985, save that where the Contractor's proposal in relation to the Works and/or Services is changed as a result of such consultation the period of relief shall be extended by up to 10 Working Days in accordance with the provisions of Clause 27.1.3 (Leaseholders);
- (r) any other matter or event expressly referred to or required to be treated as an Excusing Event within this Contract.

**"Execution Date"**

the date of this Contract;

**"Exempt Refinancing"**

- (a) any Refinancing that was fully taken into account in the calculation of the Unitary Charge;
- (b) a change in taxation or change in accounting treatment;
- (c) the exercise of rights, waivers, consents and similar actions which relate to day to day administrative and supervisory matters, and which are in respect of:
  - (i) breach of representations and warranties or undertakings;
  - (ii) movement of monies between the Project Accounts in accordance with the terms of the Senior Financing Agreements as at Financial Close;
  - (iii) late or non-provision of information, consents or licences;
  - (iv) amendments to Sub-Contracts;
  - (v) approval of revised technical and economic assumptions for financial model runs (to the extent required for forecasts under the Financing Agreements);
  - (vi) restrictions imposed by the Senior Lenders on the dates at which the Senior Debt can be advanced to the Contractor under the Senior Financing Agreements and/or amounts released from the relevant Project Accounts prior to the Refurbishment Works Completion

Date, and which are given as a result of any failure by the Contractor to ensure that the construction work is performed in accordance with the agreed programme and which is notified in writing by the Senior Lenders to the Authority prior to being given;

- (vii) changes to milestones for drawdown and/or amounts released from the relevant Project Accounts prior to the Refurbishment Works Completion Date set out in the Senior Financing Agreements and which are given as a result of any failure by the Contractor to ensure that construction work is performed in accordance with the agreed programme and which is notified in writing by the Senior Lenders to the Authority prior to being given;
  - (viii) failure by the Contractor to obtain any Consent by statutory bodies required by the Senior Financing Agreements; or
  - (ix) voting by the Senior Lenders and the voting arrangements between the Senior Lenders in respect of the levels of approval required by them under the Senior Financing Agreements
- (d) any amendment, variation or supplement of any agreement approved by the Authority as part of any Authority Change under this Contract;
- (e) any sale of shares in the Contractor or Holdco by the Shareholders or securitisation of the existing rights and/or interests attaching to shares in the Contractor or Holdco provided that this paragraph (e) shall, in respect shares in Holdco, only apply for so long as Holdco holds % of the issued share capital of the Contractor;
- (f) any sale or transfer of the Subordinated Lenders' existing rights and/or interests under the Subordinated Financing Agreements or securitisation of the Subordinated Lenders' existing rights and/or interests under the Subordinated Financing Agreements; or
- (g) any Qualifying Bank Transaction

"Existing Staff"	employees who before this Agreement is carried out are engaged in the provision of the Services;
"Expiry Date"	7 July 2022
"Fair Value"	the amount at which an asset or liability could be exchanged in an arms' length transaction between informed and willing parties, other than in a forced or liquidation sale;
"Fast Track Matters"	disputes arising under Clauses 17.6 ( <b>Defects</b> ), 30.6 ( <b>Response to Authority Notice</b> ) of this Contract or paragraph 1.5.1, 4.2 and 6.2 of Schedule 8 ( <b>Review Procedure</b> ) to this Contract or otherwise where a dispute is expressly reserved to be resolved as a " <b>Fast Track Matter</b> " in respect of which the Adjudicator's decision shall be final as specified in Clause 60.6 ( <b>Adjudicator's Decision</b> );
"Fees Regulations"	the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004;
"Final Warning Notice"	has the meaning given to it in Clause 35.2 ( <b>Final Warning Notice</b> );
"Financial Close"	has the meaning given to it in the Senior Financing Agreements;
"Financial Model"	the financial model in the Agreed Form at Financial Close as updated from time to time in accordance with this Contract;
"Financing Agreements"	all or any of the agreements or instruments entered into or to be entered into by the Contractor or any of its Associated Companies relating to the financing of the Project (including the Initial Financing Agreements and any agreements or instruments entered into by the Contractor or any of its Associated Companies relating to the rescheduling of their indebtedness or any Refinancing)
"First Contractor"	the person with whom the Authority initially contracted for the provision of services which are similar to the Services
"First Insurance Review"	the first Working Day following the first anniversary of the Relevant Insurance Inception Date;
"FOIA"	the Freedom of Information Act 2000 and any subordinate legislation (as defined in Section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with the guidance and/or codes of practice set out in Schedule 30 ( <b>FOIA/EIR Codes</b> );

"Force Majeure Event"	<p>the occurrence after the date of this Contract of:-</p> <p>(a) war, civil war, armed conflict or terrorism; or</p> <p>(b) nuclear, chemical or biological contamination unless the source or cause of the contamination is as a result of the actions or breach of the Contractor or its sub-contractors of any tier; or</p> <p>(c) pressure waves caused by devices travelling at supersonic speeds,</p> <p>which directly causes either party (the "<b>Affected Party</b>") to be unable to comply with all or a material part of its obligations under this Contract;</p>
"Force Majeure Termination Sum"	has the meaning given to it in Clause 40.1 ( <b><i>Force Majeure Termination Sum</i></b> )
"Forecast"	shall have the meaning given to it in the Senior Financing Agreement;
"Forecast Annual Debt Service Cover Ratio"	shall have the meaning given to it in the Senior Financing Agreement;
"Future Service Provider"	has the meaning given to it in Clause 28.12.4 ( <b><i>Indemnities</i></b> );
"General Change in Law"	a Change in Law which is not a Discriminatory Change in Law nor a Specific Change in Law nor a Best Value Change in Law;
"Good Industry Practice"	that degree of skill, care, prudence and foresight which would reasonably and ordinarily be expected from time to time of a skilled and experienced building contractor, housing management contractor and maintenance contractor (engaged in the same type of undertaking as that of the Contractor under the same or similar circumstances);
"Government Departmental Direction"	any direction issued by a Secretary of State in the United Kingdom;
"Guidance"	any applicable guidance or directions with which the Contractor is bound to comply;
"H & S Incident"	has the meaning given to it in the Call Off Protocol;
"H & S Works"	has the meaning given in the Call Off Protocol;
"Handover Protocol"	the protocol relating to the parties' responsibilities in respect of the handover of works and services in the form set out in Schedule 9 ( <b><i>Authority's Protocols</i></b> );

<b>"Health and Safety Regime"</b>	the Food Safety Act 1990 (and associated regulations), the Health and Safety at Work etc. Act 1974 (and associated regulations), the Fire Precautions Act 1971, the Environmental Protection Act 1990, the Water Industry Act 1991, the Water Resources Act 1991 and any similar or analogous health, safety or environmental legislation in force from time to time;
<b>"Heating Services"</b>	the heating services required to satisfy the requirements of the Output Specification;
<b>"Heating Systems"</b>	<ul style="list-style-type: none"> <li>(a) the central heating boiler, radiators, gas fire, controls and the system pipe work;</li> <li>(b) the primary heating supplies up to the hot water cylinder (but not the cylinder itself or any hot or cold outlets );</li> <li>(c) the heating expansion tank; and</li> <li>(d) the gas supply downstream of the gas meter (but not including the gas meter);</li> </ul>
<b>"Heating Services Contract"</b>	the contract to be entered into at Financial Close in the form to be agreed prior to Financial Close under which the Heating Services Contractor is to provide the Heating Services, or any replacement thereof;
<b>"Heating Services Contractor"</b>	United House Limited (registered number 00817560) of United House, Goldsel Road, Swanley, Kent BR8 8EX or such other person as the Contractor may, subject to Clause 63.2 ( <b><i>Contractor's Permitted Sub-Contractors</i></b> ) appoint to provide the Heating Services;
<b>"Heating Services"</b>	the heating services required to satisfy the requirements of the Output Specification;
<b>"Hedging Banks"</b>	as defined in the Senior Financing Agreements;
<b>"Helpdesk"</b>	the telephone and email service provided by the Contractor to be available 24 hours per day 365 days per year for reporting Unavailability and Performance Failures;
<b>"HFI Existing Employee"</b>	means an employee of HFI as at the Service Transfer Date;
<b>"Highest Compliant Tender Price"</b>	the price offered by the Compliant Tenderer (if any) with the highest tender price and if no Compliant Tenders are received, zero;
<b>"Historic Annual Debt Service Cover Ratio"</b>	has the meaning given to it in the Senior Financing Agreement;
<b>"Holdco"</b>	PFI Islington 2 (Holdings) Limited registered in England and Wales under Company No

	5884307 and whose registered office is at United House, Goldsel Road, Swanley, Kent BR8 8EX;
<b>"Holding Company"</b>	has the meaning given to it in Section 736 of the Companies Act 1985, as amended by Section 144 of the Companies Act 1989;
<b>"Home Ownership Protocol"</b>	the protocol relating to the provision of certain services by the Authority to the Contractor in respect of the exercise of the Right to Buy by Tenants in the form set out in Part 2 of Schedule 9 ( <b>Authority's Protocols</b> );
<b>"Homes for Islington" or "HFI"</b>	means the arm's length management organisation registered as a company limited by guarantee with Company number 05063751 and registered office at Highbury House, 5 Highbury Crescent, London N5 1RN;
<b>"Housing Benefit Failure Event"</b>	<p>where, in any Contract Month in respect of the period of that Contract Month:-</p> <ul style="list-style-type: none"> <li>(a) the average time taken to process new claims to determination (BVPI 78a) exceeds the average time taken by Inner London Boroughs to process such claims by twenty per cent (20%) or more; or</li> <li>(b) the percentage of claims renewals processed to determination (BVPI 78c) is less than the percentage of such claims renewals processed by Inner London Boroughs by 25% or more; and</li> <li>(c) the overall rent collection rate within the Authority on a month by month basis falls beneath 92%;</li> </ul>
<b>"Housing Health and Safety Rating System" or "HHSRS"</b>	the system for assessing housing conditions and enforcing housing standards as set out in Part 1 of the Housing Act 2004 as supplemented by the Housing Health and Safety Rating System (England) Regulations (SI 2005/3208);
<b>"Housing Management Contract"</b>	the contract to be entered into at Financial Close in the form to be agreed prior to Financial Close under which the Housing Management Contractor is to provide the Housing Management Services, or any replacement thereof;
<b>"Housing Management Contractor"</b>	Hyde Housing Association Limited of Leegate House, Burnt Ash Road, Lee Green, London SE12 8RR or such other person as the Contractor may, subject to Clause 63.2 ( <b>Contractor's Permitted Sub-Contractors</b> ) appoint to provide the Housing Management Services;

<b>"Housing Management Functions"</b>	has the meaning given to it in Clause 27.2( <b>Management Agreement</b> );
<b>"Housing Management Services"</b>	those housing and leaseholder management services required to satisfy the Output Specification;
<b>"Leaseholder Recovery Account"</b>	has the meaning given to it in Clause 27.1.5;
<b>"Hyde Leaseholder Service Charge Programme"</b>	means the sx3 computer programme (and any amendment and/or replacement thereof) used by the Housing Management Contractor;
<b>"ICT Protocol"</b>	the protocol relating to the parties' responsibilities in respect of ICT to be used in relation to the Project in the form set out in Part 5 of Schedule 9 ( <b>Authority's Protocols</b> );
<b>"Indexed Element"</b>	that part of the Unitary Payment which is to be indexed in accordance with Paragraph 3 of Part 1 of Schedule 6 ( <b>Payment and Performance Mechanism</b> );
<b>"Indirect Losses"</b>	loss of profits, loss of use, loss of production, loss of business, loss of business opportunity, or any claim for consequential loss or for indirect loss of any nature but excluding any of the same that relate to loss of revenue under this Contract;
<b>"Information"</b>	has the meaning given under Section 84 of the Freedom of Information Act 2000;
<b>"Initial Financing Agreements"</b>	the Financing Agreements put in place upon signature of this Contract as follows: Senior Financing Agreements, Subordinated Financing Agreements and which are listed at Part 2 of Schedule 18 (Project Documents);
<b>"Initial Refurbishment Costs"</b>	the costs calculated in accordance with Clause 27.8.4(e) (CNDT) and Table A of Schedule 15 ( <b>Changes to Numbers of Dwellings by Tenure</b> );
<b>"Inner London Borough"</b>	the London Boroughs of City of Westminster, Camden, Islington, Hackney, Tower Hamlets, Greenwich, Lewisham, Southwark, Lambeth, Wandsworth, Haringey, Hammersmith and Fulham, Royal Borough of Kensington and Chelsea, and Newham or the successors of such London Boroughs as may be established by Legislation from time to time;
<b>"Insurance Cost Decrease"</b>	the Insurance Cost Differential if the value thereof is less than zero, multiplied by minus one;
<b>"Insurance Cost Differential"</b>	shall, subject to the Insurance Review Procedure, be determined as follows:-

Insurance Cost Differential = (ARIC – BRIC) – (±PIC)

where:

ARIC is the Actual Relevant Insurance Cost

BRIC is the Base Relevant Insurance Cost

PIC is any Project Insurance Change

**"Insurance Cost Increase"**

the Insurance Cost Differential if the value thereof is greater than zero;

**"Insurance Cost Index"**

any index introduced by the United Kingdom Government or the Office of National Statistics after the date of this Contract and which is anticipated to be published annually to provide an independent and objective measure of changes in prevailing market insurance costs;

**"Insurance Review Date"**

the First Insurance Review Date and, thereafter, each date falling on the second anniversary of the previous Insurance Review Date, except where such date lies beyond the end of the Contract Period, in which case the Insurance Review Date shall be the last renewal date of the Relevant Insurance prior to the end of the Contract Period;

**"Insurance Review Procedure"**

the procedure set out in Clause 57.10 (**Insurance Review Procedure**) of this Contract;

**"Insurance Review Period"**

a two year period from the Relevant Insurance Inception Date and each subsequent two year period commencing on the second anniversary of the Relevant Insurance Inception Date except where the end of such period lies beyond the end of the Contract Period, in which case the Insurance Review Period shall be the period from the end of the penultimate Insurance Review Period to the last day of the Contract Period;

**"Insurance Undertaking"**

has the meaning given in the rules from time to time of the Financial Services Authority

**"Intellectual Property Rights"**

any and all patents, trade marks, service marks, copyright, moral rights, rights in a design, know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto;

**"Intervening Contract"**

a contract with the Authority for the provision of services which are similar to the Services at times after they were provided under a contract

	with the First Contractor and before they are to be provided by the Contractor
<b>"Irrecoverable Leaseholder Costs"</b>	<p>the sum which represents the costs which are irrecoverable from Leaseholders as a consequence of:</p> <ul style="list-style-type: none"> <li>a) failure to comply with Sections 19 and/or 20 of the Landlord and Tenant Act 1985;</li> <li>b) failure of any Works or Services to meet the relevant Availability Standards Leasehold;</li> <li>c) a defective notice served under Section 125 of the Housing Act 1985 after the date of this Contract</li> <li>d) any failure by the Contractor to carry out its obligations pursuant to and in accordance with this Contract</li> </ul> <p>to the extent that such costs are irrecoverable due to the act, omission or default of the Contractor or any Contractor Related Party</p>
<b>"Joint Insurance Account"</b>	the joint bank account in the names of the Authority and the Contractor, having account number and held with the Account Bank and referred to Clause 58.2 ( <b>Joint Account</b> );
<b>"Joint Insurance Cost Report"</b>	shall bear the meaning ascribed to it in Clause 57.10.2 of this Contract;
<b>"Junior Debt"</b>	all amounts outstanding at the Termination Date under the Subordinated Financing Agreements
<b>"Law"</b>	Legislation and Guidance and any applicable judgement of a relevant court of law which changes a binding precedent;
<b>"Leasehold Dwellings"</b>	the Dwellings identified as such in Schedule 5 ( <b>Housing Accommodation</b> ) and other Rented Dwellings which subsequently become Leasehold Dwellings following the exercise of the Right to Buy after Financial Close;
<b>"Leasehold Dwelling Refurbishment Amount"</b>	means the sum of payable in respect of a maximum of 1170 (one thousand, one hundred and seventy) Leasehold Dwellings in accordance with the terms of the Contract;
<b>"Leasehold Lifecycle Amount"</b>	means the sum of £
<b>"Leasehold Insurances"</b>	means the insurances as set out in Schedule 29 (Leasehold Insurances);
<b>"Leasehold Non Standard Works Refusal"</b>	means a failure by the Authority to approve a NSW Schedule or a Leaseholder to permit Non Standard Works, in each case as provided in the Leaseholder Works Protocol to the extent such

	refusal is the direct cause of a failure to meet the relevant Availability Standards;
"Leaseholder"	a person who holds a Leasehold Dwelling under a Long Lease;
"Leaseholder Costs (Authority Share)"	<p>the amount, subject to any adjustment pursuant to Clause 27.1.15 equivalent to:</p> <p>(a) 79.1% of the Collected Leaseholder Costs for the relevant Contract Year where the aggregate amount of the Collected Leaseholder Costs is less than or equal to £</p> <p>(b) where the aggregate amount of the Collected Leaseholder Costs for the relevant Contract Year exceeds £, the percentage share for such excess amount set out in Clause 27.1.18</p> <p>less, in each case, any Deemed Collected Leaseholder Costs of which the Contractor becomes aware in the relevant Contract Year;</p>
"Leaseholder Costs (Contractor Share)"	the amount equivalent to the Collected Leaseholder Costs less the Leaseholder Costs (Authority Share);
"Leaseholder Costs Payment Dates"	2 January (or the nearest following Working Day) in the subsequent Contract Year to that Contract Year to which the Collected Leaseholder Costs relate;
"Leaseholder Works Protocol"	the protocol relating to the Works to be undertaken to Leasehold Dwellings in the form set out in Part 7 of Schedule 9 ( <b>Authority's Protocols</b> );
"Leaseholder's Lease"	the Long Lease under which a Leaseholder holds a Leasehold Dwelling in the form set out or referred to in Schedule 11 ( <b>Warranted Data</b> );
"Legislation"	<p>means:-</p> <p>(a) any Act of Parliament;</p> <p>(b) any subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978;</p> <p>(c) any exercise of the Royal Prerogative; and</p> <p>(d) any enforceable community right within the meaning of Section 2 of the European Communities Act 1972</p> <p>in each case in the United Kingdom.</p>

<b>"Liaison Procedure"</b>	the procedure contained in Schedule 22 ( <b><i>Liaison Procedure</i></b> );
<b>"Liquid Market"</b>	there are sufficient willing parties (being at least two parties, each of whom is capable of being a Suitable Substitute Contractor) in the market for PFI contracts or similar contracts for the provision of services (in each case the same as or similar to the Contract) for the price that is likely to be achieved through a tender to be a reliable indicator of Fair Value provided always that any vehicle controlled and established by the Senior Lenders specifically for the purposes of this Project and to which this Contract may be novated shall be discounted in assessing whether there are sufficient willing parties in the market for such purposes;
<b>"Loan Life Cover Ratio"</b>	shall have the meaning given to it in the Senior Financing Agreement;
<b>"Local Authority"</b>	a principal council (as defined in Section 220 Local Government Act 1972) or any body of government in England established as a successor to principal councils in relation to housing services;
<b>"Local Government Pension Scheme"</b>	the Local Government Pension Scheme established pursuant to regulations made by the Secretary of State in exercise of powers under sections 7 and 12 of the Superannuation Act 1972 as amended from time to time
<b>"Lock In Period"</b>	means: <ul style="list-style-type: none"> <li>a) in relation to those Shareholders who are also Subcontractors, to the extent of their shareholding as at Financial Close the period expiring on the date that is one (1) day after the Refurbishment Works Completion Date, provided that the Lock In Period shall terminate in the event of replacement of the Housing Management Subcontractor as a result of any Market Testing pursuant to Clause 26.2;</li> <li>b) in relation to any other Shareholder no earlier than that date falling 30 months after the date on which Financial Close is achieved provided that at least 3,147 Completion Points have been achieved by that date and further that in the case of delay to the progress of the Works by reason of any Compensation Events of three months or more in the aggregate, the said number of Completion Points shall be reduced to reflect all such delay</li> </ul>
<b>"Long Lease"</b>	a lease of a term in excess of 21 years at a

	ground rent;
"Longstop Date"	the date 18 months after the Planned Refurbishment Works Completion Date for the Project as may be extended in accordance with the terms of this Contract;
"Losses"	means all damages, losses, liabilities, costs, expenses (including legal and other professional charges and expenses) and charges whether arising under statute or contract or at common law or in connection with judgements, proceedings, internal costs or demands and " <b>Loss</b> " shall be construed accordingly;
"Main Sub-Contractor"	means the Refurbishment Contractor, the Housing Management Contractor, the Responsive and Cyclical Maintenance Contractor, the Heating Services Contractor and any of their replacements appointed in accordance with Clause 63 ( <b>Assignment and Sub-Contracting</b> );
"Management Agreement"	has the meaning given to it in Clause 27.2 ( <b>Management Agreements</b> );
"Management Fee"	the reasonable management fee set by the Authority in accordance with Clause 27.1.9 such management fee to be no more than can be charged within the meaning of "reasonable" in Section 19 of the Landlord and Tenant Act 1985 and if less than the amount charged by the Authority as at the date of this Contract (which for the avoidance of doubt is £per annum per Leasehold Dwelling) indexed in accordance with Schedule 6 ( <b>Payment Mechanism</b> ) then the difference shall be Deemed Collected Leaseholder Costs;
"Mandatory Reduction Directions"	the Mandatory Reduction of Service Charges (England) Directions 1997;
"Market Costs"	as defined in Clause 26.1.4 ( <b>Benchmarking</b> );
"Market Testing"	market testing in accordance with Clause 26.2 ( <b>Market Testing Procedure</b> );
Market Value Availability Deduction Amount"	for any month or part of a month, an amount equal to the availability deduction that was made to the Unitary Charge under Schedule 6 (Payment and Performance Mechanism) in the month immediately preceding the Termination Date, less an amount equal to any availability deduction that was made for a Dwelling which was Unavailable at the Termination Date but which has subsequently become available whether as a result of the Authority incurring Rectification Costs or otherwise;
"Maximum Unitary Charge"	in respect of a month the Unitary Charge

payable during that month before any Deductions under Schedule 6 (**Payment and Performance Mechanism**) but allowing for Indexation under paragraph 3.2 of Schedule 6 (**Payment and Performance Mechanism**);

**"Milestone Works"**

means:

(a) the accrual of 3,568 Completion Points; or

(b) the accrual of 5,465 Completion Points;

**"Milestone Works Completion Date"**

means either the Milestone Works Completion Date A and/or the Milestone Works Completion Date B;

**"Milestone Works Completion Date A"**

means 31 December 2009 or such later date as may be allowed in accordance with the terms of this Contract;

**"Milestone Works Completion Date B"**

means 31 December 2010 or such later date as may be allowed in accordance with the terms of this Contract;

**"Modelled Insurance Cost"**

the aggregate annual insurance premium payable by the Contractor in respect of any Contract Year for the Relevant Insurances as set out in Schedule 24 (**Modelled Insurance Costs**);

**"Moratorium Period"**

has the meaning given to it in Clause 27.2 (**Management Agreements**);

**"Net Present Value"**

the aggregate of the discounted values calculated as of the estimated date of the Refinancing of each of the relevant projected Distributions, in each case discounted using the Threshold Equity IRR;

**"New Contract"**

an agreement on the same terms and conditions as this Contract as at the Termination Date, but with the following amendments:-

(a) if this Contract is terminated during the Works Period, then the Planned Refurbishment Works Completion Date shall be extended by a period to allow a New Contractor to complete the Works at the Dwellings in question;

(b) any accrued Deductions and/or Warning Notices shall for the purposes of termination only, and without prejudice to the rights of the Authority to make financial deductions, be cancelled;

(c) the term of such agreement shall be equal to the term from the Termination Date until

	the Expiry Date;
	(d) the New Contractor will pay a capital sum to the Authority on entering into the New Contract; and
	(e) any other amendments which do not materially reduce the Capital Sum which a tenderer would be prepared to pay in consideration for the Authority entering into the New Contract;
<b>"New Contractor"</b>	the person who has entered or who will enter into the New Contract with the Authority.
<b>"New Employees"</b>	those new employees recruited and employed by the Contractor to provide the Services who will be working alongside the Transferring Employees;
<b>"Non-Default Interest Rate"</b>	means the Senior Debt Rate;
<b>"Non-Disclosed Adverse Right"</b>	an Adverse Right other than a Disclosed Adverse Right;
<b>"Non-PFI Property"</b>	has the meaning given in the Output Specification;
<b>"Notice Date"</b>	the later of the Termination Date and (if applicable) the date that the Adjusted Estimated Fair Value of the Contract is agreed between the parties pursuant to Clause 41.3 ( <b>No Retendering Procedure</b> );
<b>"NSW Schedule"</b>	has the meaning given in the Leaseholder Works Protocol;
<b>"Operational Period"</b>	the period from and including the Services Commencement Date until and including the earlier of the Expiry Date and the Termination Date;
<b>"Original Employees"</b>	means those employees of the Authority who as a result of the application of TUPE in relation to what was done for the purposes of carrying out the contract between the Authority and the First Contractor became employees of someone other than the Authority;
<b>"Original Senior Commitment"</b>	the amount committed under the Senior Financing Agreements as at Financial Close (as adjusted to take into account any Qualifying Variation);
<b>"Out of Sequence Works"</b>	has the meaning given in paragraph 5 of the Output Specification;
<b>"Out of Sequence Works Caps"</b>	has the meaning given in paragraphs 5.5 and 6.8 of the Output Specification;

"Output Specification"	the specification contained in Schedule 2 ( <b>Output Specification</b> );
"Outstanding Principal"	means the principal amount outstanding at the Termination Date of each borrowing (other than any borrowing under any equity bridge facility) under the Senior Financing Agreements;
"Part L of the Building Regulations"	Building Regulations Approved Document Part L (Conservation of Fuel and Power) 2006;
"Partner Admission Agreement"	means an admission agreement entered into in accordance with Regulation 5 of the Local Government Pension Scheme Regulations 1997 (as amended) by the Authority, the Contractor and the Administering Body;
"Payment and Performance Report"	the report referred to in Clause 30.3 ( <b>Report and Invoice</b> );
"Payment Month"	means any month during the Contract Period commencing on the 7th of each month and ending on the 6th of the immediately succeeding month;
"Performance Bonus"	as defined in paragraph 4 of Schedule 6 ( <b>Payment and Performance Mechanism</b> );
"Performance Deductions"	the deductions which fall to be made from the Unitary Payment in respect of Performance Failures in accordance with paragraph 8 of Schedule 6 ( <b>Payment and Performance Mechanism</b> );
"Performance Failure"	a failure by a Dwelling or Property or any part thereof to fulfil the applicable requirements of the Output Specification;
"Performance Monitoring Report"	has the meaning given to it in paragraph 9 of Schedule 6 ( <b>Payment and Performance Mechanism</b> );
"Performance Standard Benchmarking Exercise"	the benchmarking exercise to be undertaken in relation to the Services in accordance with Clause 32.5 ( <b>Performance Standard Benchmarking Exercise</b> )
"Period of Unavailability"	means, in relation to a Dwelling, the amount of time during which such Dwelling is Unavailable, measured in days;
"Permitted Borrowing"	without double counting, any: <ul style="list-style-type: none"> <li>(a) advance to the Contractor under the Senior Financing Agreements, provided that such advance is not made under any Committed Standby Facility;</li> <li>(b) Additional Permitted Borrowing;</li> </ul>

- (c) advance to the Contractor under any Committed Stand-by Facility which is made solely for the purpose of funding any cost overruns, increased expenses or loss of revenue which the Contractor incurs, provided that such funds are not used in substitution for other sources of committed funding designated for those purposes; and
- (d) interest and, in respect of the original Senior Financing Agreements only (as entered into at the date of this Contract prior to any subsequent amendment), other amounts accrued or payable under the terms of the Senior Financing Agreements;

except where the amount referred to in paragraphs (a) to (d) above is or is being used to fund a payment of Default Interest on any Additional Permitted Borrowing

<b>"Permitted Instalment Termination Sum"</b>	any Termination Sum except that payable under Clause 42 ( <b><i>Compensation on Authority Default</i></b> );
<b>"Persistent Breach"</b>	a breach for which a Final Warning Notice (referred to in Clause 35.2 (Final Notice)) has been issued which has continued or recurred 4 or more times within 6 months after the date on which such Final Warning Notice is served on the Contractor;
<b>"Personal Data"</b>	personal data as defined in the DPA which is supplied to the Contractor by the Authority or obtained by the Contractor in the course of performing the Service;
<b>"PFI"</b>	the UK Government's Private Finance Initiative or any similar or replacement initiative;
<b>"PFI Contractor"</b>	a person that has contracted with the Government, a Local Authority or other public or statutory body to provide services under the PFI.
<b>"Physical Damage Policies"</b>	as defined in Clause 58.1 ( <b><i>Application of Proceeds</i></b> );
<b>"Planned Refurbishment Works Completion Date"</b>	31 March 2012 or such later date as may be allowed in accordance with the terms of this Contract;
<b>"Portfolio Cost Saving Amount"</b>	means any insurance cost saving which arises from the Contractor changing the placement of the Required Insurances from being on a stand-alone project-specific basis assumed at Financial Close and reflected in the Base Cost, to being on the basis of a policy (or policies) also covering risks on other projects or other matters

which are outside the scope of the Project so as to benefit from portfolio savings A Portfolio Cost Saving is defined to be a positive sum and cannot be less than zero;

**"Post Termination Service Amount"**

for the purposes of Clause 41.2 (***Retendering Procedure***), for the whole or any part of a month for the period from the Termination Date to the Compensation Date, an amount equal to the Maximum Unitary Charge which would have been payable in that Month under the Contract had the Contract not been terminated plus any Authority's Capital Contribution Sum Instalments which would have been payable in the same period, less an amount equal to the aggregate of:-

- (a) the Market Value Availability Deduction Amount for that month or pro rata for any part thereof;
- (b) the Rectification Costs incurred by the Authority in that month; and
- (c) (where relevant), the amount by which the Post Termination Service Amount for the previous month was less than zero;

**"Pre-Refinancing Equity IRR"**

the nominal post-tax (i.e. post Contractor tax pre-Shareholder tax for the Contractor but pre-tax for the Shareholders) Equity IRR calculated immediately prior to the Refinancing

**"Prohibited Act"**

- (a) offering, giving or agreeing to give to any servant of the Authority any gift or consideration of any kind as an inducement or reward:-
  - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Contract or any other contract with the Authority; or
  - (ii) for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Authority;
- (b) entering into this Contract or any other contract with the Authority in connection with which commission has been paid or has been agreed to be paid by the Contractor or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission of the terms and conditions of any such contract for the payment thereof have been disclosed in

writing to the Authority;

(c) committing any offence:-

(i) under the Prevention of Corruption Acts 1889-1916;

(ii) under Legislation creating offences in respect of fraudulent acts; or

(iii) at common law in respect of fraudulent acts in relation to this Contract or any other contract with the Authority; or

(d) defrauding or attempting to defraud or conspiring to defraud the Authority;

**"Project"**

the refurbishment, management and maintenance of the Dwellings and the Properties by the Contractor including the carrying out of the Works and the provision of the Services as required by and in accordance with this Contract and the PFI;

**"Project Accounts"**

The accounts referred to in and required to be established under the Senior Financing Agreements;

**"Project Data"**

(a) all Design Data;

(b) all drawings, reports, documents, plans, formulae, calculations and other data relating to the carrying out of the Works or the provision of the Services;

(c) any other materials, documents or data acquired, brought into existence or used in relation to the Works, the Services or this Contract;

**"Project Documents"**

the agreements entered into by the Contractor for the performance of the obligations under this Contract listed in Schedule 18 (***Project Documents***);

**"Project Insurance Change"**

any net increase in the Actual Relevant Insurance Cost relative to the Base Relevant Insurance Cost, arising from:

(a) the claims history or re-rating of the Contractor or any Contractor Related Party;

(b) the effect of any change in deductible unless the following applies:

(i) such change is attributable to circumstances generally prevailing in the Relevant Insurance Market;

and

(ii) the deductible, further to such changes, is either greater than or equal to the maximum in Schedule 14 (**Required Insurances**)

(c) any other issue or factor other than circumstances generally prevailing in the Relevant Insurance Market (except for any Portfolio Cost Saving);

For the purpose of determining the Insurance Cost Differential, in the event that there is a net increase, the Project Insurance Change shall have a positive value. In the event that there is a net decrease the Project Insurance Change shall have a negative value

**"Project Internal Rate of Return"**

% (quarterly)

**"Property"**

a building comprising one or more Dwellings and any Common Parts;

**"Property Completion"**

means in respect of a Property that Certificates of Availability Rented (Full Standard) and/or Certificates of Availability Leasehold (Full Standard) as relevant have been issued (or are deemed to have been issued) in respect of all the Dwellings forming part of that Property and which are within the Project;

**"Proposed Leaseholder Works and Services"**

has the meaning given to it in Clause 27.1.3(a)

**"Protection Legislation"**

means:

- (a) Protection of Children Act 1999
- (b) Police Act 1997
- (c) Protection of Vulnerable Adults Scheme as set out in the Care Standards Act 2000
- (d) any other legislation which requires spent convictions to be disclosed and any future legislation which requires the disclosure of spent convictions

**"Qualifying Bank Transaction"**

means:

- (a) the syndication by a Senior Lender, in the ordinary course of its business, of any of its rights or interests in the Senior Financing Agreements;
- (b) the grant by a Senior Lender of any rights of participation, or the disposition by a Senior Lender of any of its rights or

interests (other than as specified in paragraph (a) above), in respect of the Senior Financing Agreements in favour of:

- (i) any other Senior Lender;
  - (ii) any institution which is recognised or permitted under the law of any member state of the EEA to carry on the business of a credit institution pursuant to Council Directive 2001/12/EC relating to the taking up and pursuit of the business of credit institutions or which is otherwise permitted to accept deposits in the United Kingdom or any other EEA member state;
  - (iii) a local authority or public authority;
  - (iv) a trustee of a charitable trust which has (or has had at any time during the previous two years) assets of at least £ (or its equivalent in any other currency at the relevant time);
  - (v) a trustee of an occupational pension scheme or stakeholder pension scheme where the trust has (or has had at any time during the previous two years) at least 50 members and assets under management of at least £ (or its equivalent in any other currency at the relevant time);
  - (vi) an EEA or Swiss Insurance Undertaking;
  - (vii) a Regulated Collective Investment Scheme;
  - (viii) any Qualifying Institution; or
  - (ix) any other institution in respect of which the prior written consent of the Authority has been given;
- (c) the grant by a Senior Lender of any other form of benefit or interest in either the Senior Financing Agreements or the revenues or assets of the Contractor or Holdco, whether by way of security or otherwise, in favour of:
- (i) any other Senior Lender;
  - (ii) any institution specified in paragraphs (b)(ii) to (vii) above;

- (iii) any Qualifying Institution; or
- (iv) any other institution in respect of which the prior written consent of the Authority has been given

**"Qualifying Change in Law"**

- (a) a Discriminatory Change in Law;
- (b) a Specific Change in Law;
- (c) a Best Value Change in Law;
- (d) a General Change in Law which comes into effect during the Service Period and which involves Capital Expenditure (other than such as shall apply to the Works to the extent such Works are carried out to each Dwelling prior to the issue of a Certificate of Availability for such Dwelling except as provided for in Clause 27.14.2 (Part L Heating Systems);

**"Qualifying Institution"**

means:

- (a) any person who is subject to United Kingdom corporation tax whose ordinary activities involve them in acquiring, holding or disposing of investments (as principal or agent) for the purposes of their business where the acquisition of the rights of a Senior Funder in the Senior Financing Agreements takes place in accordance with all applicable securities legislation other than where such acquisition, grant or disposal is for the purposes of giving rise to a Refinancing Gain; or
- (b) a trustee for any other entity listed in paragraph (b)(iii) to (viii) or (c) (ii) to (iv) of the definition of Qualifying Bank Transaction other than a trustee whose acquisition, grant or disposition is made in concert with the Shareholders and/or the Subordinated Lenders for the purpose of giving rise to a Refinancing Gain;

**"Qualifying Refinancing"**

any Refinancing that will give rise to a Refinancing Gain greater than zero that is not an Exempt Refinancing

**"Qualifying Variation"**

either:-

- (a) a change in the Works and/or the Service in respect of which either an Authority Notice of Change or a Contractor Notice of Change has been served and; in the case of:

- (i) an Authority Notice of Change, the Authority has confirmed the Estimate and, where the Contractor is not funding all or part of the required Capital Expenditure, the Authority has agreed to meet all or the remaining part (as appropriate) of such Capital Expenditure; and
- (ii) a Contractor Notice of Change, the change has been accepted by the Authority; or

(b) a Qualifying Change in Law

and in respect of which any documents or amendments to the Project Documents which are required to give effect to such change in the Works and/or Services or Qualifying Change in Law have become unconditional in all respects

**"Rectification Costs"**

for the purposes of any Termination Date that occurs during the Service Period, an amount equal to the reasonable and proper costs incurred by the Authority in a particular month or part of a month in ensuring that the Dwellings and/or Properties are Available;

**"Rectification Period"**

has the meaning given to it in Schedule 6 (***Payment and Performance Mechanism***);

**"Recoverable Leaseholder Costs"**

has the meaning given to it in Clause 27.1.4(b) but shall exclude any amounts which are Additional Recoverable Leaseholder Costs;

**"Refinancing"**

- (a) any amendment, variation, novation, supplement or replacement of any Financing Agreement (other than any Subordinated Financing Agreement);
- (b) the exercise of any right, or the grant of any waiver or consent, under any Financing Agreement (other than any Subordinated Financing Agreement);
- (c) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, any Financing Agreement (other than any Subordinated Financing Agreement) or the creation or granting of any other form of benefit or interest in either the Financing Agreements (other than the Subordinated Financing Agreements) or the contracts, revenues or assets of the Contractor whether by way of security or otherwise; or
- (d) any other arrangement put in place by the Contractor or another person which has an effect which is similar to any of (a)-(c)

above or which has the effect of limiting the Contractor's ability to carry out any of (a)-(c) above

**"Refinancing Gain"**

an amount equal to the greater of zero and  $\{(A-B)-C\}$ , where:

A = the Net Present Value of the Distributions projected immediately prior to the Refinancing (taking into account the effect of the Refinancing and using the Base Case as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made to each Relevant Person over the remaining term of this Contract following the Refinancing;

B = the Net Present Value of the Distributions projected immediately prior to the Refinancing (but without taking into account the effect of the Refinancing and using the Base Case as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made to each Relevant Person over the remaining term of this Contractor following the Refinancing; and

C = any adjustment required to raise the Pre-Refinancing Equity IRR to the Threshold Equity IRR

**"Refurbishment Contract"**

the building contract to be entered into at Financial Close in the form agreed prior to Financial Close between the Contractor and the Refurbishment Contractor relating to the Works, or any replacement thereof;

**"Refurbishment Contractor"**

United House Limited (registered number 00817560) of United House, Goldsel, Swanley, Kent BR8 8EX or such other refurbishment contractor as the Contractor may, subject to Clause 63.2 (***Contractor's Permitted Sub-Contractors***), appoint to carry out the Works;

**"Refurbishment Works or Services Denial Event"**

means any of:

- (a) Access Failure Event
- (b) Rehousing Refusal Event;
- (c) Tenant Waiver Event;

	<p>(d) the exercise by any Relevant Authority of powers preventing the Contractor from gaining access to any relevant Dwelling to which the Contractor requires access for the purpose of performing its obligations under this Contract; or</p> <p>(e) any other circumstances which may, in the discretion of the Authority, be agreed with the Contractor;</p>
<b>"Refurbishment Works Completion Date"</b>	the date on which the final Certificate of Availability is issued in relation to the Project;
<b>"Refurbishment Works Programme"</b>	means the indicative programme set out in Schedule 13 as amended from time to time and notified to the Authority in accordance with the Contract;
<b>"Regulated Collective Investment Scheme"</b>	has the meaning given in the Rules from time to time of the Financial Services Authority
<b>"Registered Social Landlord"</b>	any entity appearing in the register of social landlords maintained by the Housing Corporation pursuant to Section 1 of the Housing Act 1996;
<b>"Rehousing Refusal Event"</b>	<p>where the Contractor has followed the procedure contained in the Temporary Moves Protocol and/or the Access Protocol, either:</p> <p>(a) a Tenant refusing to be Decanted;</p> <p>(b) a Tenant being unable to be Decanted due to his or her frail or elderly condition; or</p> <p>(c) a Tenant once Decanted, refusing to move back into his/her original Dwelling;</p> <p>to enable the Refurbishment Works or Services to be carried out and there is "No Access" for the purposes of the Temporary Moves and/or the Access Protocols;</p>
<b>"Relevant Assumptions"</b>	the assumptions that the sale of this Contract is on the basis that there is no default by the Authority that the sale is on a going concern basis that no restrictions exist on the transfer of share capital, that no Additional Permitted Borrowing has taken place and therefore that the effect of the Additional Permitted Borrowing on the calculation of such amount is disregarded but that otherwise the actual state of affairs of the Contractor and the Project is taken into account
<b>"Relevant Authority"</b>	any court with the relevant jurisdiction and any local, national or supra-national agency, inspectorate, minister, ministry, official or public or statutory person of the government of the

	United Kingdom or of the European Union;
"Relevant Date"	any or all of the Planned Refurbishment Works Completion Date, the Milestone Works Completion Date and the Disrepair Action Cut Off Date;
"Relevant Employees"	the employees who are the subject of a Relevant Transfer
"Relevant Event"	an Authority Change, Qualifying Change in Law, Compensation Event or other matter as a result of which there may be an adjustment to the Unitary Charge in accordance with Clause 31 ( <b>Financial Adjustments</b> );
"Relevant Insurance"	the Required Insurances and any other insurances as may be required by law other than; <ul style="list-style-type: none"> <li>(a) Construction Period Insurance; and</li> <li>(b) Business Interruption Cover to the extent that it relates to loss of profits</li> </ul>
"Relevant Insurance Inception Date"	the date of this Contract;
"Relevant Insurance Market"	the insurance market which insures the majority of all PFI projects across all of the PFI sectors (as determined by the number of PFI projects). At the date of this Contract, the Relevant Insurance Market is in the United Kingdom;
"Relevant Part of the Unitary Payment"	has the meaning given in Clause 27 ( <b>CNDT</b> );
"Relevant Person"	each of the Shareholders and their Affiliates;
"Relevant Transfer"	a relevant transfer for the purposes of TUPE;
"Relevant Transfer Date"	the date on which an Eligible Employee transfers to the Contractor and/or one or more Sub-Contractor whether by virtue of any Relevant Transfers or deemed Relevant Transfers or otherwise;
"Relief Event"	<ul style="list-style-type: none"> <li>(a) fire, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation (to the extent it does not constitute a Force Majeure Event), earthquakes, riot and civil commotion;</li> <li>(b) failure by any statutory undertaker, utility company, local authority or other like body to carry out works or provide services;</li> <li>(c) any accidental loss or damage to the Sites and/or Properties or any roads servicing</li> </ul>

them;

- (d) any failure or shortage of power, fuel or transport;
- (e) any blockade or embargo which does not constitute a Force Majeure Event; or
- (f) any
  - (i) official or unofficial strike;
  - (ii) lockout;
  - (iii) go slow; or
  - (iv) other disputegenerally affecting the construction, housing or facilities management industry or a significant sector of it;
- (g) subsidence or changes in the water table affecting any Dwelling or Property occurring after the date of the Stock Condition Survey relating to that Dwelling or Property;
- (h) the occurrence of a Refurbishment Works or Services Denial Event;
- (i) the occurrence of a Channel Tunnel Works Event;
- (j) [Not Used];
- (k) [Not Used];
- (l) [Not Used];
- (m) the Authority not agreeing to make available pursuant to Clause 27.5 (**Decant**), the number of Decant Voids and/or Decant weeks required by the Contractor taking reasonable account of the Contractor's need to undertake works at Dwellings at which there exists asbestos;

unless any of the events listed in paragraphs (a) to (m) inclusive arises (directly or indirectly) as a result of any wilful act or wilful default of the Contractor or any of its Sub-Contractors;

**"Rented Dwellings"**

all Dwellings other than Leasehold Dwellings;

**"Requests for Information"**

shall have the meaning set out in the FOIA or the Environmental Information Regulations as applicable (where the meaning set out for the

	term "request" shall apply);
"Required Action"	has the meaning given to it in Clause 53.4 ( <b>Authority Action</b> );
"Required Insurances"	the insurances set out in Schedule 14 ( <b>Required Insurances</b> );
"Responsive and Cyclical Maintenance Contract"	the contract to be entered into at Financial Close in the form to be agreed prior to Financial Close under which the Responsive and Cyclical Maintenance Contractor is to provide the Responsive and Cyclical Maintenance Services, or any replacement thereof as permitted by this Contract;
"Responsive and Cyclical Maintenance Contractor"	Rydon Property Maintenance Limited (registered number 01651097) of Rydon House, Station Road, Forest Row, East Sussex, RH18 5DW or such other person as the Contractor may, subject to Clause 63.2 ( <b>Contractor's Permitted Sub-Contractors</b> ) appoint to provide the Responsive and Cyclical Maintenance Services;
"Responsive and Cyclical Maintenance Services"	the maintenance and repair services required to satisfy the requirements of the Output Specification;
"Restrictions"	all matters (whether arising before or after the date of this Contract) affecting the Site or its use registered or capable of registration as local land charges, and all notices, charges, orders, resolutions, demands, proposals, requirements, regulations, restrictions, agreements, directions or other matters affecting the Site or its use served or made by any local or other competent authority or otherwise arising under any Legislation;
"Retendering Information"	has the meaning given to that term in Clause 41.2 ( <b>Retendering</b> );
"Retention Fund Account"	as defined in Clause 38.1 ( <b>Retention Fund</b> );
"Return Date"	has the meaning given to it in Clause 28.16.2 ( <b>Termination of Agreement</b> );
"Returning Employees"	has the meaning given to it in Clause 28.16.2 ( <b>Termination of Agreement</b> );
"Review Date"	1 April 2006 and 1 April in each subsequent Contract Year during the Contract Period;
"Review Procedure"	the procedure contained in Schedule 8 ( <b>Review Procedure</b> );
"Revised Senior Debt Termination Amount"	subject to Clause 47.3 ( <b>Changes to the Financing Agreements</b> );

- (a) all amounts outstanding at the Termination Date, including interest and (other than in respect of Additional Permitted Borrowing) Default Interest accrued as at that date, from the Contractor to the Senior Lenders in respect of Permitted Borrowing;
- (b) all amounts including costs of early termination of interest rate hedging arrangements and other breakage costs, payable by the Contractor to the Senior Lenders as a result of a prepayment in respect of Permitted Borrowing subject to the Contractor and the Senior Lenders mitigating all such costs to the extent reasonably possible,

less

to the extent it is a positive amount, the aggregate of (without double counting in relation to the calculation of the Revised Senior Debt Termination Amount or the amounts below):

- (i) all credit balances on any bank accounts (but excluding the Joint Insurance Account and the Leaseholder Recovery Account) held by or on behalf of the Contractor on the Termination Date;
- (ii) any amounts claimable on or after the Termination Date in respect of Contingent Funding Liabilities;
- (iii) all amounts, including costs of early termination of interest rate hedging arrangements and other breakage costs, payable by the Senior Lenders to the Contractor as a result of prepayment of amounts outstanding in respect of Permitted Borrowing;
- (iv) all other amounts received by the Senior Lenders on or after the Termination Date and before the date on which any compensation is payable by the Authority to the Contractor as a result of enforcing any other rights they may have; and
- (v) all APB Distributions;

**"Right to Buy"**

the right conferred on a tenant by Part V of the Housing Act 1985 to buy a Dwelling;

**"Right to Carry Out Improvements"**

the right of any tenant to carry out improvements to his Dwelling pursuant to Section 97 of the

	Housing Act 1985;
"Right to Manage"	the right conferred on the tenants of the Dwellings by Section 27AB of the Housing Act 1985 to require that the Authority enters into a management agreement with a tenant management organisation;
"Right to Repair"	the right of any tenant to have repairs carried out to his Dwelling pursuant to Section 96 of the Housing Act 1985;
"RPI"	the General Index of Retail Prices (All Items) published from time to time by the Office for National Statistics or, if such index shall cease to be published, such other retail prices index as may be published as its substitute or, in the event that there is no direct substitute, such index as the parties agree produces as nearly as possible the same result
"RRO"	the Regulatory Reform (Housing Management Agreements) Order 2003;
"Scheme"	the London Borough of Islington LGPS Scheme
"Section 27"	Section 27 of the Housing Act 1985 as amended and substituted by the RRO
"Section 27 Consent"	has the meaning given to it in Clause 27.2.1 ( <b><i>Management Agreements</i></b> );
"Security Trustee"	the Governor and Company of The Bank of Scotland and any successor or assignee;
"Semi-Variable Costs"	for the purpose of Clauses 27.7.16 ( <b><i>Changes to Numbers of Dwellings by Tenure</i></b> ), the costs each as contained in the Financial Model by reference to whether a relevant Dwelling is a Rented Dwelling or a Leasehold Dwelling and defined and set out in Schedule 15;
"Senior Debt"	means the financing provided by the Senior Lenders under the Senior Financing Agreements;
"Senior Debt Rate"	means the interest rate set out in Clause 7.2 of the credit agreement being one of the Senior Financing Agreements or such other lower rate as the parties may agree;
"Senior Financing Agreements"	those of the Financing Agreements listed in Part 2 of Schedule 18 (Project Documents) as at the date of this Contract or as amended with the prior written approval of the Authority pursuant to Clause 47.3.1 ( <b><i>Changes to the Financing Agreements and Ancillary Documents</i></b> );
"Senior Lenders"	each person providing finance to the Contractor under the Senior Financing Agreements and any

	Hedging Bank and any trustee or agent of them;
"Service Charge Period"	the successive periods set out in a Leaseholder Lease for the re-charge to Leaseholders of costs incurred by or on behalf of the landlord;
"Service Period"	the period during which Services are undertaken;
"Service Recovery Plan"	has the meaning given to it in paragraph 4 of Schedule 6 ( <b>Payment and Performance Mechanism</b> );
"Service Transfer Date"	the transfer to the Contractor on a date agreed by the parties of responsibility for provision of (or procuring the provision by sub-contractors of) the Services in accordance with this Contract;
"Services"	the services required to satisfy the Output Specification (which for the avoidance of doubt shall exclude the Works);
"Services Commencement Date"	7 August 2006;
"Shareholders"	any person from time to time holding share capital in the Contractor or its Holdco;
"Sites"	the land and sites on which the Properties are situated together with the buildings and other erections in and upon the same and the service ducts and media for all utilities and services serving such buildings and erections;
"Small Works Change"	any change to the Services requested by the Authority requiring works having an individual cost not exceeding £ (indexed) per Dwelling and £(indexed) in aggregate in any Contract Year, or as otherwise agreed from time to time, except for any request which will (if implemented) increase the likelihood of the Works and/or Services not complying with the performance regime, Output Specification or materially and adversely affect the Contractor's ability to perform its obligations under this Contract and " <b>Small Works</b> " shall be construed accordingly;
"Small Works Rates"	means, for the first Contract Year, the labour rate of £ per hour per operative for work done by the Responsive and Cyclical Maintenance Contractor and £ per hour per operative for work done by the Heating Services Contractor together with the rates for materials as set out in Clause 52.3.1 (B) and thereafter as agreed and/or determined in accordance with Clause 52.3 ( <b>Small Works Changes</b> );
"Snagging List"	the list to be prepared by the Contractor in accordance with Clause 19.4A ( <b>Snagging Items</b> ) containing particulars of minor defects, deficiencies or omissions of a snagging nature

	which do not prevent the Contractor from issuing a Certificate of Availability;
"Snagging Programme"	has the meaning given to it in Clause 19.4A.1 ( <b>Snagging Items</b> );
"Specific Change in Law"	any Change of Law which specifically refers to: <ul style="list-style-type: none"> <li>(a) the provision of housing or tenant management services to housing owned by a Local Housing Authority or a Registered Social Landlord;</li> <li>(b) the provision of construction and maintenance of housing services to residential tenanted accommodation;</li> <li>(c) a Tenant or Leaseholder or other lawful occupiers of housing owned by a Local Housing Authority or a Registered Social Landlord;</li> <li>(d) the holding of shares in companies or industrial and provident societies whose main business is providing services referred to in (a) or (b) above;</li> </ul>
"Specific Risk"	a risk against which a building contractor undertaking work in respect of housing accommodation or a provider of housing accommodation or a provider of services to or in respect of housing accommodation the same as or similar to the Properties is required by Legislation to carry insurance cover;
"Standard Rate for Leasehold Dwellings"	either DR(L)(In) or DR(L)(IF) as defined in paragraph 1.1 of Schedule 6 ( <b>Payment and Performance Mechanism</b> ) as appropriate;
"Standard Rate for Rented Dwellings"	either DR(R)(In), DR(R)(I) or DR(R)(F) as defined in paragraph 1.1 of Schedule 6 ( <b>Payment and Performance Mechanism</b> ) as appropriate;
"Statutory Reduction of Dwellings"	a reduction of the number of Rented Dwellings or Leasehold Dwellings in the Project as a consequence of the exercise of the Right to Buy or Right to Manage (unless the Authority elects to treat such as an Authority Change in accordance with Clause 27.9 ( <b>Right to Manage</b> ) or of any other right to purchase or acquire the freehold interest or leasehold interest of a Dwelling (including any right conferred by the Leasehold Reform and Urban Regeneration Act 1993);
"Step-In Period"	as defined in the Direct Agreement;
"Stock Condition Survey"	any of the surveys of the Dwellings and/or Properties carried out by Hunter and Partners

	Limited in accordance with the Stock Condition Surveyor's Appointment;
<b>"Stock Condition Survey Report"</b>	the final report dated August 2006 concerning the survey carried out by Hunter and Partners Limited in accordance with the Stock Condition Surveyor's Appointment;
<b>"Stock Condition Surveyor's Appointment"</b>	the appointment dated on or about the date of this Contract and entered into between inter alia the Authority, the Contractor and Hunter and Partners Limited under which Hunter and Partners Limited carried out the surveys the results of which are contained in the Stock Condition Survey Report;
<b>"Sub-Agreement"</b>	has the meaning given to it in Clause 27.2.2 ( <b>Management Agreements</b> );
<b>"Sub-Contractors"</b>	each of the Housing Management Contractor, Refurbishment Contractor, Responsive and Cyclical Maintenance Contractor, Heating Services Contractor or any other person engaged by the Contractor from time to time as may be permitted by this Contract to procure the provision of the Works and/or the Services (or any of them);
<b>"Sub-Contracts"</b>	means the contracts entered into by the Contractor and the Sub-Contractors;
<b>"Sub-Contractor Breakage Costs"</b>	<p>means Losses that have been or will be reasonably and properly incurred by the Contractor as a direct result of the termination of this Contract, but only to the extent that:-</p> <ul style="list-style-type: none"> <li>(a) the Losses are incurred in connection with the Project and in respect of the provision of services or the completion of works including:- <ul style="list-style-type: none"> <li>(i) any materials or goods ordered or subcontracts placed that cannot be cancelled without such Losses being incurred;</li> <li>(ii) any expenditure incurred in anticipation of the provision of services or the completion of works in the future;</li> <li>(iii) the cost of demobilisation including the cost of any relocation of equipment used in connection with the Project; and/or</li> <li>(iv) redundancy payments;</li> </ul> </li> <li>(b) the Losses are incurred under arrangements and/or agreements that are</li> </ul>

consistent with terms that have been entered into in the ordinary course of business and on reasonable commercial terms and the Authority acknowledge that a maximum payment of 24 months loss of profit, mitigated in accordance with normal contractual principles, in the event of termination of a Sub-Contractor on a no fault basis does reflect an agreement entered into in the ordinary course of business and on reasonable commercial terms; and

- (c) the Contractor and the relevant Sub-Contractor have each used their reasonable endeavours to mitigate the Losses;

**"Submitted Item"**

shall have the meaning given to it in paragraph 1.3 of Schedule 8 (**Review Procedure**) to this Contract;

**"Subcontract Guarantee"**

the guarantees dated as at Financial Close under which the obligations of the Refurbishment Contractor and/or the Heating Services Contractor and/or the Responsive and Cyclical Maintenance Contractor are guaranteed under the Refurbishment Contract, the Heating Services Contract and the Responsive and Cyclical Maintenance Contract respectively;

**"Subordinated Financing Agreements"**

those of the Financing Agreements listed in Part 2 of **Schedule 26** (Initial Financing Agreements) or as amended with the prior written approval of the Authority

**"Subordinated Lender"**

a person providing finance under a Subordinated Finance Agreement;

**"Suitable Alternative Accommodation"**

shall have the meaning given to it in paragraph 14 of Schedule 6 (**Performance and Payment Mechanism**);

**"Suitable Substitute Contractor"**

means a person approved by the Authority (such approval not to be unreasonably withheld or delayed) as:

- (a) having the legal capacity, power and authority to become a party to and perform the obligations of the Contractor under the Contract; and
- (b) employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and sub contracts) which are sufficient to enable it to perform the obligations of the Contractor under the

	Contract;
<b>"Suitable Third Party"</b>	<p>a party who is neither:</p> <ul style="list-style-type: none"> <li>(a) any person who has a material interest in the production, distribution or sale of tobacco products and/or alcoholic drinks;</li> <li>(b) any person whose activities are, in the reasonable opinion of the Authority, incompatible with the provision of the Services to the Authority; or</li> <li>(c) any person whose activities, in the reasonable opinion of the Authority, pose or could pose a threat to national security;</li> </ul>
<b>"Tax"</b>	any kind of tax, duty, levy or other charge (other than VAT) whether or not similar to any in force at the date of this Contract and whether imposed by a local, governmental or other Relevant Authority in the United Kingdom or elsewhere;
<b>"TeCSA"</b>	the Technology and Construction Solicitors Association
<b>"Temporary Moves Protocol"</b>	is the protocol describing how the Contractor will manage temporary moves and decanting arrangements as set out in Schedule 9 (Authority's Protocols);
<b>"Tenancy Agreement"</b>	a tenancy agreement comprising an Authority tenancy of a Rented Dwelling in the form set out or referred to in Schedule 11 (Warranted Data);
<b>"Tenancy and Leaseholder Enforcement Policy"</b>	the Authority's policy for the enforcement of the terms of Tenancy Agreements and Leaseholder Leases in the Agreed Form;
<b>"Tenant"</b>	the person who from time to time is a tenant, licensee or other lawful occupier of a Dwelling (excluding leaseholders and lodgers or sub-tenants of any Leaseholder);
<b>"Tenant Damage"</b>	any damage wilfully, intentionally or negligently caused to a Dwelling by a Tenant of that Dwelling, a member of his household or by a person invited into the Dwelling but excluding any damage arising from fair wear and tear or damage arising from a failure by the Contractor to comply with the its obligations under this Contract;
<b>"Tenant Waiver"</b>	has the meaning given to it in the Tenant Waiver Protocol;
<b>"Tenant Waiver Event"</b>	has the meaning given to it in the Tenant Waiver Protocol;

"Tenant Waiver Protocol"	the protocol describing the circumstances in which a Tenant and/or a Leaseholder may waive certain elements of the Refurbishment Works and/or Responsive and Cyclical Maintenance Services as set out in Schedule 9 ( <b>Authority's Protocols</b> );
"Tender Costs"	the reasonable and proper costs of the Authority incurred in carrying out the Tender Process and/or in connection with any calculation of the Estimated Fair Value of the Contract;
"Tender Process"	the process by which the Authority requests tenders from any parties interested in entering into a New Contract, evaluates the responses from those interested parties and enters into a New Contract with a new service provider, in accordance with Clause 41.2 ( <b>Retendering Procedure</b> );
"Tender Process Monitor"	a third party appointed by the Contractor under Clause 41.2.5 ( <b>Retendering Procedure</b> );
"Termination Date"	any date of early termination of this Contract in accordance with its terms;
"Termination Date Discount Rate"	<p>a discount rate expressed as <math>(1 + \text{real base case project IRR} + \text{Gilt B} - \text{Gilt A}) * (1+i) - 1</math></p> <p>where:-</p> <p>"real base case project IRR" is the real pre-tax Project IRR as set out in the Base Case.</p> <p>"i" is the agreed assumed forecast rate of increase in the Inflation Index set out in the Contract which, for the avoidance of doubt, is equal to the Bank of England's prevailing long term inflation target;</p> <p>"Gilt A" is the real yield to maturity on a benchmark government Gilt instrument of the same maturity as the average life of the outstanding Senior Debt as shown in the Financial Model at Financial Close; and</p> <p>"Gilt B" is the real yield to maturity on a benchmark government Gilt instrument of the same maturity as the average life of the outstanding Senior Debt as on the Financial Model as on the Termination Date;</p>
"Termination Notice"	has the meaning given to it in Clause 34.2.1 ( <b>Termination by the Authority</b> );
"Termination Sum"	any compensation payable by the Authority to the Contractor on an early termination of this Contract under Part 7 of this Contract (excluding the Adjusted Highest Compliant Tender Price) and any compensation payable as a result of a

termination of the Contract under Clause 34.1 (**Contractor Default Termination**).

**"Third Party Damage"**

any damage caused to a Dwelling or Property by a Tenant or third party save to the extent such damage constitutes Tenant Damage;

**"Threshold Equity IRR"**

means 15 per cent

**"Transfer Date"**

means the date the Transferring Employees are transferred to the employment of the Contractor and the date that the Transferring Original Employees are transferred to the employment of a subsequent contractor

**"Transferring Employee"**

means an employee of the Authority or HFI

- (a) whose contract of employment becomes, by virtue of the application of TUPE in relation to what is done for the purposes of carrying out this contract between the Authority and the Contractor, a contract of employment with someone other than the Authority or HFI; and
- (b) who, in the case where the provision of the Services in accordance with this Agreement does not amount to a Relevant Transfer is afforded no less favourable treatment in accordance with the provisions of the Code and Clause 28.2 (Offer of Employment);

**"Transferring Original Employee"**

an Original Employee;

- (a) whose contract of employment:
  - (i) becomes, by virtue of the application of TUPE in relation to what is done for the purposes of carrying out a contract between the Authority and a subsequent contractor, a contract of employment with someone other than his existing employer, and
  - (ii) on each occasion when an Intervening Contract was carried out became, by virtue of the application of TUPE in relation to what was done for the purposes of carrying out the Intervening Contract, a contract of employment with someone other than his existing employer; or
- (b) who, in the case where the contract between the Authority and the subsequent contractor does not amount to a Relevant Transfer is afforded no less favourable treatment in accordance with the provisions of the Code and Clause 28.2

	(Offer of Employment);
"Trees Protocol"	the protocol relating to the parties' responsibilities in respect of trees in the form set out in Part 6 of Schedule 9 ( <b>Authority's Protocols</b> );
"TUPE"	the Transfer of Undertakings (Protection of Employment) Regulations 2006;
"Unavailable"	in relation to any Dwellings that the applicable Availability Standard is not met in relation to that Dwelling and " <b>Unavailability</b> " shall be construed accordingly;
"Unavailability Deductions"	the deductions which fall to be made from the Unitary Payment in accordance with paragraph 13 of Schedule 6 ( <b>Payment and Performance Mechanism</b> );
"Unavailability Report"	has the meaning given to it in paragraph 10 of Schedule 6 ( <b>Payment and Performance Mechanism</b> );
"Uninhabitable"	has the meaning given to it in paragraph 10 of Schedule 6 ( <b>Payment and Performance Mechanism</b> );
"Uninsurable"	in relation to a risk, either that: <ul style="list-style-type: none"> <li>(a) insurance is not available to the Contractor in respect of the Project in the worldwide insurance market with reputable insurers of good standing in respect of that risk; or</li> <li>(b) the insurance premium payable for insuring that risk is at such a level that the risk is not generally being insured against in the worldwide insurance market with reputable insurers of good standing by contractors in the United Kingdom;</li> </ul>
"Unitary Charge"	the fee payable by the Authority under Clause 30.2 ( <b>Payment of Unitary Payment</b> ) and calculated in accordance with Schedule 6 ( <b>Payment and Performance Mechanism</b> );
"Unitary Charge Profile"	the profile for the Unitary Payment contained in Schedule 17 ( <b>Unitary Charge Profile</b> );
"Unitary Payment"	has the meaning given to it in paragraph 2 of Schedule 6 ( <b>Payment and Performance Mechanism</b> );
"Variable Costs"	for the purposes of Clause 27.7.14 ( <b>Changes in Number of Dwellings by Tenure</b> ) and 27.7.16 (Changes in Number of Dwellings by Tenure), the variable costs each as contained in the Financial Model by reference to whether a relevant Dwelling is a Rented Dwelling or a

Leasehold Dwelling and shown in the column headed "% Variable" Table A of Schedule 15;

**"VAT"**

means any value added taxes;

**"Void Dwelling"**

a Rented Dwelling which becomes vacant (except a Decant Void);

**"Void Turnover Rate"**

in respect of each Contract Year the rate at which Void Dwellings occur over a period of three consecutive Contract Years expressed as a percentage in accordance with the following formula:-

$$a = \frac{\chi}{y} \times 100$$

Where:-

a = the Void Turnover Rate for the relevant Contract Year

$\chi$  = the total number of Void Dwellings occurring during the relevant Contract Year and the period of two Contract Years immediately prior to the relevant Contract Year

y = the total number of Dwellings within the Project during the relevant Contract Year and the period of two Contract Years immediately prior to the relevant Contract Year

save that in relation to X and y in the first two Contract Years, X and y shall refer to the total number of Contract Years to date;

**"Voluntary Withdrawal of Dwellings"**

a reduction in the number of Rented Dwellings or Leasehold Dwellings in the Project as a consequence of:-

- (a) a Dwelling (or Dwellings) or Property (or Properties) ceasing to be subject to this Contract in accordance with Clause 36 (***Force Majeure***);
- (b) the Authority electing to withdraw a Dwelling from this Contract in accordance with Clause 58.5 (***Withdrawal of Damaged Properties***) or 59.3.2(c) (***Effect of Uninsurability***) following damage to that Dwelling;
- (c) the Authority electing to withdraw a Dwelling from this Contract in accordance with Clause 19.7 (***Withdrawal of Dwelling or Property***) where such Dwelling has not been the subject of any works by the Planned Refurbishment Works Completion

Date due to an Access Failure Event;

- (d) the Authority opting to withdraw a Dwelling from this Contract under Clause 49.8 (***Withdrawal of Dwellings***) as a consequence of any event as referred to in paragraphs (g) and (i) of the definition of Relief Event;
- (e) the Authority electing to withdraw a Dwelling from this Contract under Clause 27.9 (***Right to Manage***);
- (f) any Authority Change which results in a Dwelling ceasing to be subject to this Contract;
- (g) any other circumstances in this Contract which allows the Authority to withdraw a Dwelling from this Contract;

**"Warning Notice"** has the meaning given to it in Clause 35.1 (***Warning Notice***);

**"Working Day"** Monday to Friday (inclusive) in each week excluding bank holidays and statutory holidays;

**"Works" or "Refurbishment Works"** all of the works required for each Dwelling and Property to achieve a Certificate of Availability (including design and works necessary for obtaining access to the Sites) to be undertaken in accordance with this Contract;

**"Works Period"** the period from the Services Commencement Date to the Refurbishment Works Completion Date;

## 1.2 Interpretation

In this Contract, except where the context otherwise requires:-

- 1.2.1 the masculine includes the feminine and vice-versa;
- 1.2.2 the singular includes the plural and vice versa;
- 1.2.3 a reference in this Contract to any Clause, sub-Clause, paragraph, schedule, appendix or annex is, except where it is expressly stated to the contrary, a reference to such Clause, sub-Clause, paragraph, schedule, appendix or annex of or to this Contract;
- 1.2.4 save where stated to the contrary, any reference to this Contract or to any other document shall include any permitted variation, amendment or supplement to such document;
- 1.2.5 any reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted;

- 1.2.6 references to any documents being "in Agreed Form" means such documents have been initialled by or on behalf of each of the parties for the purposes of identification.
- 1.2.7 a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees;
- 1.2.8 headings are for convenience of reference only; and
- 1.2.9 words preceding "include", "includes", "including" and/or "included" shall be construed without limitation by the words which follow those words;

### 1.3 **Schedules**

The recitals, Clauses, Schedules, Appendices and Annexes to this Contract form part of this Contract.

### 1.4 **Hierarchy**

If there is any conflict, discrepancy, ambiguity or inconsistency between the recitals and Clauses of this Contract and any of the Schedules, Appendices or Annexes and in the absence of express drafting it is unclear which provision is to take precedence then the provisions shall be interpreted so that they are given precedence in the following order:-

- 1.4.1 subject to the order of precedence set out below, duly executed amendments to this Contract, if any, in the reverse order in which they become effective;
- 1.4.2 the Clauses;
- 1.4.3 Schedule 2 (***Output Specification***) and Schedule 6 (***Payment and Performance Mechanism***);
- 1.4.4 the Authority's Protocols;
- 1.4.5 the remaining Schedules;
- 1.4.6 the Appendices; and
- 1.4.7 the Annexes (if any).

### 1.5 **Consents**

The right of a party under this Contract to give or withhold its approval, consent, agreement, confirmation or analogous endorsement shall in each case unless otherwise expressly stated be subject to an obligation upon such party not to unreasonably withhold or delay the giving or withholding of any such approval, consent, agreement, confirmation or analogous endorsement. If either party (for the purposes of this Clause 1.5 the "**Consenting Party**") is unreasonably withholding or delaying the giving of any approval, consent, agreement, confirmation or analogous endorsement, the other party (for the purposes of this Clause 1.5 the "**Requesting Party**") may proceed with the action in relation to which the approval, consent, agreement, confirmation or analogous endorsement was requested by the Requesting Party.

If it is demonstrated after such action has been taken by the Requesting Party that the Consenting Party did not unreasonably withhold or delay the giving of the approval, consent, agreement, confirmation or analogous endorsement and the Consenting Party suffers a Loss as a direct result of such action, the Requesting Party shall

compensate the Consenting Party in full for any such Loss provided that the Consenting Party has used reasonable endeavours to mitigate any such loss.

## 1.6 Indexation

Save in relation to Clause 27.14, references to amounts expressed to be "indexed" are references to such amounts as at the Execution Date multiplied by:-

$$\frac{I_1}{I_2}$$

where  $I_1$  is the value of RPI most recently published prior to the relevant calculation date and  $I_2$  is the value of RPI published in March 2006.

## 1.7 Insolvency

For the purpose of this Contract the reference to £ in Section 123(1) of the Insolvency Act 1986 shall be construed as a reference to £ or such other amount as the parties may from time to time agree in writing and for the purpose of Clause 34.1 (**Contractor Default Termination**) the Contractor shall not be deemed to be unable to pay its debts if such demand as is mentioned in Section 123(1)(a) of the Insolvency Act 1986 is satisfied before the expiration of three months from the date such demand was made.

## 2. EXCLUSION OF LEGISLATION

### 2.1 Housing Grants, Construction and Regeneration Act

This Contract is entered into under the PFI. This Contract is excluded from Part II of the Housing Grants, Construction and Regeneration Act 1996 by operation of paragraph 4 of the Construction Contracts (England and Wales) Exclusion Order 1998. The Contractor acknowledges that the operation of the Housing Grants, Construction and Regeneration Act 1996 upon any Project Document shall not affect the parties, rights or obligations under this Contract.

### 2.2 Third Party Rights

Any right of any person who is not a party to this Contract to enforce the terms of this Contract pursuant to the Contracts (Rights of Third Parties) Act 1999 are excluded.

## 3. DURATION OF CONTRACT

### 3.1 Duration

3.1.1 This Contract and the rights and obligations of the parties to this Contract shall take effect on the date of this Contract.

3.1.2 The Service Period will commence on the Service Commencement Date and terminate on the earlier of:

(a) the Expiry Date; and

(b) the Termination Date.

3.2 The parties acknowledge that during the final Contract Year in the last three months prior to the Expiry Date, the Contractor shall be under no obligation to carry out the Services (and no Deductions shall be awarded). During such period the Contractor shall be paid a reduced proportion of the Unitary Charge as set out in and in accordance with the Unitary Charge Profile.

4. **[NOT USED]**

5. **WARRANTIES AND UNDERTAKINGS**

5.1 **Contractor Warranty**

The Contractor warrants, represents and undertakes to the Authority that at the date of this Contract:-

- 5.1.1 it is properly constituted and incorporated under the laws of England and Wales and has the corporate power to own its assets and to carry on its business as it is now being conducted;
- 5.1.2 it has the power to enter into and to exercise its rights and perform its obligations under the Project Documents;
- 5.1.3 all necessary action to authorise the execution of and the performance of its obligations under the Project Documents has been taken or, in the case of any Project Document executed after the date of this Contract, will be taken before such execution;
- 5.1.4 the execution, delivery and performance by it of the Project Documents does not contravene any provision of:-
  - (a) any existing Legislation either in force, or enacted but not yet in force binding on the Contractor;
  - (b) the Memorandum and Articles of Association of the Contractor;
  - (c) any order or decree of any court or arbitrator which is binding on the Contractor; or
  - (d) any obligation which is binding upon the Contractor or upon any of its assets or revenues;
- 5.1.5 the Contractor Warranted Data is true and accurate in all respects;
- 5.1.6 it has not, other than in connection with the Project traded at any time since its incorporation as a company pursuant to the Companies Act 1985 (as amended);
- 5.1.7 no claim is presently being assessed and no litigation, arbitration or administrative proceedings is presently in progress or, to the best of the knowledge of the Contractor, pending or threatened against it or any of its assets which would adversely effect to an extent which is material in the context of the Project the ability of the Contractor to perform its obligations under any Project Document;
- 5.1.8 except for the terms of the Financing Agreements and the Project Documents, it is not subject to any other obligation, compliance with which will or is likely to have a material adverse effect on the ability of the Contractor to perform its obligations under any Project Document;
- 5.1.9 no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues;

- 5.1.10 having made reasonable enquiry is not aware of the occurrence of any event giving rise to a Contractor Default Termination under Clause 34 (***Termination of this Contract***);
- 5.1.11 the copies of the Project Documents which the Contractor is obliged to deliver, to the Authority are or, as the case may be, will be, true and complete copies of such documents and there are not in existence any other agreements or documents replacing or amending any of the Project Documents which would materially affect the interpretation or application of any of the Project Documents;

and the Authority relies upon such warranties and representations.

## 5.2 Contractor Undertakings

The Contractor hereby undertakes with the Authority that until the earlier of the Expiry Date and the Termination Date:-

- 5.2.1 it will upon becoming aware that the same may be threatened or pending and immediately after the commencement thereof give the Authority notice of all litigation or arbitration or administrative or adjudication or mediation proceedings before or of any court, arbitrator or governmental authority which would adversely affect, to an extent which is material in the context of the Project, the Contractor's ability to perform its obligations under this Contract;
- 5.2.2 subject to the provisions of the Direct Agreement, it will not without the prior written consent of the Authority (and whether by a single transaction or by a series of transactions whether related or not) sell, transfer, lend or otherwise dispose of (other than by way of security) the whole or any part of its business or assets which would adversely affect to an extent which is material in the context of the Project the ability of the Contractor to perform its obligations under this Contract;
- 5.2.3 it will not cease to be resident in the United Kingdom or transfer in whole or in part its undertaking, business or trade outside the United Kingdom;
- 5.2.4 it will not undertake the performance of its obligations under this Contract for the provision of the Services otherwise than through itself or a Sub-Contractor;
- 5.2.5 except where such a transaction is contemplated by any Project Document, it shall not without the written consent of the Authority incorporate any company or purchase or acquire or subscribe for any shares in any company save where such company is involved in the provision of the Services;
- 5.2.6 it shall not without the written consent of the Authority (such consent not to be unreasonably withheld or delayed) make any loans or grant any credit or give any guarantee or indemnity to or for the benefit of any person or otherwise voluntarily or for consideration assume any liability (whether actual or contingent) in respect of any obligation of any other person except in the ordinary course of its business (and for the avoidance of doubt actions in the ordinary course of the Contractor's business shall include the provision of loans to Holdco) and/or as contemplated by the Project Documents and/or the Financing Agreements; and
- 5.2.7 it shall not change or cease its business or start any other business which is materially different from that to be carried on by it under this Contract.

### 5.3 **Status of Warranties and Undertakings**

All warranties, representations, undertakings, indemnities and other obligations made, given or undertaken by the Contractor in this Contract are cumulative and none shall be given a limited construction by reference to any other.

## 6. **BACKGROUND INFORMATION**

### 6.1 **No warranty by Authority**

Subject to the other provisions of this Clause 6 (**Background Information**) the Authority does not give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for any purpose of any of the Disclosed Data other than the Authority Warranted Data.

### 6.2 **No liability to Contractor**

Subject to the other provisions of this Clause 6 (**Background Information**) neither the Authority nor any Authority Related Party shall be liable to the Contractor in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of:-

6.2.1 any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the Disclosed Data excluding Authority Warranted Data; or

6.2.2 any failure to make available to the Contractor any materials, documents, drawings, plans or other information relating to the Project other than as part of or in connection with the Authority Warranted Data.

### 6.3 **Contractor's Warranty**

[NOT USED]

### 6.4 **Fraudulent Statements**

Nothing in this Clause 6 (**Background Information**) shall exclude any liability which the Authority or any of its agents or servants would otherwise have to the Contractor in respect of any statements made fraudulently prior to or after the date of this Contract.

### 6.5 **Authority Warranted Data**

The Authority represents and warrants to the Contractor that the Authority Warranted Data is true, accurate and complete in all respects.

### 6.6 **Contractor's Due Diligence**

The Contractor shall subject to the terms of this Contract be deemed to have:-

6.6.1 satisfied itself as to the assets to which it will acquire rights and the nature and extent of the risks assumed by it under this Contract; and

6.6.2 gathered all information necessary to perform its obligations under this Contract and other obligations assumed.

### 6.7 **No Relief**

Subject to Clause 6.4 (**Fraudulent Statements**), Clause 6.5 (**Authority Warranted Data**) and Clause 8A.4 (**Adverse Rights**) the Contractor shall not in any way be relieved from any obligation under this Contract nor shall it be entitled to claim against

the Authority on grounds that any information, whether obtained from the Authority or otherwise (including the Disclosed Data and any other information made available by the Authority) is incorrect or insufficient and shall make its own enquiries as to the accuracy and adequacy of that information.

## **7. PROJECT DOCUMENTS**

### **7.1 Ancillary Documents**

The Contractor shall not (subject to the Direct Agreement):-

- 7.1.1 terminate or agree to the termination of all or part of any Ancillary Document;
- 7.1.2 make or agree to any variation of any Ancillary Document which has an effect upon the interests of the Authority which is material and adverse in the context of the Project; or
- 7.1.3 enter into (or permit the entry into by any other person of) any agreement replacing all or part of (or otherwise affecting the interpretation of) any Ancillary Document that has a material adverse effect in the context of the Project (but for the avoidance of doubt, an agreement in respect of any Permitted Borrowing shall not be considered to have such a material adverse effect),

unless the Contractor implements the proposed course of action as a result of an Emergency (save where such arises from a breach by the Contractor or Sub-Contractor of an obligation under this Contract) or in the case of Clause 7.1.1 (**Ancillary Documents**) only to avoid any interruption to the execution of the Works and/or the provision of any of the Services (including the prevention of Deductions) or otherwise unless the proposed course of action has been submitted to the Authority's Representative for review under the Review Procedure and the Submitted Item has become an Approved Submitted Item.

### **7.2 Delivery**

Without prejudice to the provisions of this Clause 7 (**Project Documents**), if at any time a material amendment is made to any Project Document, or the Contractor enters into a new Project Document (or any agreement which affects the interpretation or application of any Project Document), the Contractor shall deliver to the Authority a conformed copy of each such amendment or agreement within ten (10) Working Days of the date of its execution or creation, certified as a true copy by an officer of the Contractor.

### **7.3 Authority Obligations**

The Authority undertakes to the Contractor that it shall not impede or otherwise affect the Contractor in the performance of its obligations under this Contract (having regard always to the interactive nature of the activities of the Authority, its Tenants and Leaseholders and the Contractor and any other operations or activities carried out by the Authority on or at the Sites, Dwellings or Properties for the purposes contemplated by this Contract or any other of the Authority's statutory duties or functions).

### **7.4 Co-operation**

Each party agrees to co operate, at its own expense, with the other party in the fulfilment of the purpose and intent of this Contract. To avoid doubt, neither party shall be under any obligation to perform any of the other's obligations under this Contract.

## PART 2

### LAND ISSUES

#### 8. NATURE OF LAND INTERESTS

##### 8.1 Licence

8.1.1 The Authority grants with effect from the Services Commencement Date until the Expiry Date (or, if earlier, the Termination Date) to the Contractor and to every Contractor Related Party and their sub-contractors with or without vehicles, plant and equipment, licence in common with the Authority, its Tenants and persons authorised by them and any Authority Related Party to occupy the Sites and to use the Ancillary Rights subject to the occupation of residents to enable the Contractor to discharge its obligations and exercise its rights under this Contract. In exercising its rights under such licence the Contractor shall take all reasonable steps to minimise any damage, inconvenience, disruption and disturbance to the Authority, its Tenants or to the owners, users and occupiers of any adjoining property and shall make good any damage caused and indemnify the Authority in respect of any losses and/or expenses incurred as a result, pursuant to and subject to Clause 56.1 (**Contractor's Indemnity**). The Contractor will pay to the Authority a licence fee in the sum of one pound (£1) sterling, exclusive of VAT receipt of which the Authority hereby acknowledges for the use and occupation of the Site.

8.1.2 The licence granted by Clause 8.1.1 (**Licence**) is subject to:

- (a) the statutory right of any relevant authority or third party to have access to the Sites, Dwellings and/or Properties;
- (b) the right of the Authority and those authorised by it to have access to the Sites, Dwellings and/or Properties in accordance with this Contract;
- (c) the rights granted under the Tenancy Agreements and Leaseholder's Leases; and
- (d) the rights, covenants and encumbrances contained in the titles to the Sites, Dwellings and/or Properties.

8.1.3 In the event that this Contract is terminated prior to the expiry of the Contract Period then such licence granted pursuant to this Clause 8.1 shall immediately terminate.

##### 8.2 Compliance with Leases and Tenancy Agreement

The Contractor shall procure that:-

8.2.1 the Works and the provision of the Services at the Rented Dwellings and Leasehold Dwellings by or on behalf of the Contractor (whether before, during or after the completion of the Works) shall be carried out in a manner which does not breach any provisions of the Tenancy Agreement and the Leaseholder's Leases which have been disclosed to the Contractor prior to the date of this Contract to the extent set out in Part 1 of Schedule 11 (**Authority Warranted Data**);

8.2.2 it shall not act or omit to act (save in accordance with the terms of this Contract) so as to give rise to a right for any person to obtain title to any Site or any part of it.

## 8A. CONSULTATION AND AUTHORITY PROTOCOLS

### 8A.1 Consultation

- 8A.1.1 Before commencing the Works and throughout the carrying out of the Works the Contractor shall comply with the arrangements for consultation with the Tenants and Leaseholders of the Dwellings affected in accordance with this Contract and any other residents as required by Legislation and Guidance.

### 8A.2 Authority Protocols

- 8A.2.1 The Contractor shall, in undertaking the Works, adopt and fully comply with the Access Protocol, Temporary Moves Protocol and Leaseholder Works Protocol
- 8A.2.2 In the event the Contractor becomes aware of an Access Failure Event the Contractor shall in accordance with the Access Protocol notify the Authority of this fact.

### 8A.3 Wayleaves

The Authority grants to the Contractor the right to the free and uninterrupted passage and running of gas, grouped heating system mains, water, electricity, telephone, television, video, audio, fax, electronic mail, data, information, communications and other services or supplies to and from and through the pipes, conduits, wires, cables, laser optical fibres, data or impulse transmission, communication or reception systems and other conducting media that are now or may during the term of this Contract be in or under or over the Properties for the purposes only of the Project.

### 8A.4 Adverse Rights

- 8A.4.1 The Authority represents and warrants that it has disclosed all Adverse Rights provided that it shall not be responsible for nor that it be liable to pay any compensation or be held to be in breach of this warranty in respect of any Disclosed Adverse Rights.
- 8A.4.2 Subject to Clause 8A.4.3 (**Adverse Rights**), in the event that a Non Disclosed Adverse Right is revealed and the Authority is found to be in breach of its warranty given in Clause 8A.4.1 (**Adverse Rights**) which breach prevents or disrupts the provision of the Works and/or the Services, the matter shall (subject to the provisos in Clauses 8A.4.1 and 8A.4.3 (**Adverse Rights**)) be treated as a Compensation Event and Clause 15.5 (**Delays due to a Compensation Event**) shall apply until such time as the Authority procures the removal of the Non Disclosed Adverse Right or issues an Authority Change pursuant to Clause 52 (**Variations**) to remove the breach or terminates this Contract in accordance with Clause 36 (**Force Majeure**) and Clause 40 (**Force Majeure Compensation**) shall apply as if a Force Majeure Event had occurred.
- 8A.4.3 In the event that the Contractor discovers a Non Disclosed Adverse Right which is disrupting or preventing or may disrupt or prevent the Works and/or the Services, it shall immediately notify the Authority of its existence. The Authority shall then seek to procure the removal (whether temporarily or permanently) of such Non Disclosed Adverse Right to the extent that it disrupts or prevents the Works and/or the Services provided that in the event that the Contractor fails or delays in providing the said notification the Authority shall not be liable pursuant to Clause 8A.4.1 and Clause 15.5 (**Delays due to a Compensation Event**) for any delay and/or additional costs which would have been avoided but for such failure and/or delay by the Contractor.

## **PART 3**

### **REFURBISHMENT WORKS**

#### **9. THE WORKS**

##### **9.1 Responsibility**

The Contractor shall (or shall procure that the Refurbishment Contractor shall) carry out the design (including the preparation of all Design Data), construction and completion of the Works:-

- 9.1.1 so as to procure satisfaction of the Output Specification;
- 9.1.2 in accordance with the Contractor's Contractual Method Statements;
- 9.1.3 in accordance with the terms of this Contract;
- 9.1.4 in accordance with Good Industry Practice and all applicable Law;
- 9.1.5 so that all goods used or included in the Works shall be of satisfactory quality;
- 9.1.6 so that all persons employed in connection with the performance of the Works will be careful, skilled and experienced in their several professions, trades and callings;
- 9.1.7 so that all aspects of the Works will be supervised by sufficient numbers of persons having adequate knowledge of such matters for the satisfactory and safe performance of the Works in accordance with this Contract and having regard to the activities which are carried on at the Sites; and
- 9.1.8 so that the Properties and/or Dwellings in the Project shall achieve the applicable Availability Standards Rented (Full) or the Availability Standard Leasehold (Full) by the Planned Refurbishment Works Completion Date,

and to avoid doubt, the obligations in Clauses 9.1.1 to 9.1.8 (inclusive) are independent obligations and in particular the fact that the Contractor has complied with Clauses 9.1.2 to 9.1.8 (inclusive) shall not be a defence to an allegation that the Contractor has not satisfied the Output Specification;

##### **9.2 Design Warranty**

The Contractor warrants that it has used, and will continue to use, or has procured and shall continue to procure that there is used, the degree of skill and care in the design of the Works that would reasonably be expected of a competent professional designer acting in accordance with Good Industry Practice experienced in carrying out design activities of a similar nature, scope and complexity to those comprised in the Works.

##### **9.3 Works Stipulations**

During the carrying out of the Works the Contractor shall and shall procure that the Refurbishment Contractor and any Refurbishment Sub-Contractor shall comply with the Works procedures contained in Part 1 (Refurbishment Works) of Schedule 3 (Contractor's Contractual Method Statements).

10. **METHOD STATEMENTS AND REFURBISHMENT WORKS APPROACH**

10.1 **Changes to Contractual Method Statements**

The Contractor may vary, amend or replace any Contractor's Contractual Method Statement provided that the Submitted Item has been submitted to the Authority in accordance with the Review Procedure and the arrangements set out in the Review Procedure followed.

10.2 **Implementation of Changes to Contractual Method Statements**

The Contractor may not implement a variation or amendment to or a replacement of a Contractor's Contractual Method Statement unless the Submitted Item has become an Approved Submitted Item.

10.3 **Financial Assumptions**

Any change to the Financial Assumptions requested by the Authority shall be an Authority Change to which Clause 52 (**Variations**) shall apply.

11. **REPRESENTATIVES**

11.1 **Contractor's Representative**

The Contractor shall employ at all times during the Contract Period a representative the identity of whom will be subject to the prior approval of the Authority to act as the Contractor's Representative in connection with the carrying out of the Works, the provision of the Services and generally in connection with this Contract.

11.2 **Authority of Contractor's Representative**

The Contractor's Representative shall have full authority to act on behalf of the Contractor for all purposes of this Contract. The Authority shall be entitled to treat any act of the Contractor's Representative in connection with this Contract as being expressly authorised by the Contractor (save where the Contractor has notified the Authority that such authority has been revoked) and the Authority shall not be required to determine whether any express authority has in fact been given.

11.3 **Termination of Appointment of Contractor's Representative**

The Contractor may terminate the appointment of the Contractor's Representative and appoint a substitute who will be subject to prior approval by the Authority.

11.4 **Authority's Representative**

The Authority shall appoint the Authority's Representative and shall inform the Contractor in writing of the identity of such Authority's Representative. The Authority's Representative shall liaise with the Contractor's Representative. In the event that the Authority wishes to change the identity of the Authority's Representative from time to time it shall inform the Contractor in writing of the identity of the new Authority's Representative.

11.5 **Authority of the Authority's Representative**

The Authority's Representative shall have full authority to act on behalf of the Authority for all purposes of this Contract. The Contractor shall be entitled to treat any act of the Authority's Representative in connection with this Contract as being expressly authorised by the Authority (save where the Authority has notified the Contractor that such authority has been revoked) and the Contractor shall not be required to determine whether any express authority has in fact been given.

## 11.6 Notices

Any notice, information, instructions or public communication given to:-

11.6.1 The Contractor's Representative shall be given in writing and shall be deemed to have been given to the Contractor; and

11.6.2 The Authority's Representative shall be given in writing and shall be deemed to have been given to the Authority.

## 12. WORKS COLLATERAL WARRANTIES AND DIRECT AGREEMENTS

Subject to Clause 63.2 (**Contractor's Permitted Sub-Contractors**), if the Contractor engages any replacement of the Refurbishment Contractor or Employer's Certifier in connection with the Works the Contractor shall procure that an agreement substantially in the form of the Direct Agreement (Sub-Contractor) or Employer's Certifier's Warranty (as appropriate) is duly executed by any such replacement Refurbishment Contractor or Employer's Certifier being appointed and delivered to the Authority immediately upon the replacement Refurbishment Contract being entered into or Employee's Agent being appointed.

## 13. DEVELOPMENT OF REFURBISHMENT PROPOSALS

### 13.1 Obligation to finalise

The Contractor shall develop and finalise the design and specification of the Works to satisfy the requirements of the Output Specification.

## 14. CONSENTS

The Contractor shall (save to the extent that the Authority has retained responsibility in relation to any works or services pursuant to Clause 20 (**Call Off Services**)):-

14.1 subject to Clause 27.2 (**Management Agreements**) at its own expense use all reasonable endeavours to obtain and maintain all Consents and supply free of charge to the Authority's Representative a copy of any application for a Consent (with a copy of all accompanying drawings and other documents) and a copy of any Consent obtained;

14.2 comply with the conditions attached to any Consents and procure that no such Consent is breached by it or any person under its control and use all reasonable endeavours to procure that no Consent is revoked and that all Consents continue in full force and effect for such time as is necessary for the Contractor to carry out the Works and/or the Services;

14.3 not (and shall use all reasonable endeavours to procure that any other person over whom it has control shall not) without the prior consent of the Authority under this Contract (which consent shall not be unreasonably withheld or delayed) or agree to any change of any Consent (whether obtained before or after the date of this Contract) or of any condition attached to it where to do so would have a material adverse effect in the context of the Project but, subject to the compliance by the Contractor with its obligations under this paragraph, references in this Contract to Consents shall be construed as referring to the Consents as from time to time varied, relaxed or waived.

## 15. EXTENSIONS OF TIME

### 15.1 Notice

If at any time and due to any event the Contractor becomes aware that completion by the Contractor of those obligations to be completed by a Relevant Date or Relevant

Dates is likely to be delayed, the Contractor shall as soon as reasonably practicable and in any event within twenty (20) Working Days of becoming aware of the likely delay give notice to the Authority to that effect specifying:-

- 15.1.1 the reason for the delay or likely delay; and
- 15.1.2 an estimate of the likely effect of the delay to the Relevant Date or Relevant Dates (taking into account any measures that the Contractor proposes to adopt to mitigate the consequences of the delay in accordance with Clause 15.3 (**Duty to Mitigate**)).

## 15.2 Supply of Information

Following service of a notice by the Contractor pursuant to Clause 15.1 (**Notice**) the Contractor shall promptly supply to the Authority any further information relating to the delay which:-

- 15.2.1 is received by the Contractor; or
- 15.2.2 is reasonably requested by the Authority (provided that it is within the reasonable control of the Contractor to obtain such information).

## 15.3 Duty to Mitigate

The Contractor shall take all reasonable steps to mitigate the consequences of any delay which is the subject of a notice pursuant to Clause 15.1 (**Notice**).

## 15.4 Time for Completion of the Works

If any anticipated failure by the Contractor to complete all of its obligations to be completed by a Relevant Date or Relevant Dates is notified to the Authority by the Contractor as being in the Contractor's reasonable opinion attributable to:-

- 15.4.1 a Compensation Event, then the provisions of Clauses 15.5 (**Delays due to a Compensation Event**) shall apply;
- 15.4.2 a Relief Event, then the provisions of Clause 49.3 (**Consequences**) shall apply;
- 15.4.3 a Force Majeure Event, then the provisions of Clause 36 (**Force Majeure**) shall apply;
- 15.4.4 an Authority Change, then the provisions of Clause 52.1 (**Authority Changes**) shall apply; or
- 15.4.5 a Qualifying Change in Law, then the provisions of Clause 50 (**Change in Law**) shall apply.

## 15.5 Delays due to a Compensation Event

If as a direct result of the occurrence of a Compensation Event:-

- 15.5.1 the Contractor is unable to procure that the relevant Properties and/or Dwellings within the Project achieve the relevant Availability Standards as specified in the Output Specification on or before the Planned Refurbishment Works Completion Date , the Milestone Works Completion Date or the Longstop Date;
- 15.5.2 the Contractor is unable to comply with one or more of its obligations under this Contract; and/or

15.5.3 the Contractor incurs Losses or loses revenue,

then the Contractor is entitled to apply for relief from its obligations and/or claim compensation under this Contract.

## 15.6 Procedure for Relief and Compensation

Subject to Clause 15.8 (***Late Provision of Information***) to obtain relief and/or claim compensation the Contractor must:-

- 15.6.1 as soon as practicable, and in any event within fifteen (15) Working Days after it became aware that the Compensation Event has caused or is likely to cause delay, breach of an obligation under this Contract and/or the Contractor to incur costs or lose revenue, give to the Authority a notice of its claim for an extension of time to the Relevant Date, payment of compensation and/or relief from its obligations under the Contract;
- 15.6.2 within ten (10) Working Days of receipt by the Authority of the notice referred to in Clause 15.6.1 above, give full details of the Compensation Event and the extension of time to the Relevant Date and/or any Estimated Change in Project Costs and/or loss of revenue claimed;
- 15.6.3 demonstrate to the reasonable satisfaction of the Authority that:-
  - (a) the Compensation Event was the direct cause of the Estimated Change in Project Costs and/or loss of revenue and/or any delay in the achievement of the Relevant Date and/or breach of the Contractor's obligations under this Contract or, following the Relevant Date, delay in achieving the Relevant Date before the Longstop Date; and
  - (b) the Estimated Change in Project Costs and/or loss of revenue, time lost, and/or relief from the obligations under the Contract claimed, could not reasonably be expected to be mitigated or recovered by the Contractor acting in accordance with Good Industry Practice.

## 15.7 Giving of Relief

In the event that the Contractor has complied with its obligations under Clause 15.6 above, then:

- 15.7.1 the Relevant Date shall be postponed by such time as shall be reasonable for such a Compensation Event, taking into account the likely effect of delay;
- 15.7.2 in the case of an additional cost being incurred or revenue being lost by the Contractor:
  - (a) on or before the Relevant Date; or
  - (b) as a result of Capital Expenditure being incurred by the Contractor at any time,

the Authority shall compensate the Contractor for the actual Estimated Change in Project Costs as adjusted to reflect the actual costs reasonably incurred and without double counting, for revenue actually lost (to the extent it could not reasonably have been negotiated) within twenty (20) Working Days of its receipt of a written demand by the Contractor supported by all relevant information;

- 15.7.3 in the case of a payment of compensation for the Estimated Change in Project Costs and/or without double counting loss of revenue that does not result in Capital Expenditure being incurred by the Contractor referred to in Clause 15.7.2(b) above but which reflects a change in the costs being incurred by the Contractor after the Relevant Date, the Authority shall compensate the Contractor in accordance with Clause 15.11 (**Payment**) below by an adjustment to the Unitary Charge; and/or;
- 15.7.4 the Authority shall give the Contractor such relief from its obligations under the Contract, as is reasonable for such a Compensation Event.

## 15.8 **Late Provision of Information**

In the event that information is provided after the dates referred to in Clause 15.6.1 (**Procedure for Relief and Compensation**), then the Contractor shall not be entitled to any extension of time, compensation, or relief from its obligations under the Contract in respect of the period for which the information is delayed.

## 15.9 **Mitigation of Loss**

The Contractor shall take all reasonable steps so as to minimise the amount of compensation due in accordance with this Clause 15 (**Extensions of Time**) in relation to any Compensation Event. The Contractor shall pass to the Authority any monies received by it, under any insurance policy (taken out by the Contractor in accordance with this Contract), in respect of the Compensation Event in relation to which compensation has been paid to the Contractor by the Authority up to an amount not exceeding the level of compensation so paid by the Authority.

## 15.10 **Failure to Agree**

If the parties cannot agree the extent of any compensation, delay incurred, relief from the Contractor's obligations under the Contract, or the Authority disagrees that a Compensation Event has occurred (or as to its consequences), or that the Contractor is entitled to any relief under this Clause 15 (**Extensions of Time**), the parties shall resolve the matter in accordance with the Dispute Resolution Procedure.

## 15.11 **Payment**

Any payment of compensation referred to in Clause 15.7 (**Giving of Relief**) shall be calculated in accordance with Clause 31 (**Financial Adjustments**).

# 16. **CDM REGULATIONS**

## 16.1 **Responsibility for Design**

The Contractor shall procure that the Refurbishment Contractor shall be entirely responsible for the safety of any design which forms part of the Works and for the adequacy, stability and safety of all site operations and methods of construction.

## 16.2 **Contractor as Client**

The Contractor shall procure that the Refurbishment Contractor act as the client's agent for the purposes of the Construction (Design and Management) Regulations 1994 ("**the CDM Regulations**") in respect of the Refurbishment Works. No later than 13 October 2006 the Contractor shall procure that the Refurbishment Contractor makes and serves on the Health and Safety Executive a declaration in accordance with paragraph (4) of Regulation 4 of the CDM Regulations. The Contractor shall procure that the Refurbishment Contractor shall as soon as possible provide to the Authority a copy of the notice which it receives pursuant to paragraph (5) of Regulation 4 of the CDM Regulations.

### 16.3 Duties under CDM Regulations

The Contractor shall observe, perform and discharge and/or shall procure the observance, performance and discharge of all the obligations, requirements and duties arising under the CDM Regulations in connection with the Works and Services.

### 16.4 Authority to Provide Information

Upon the Contractor's reasonable request the Authority shall provide to the Contractor such information and documents as may be in the Authority's possession or which the Authority may reasonably obtain which may be required by the Contractor to fulfil its duties as client for the purposes of the CDM Regulations.

## 17. THE SITES

### 17.1 Access

If at any time the Contractor requires access to any interest in any land which does not form part of the Sites or any additional rights beyond those which the Contractor has in relation to any part of the Sites, the responsibility and cost of securing or acquiring such access or rights shall be entirely the responsibility of the Contractor.

### 17.2 Use of Sites

17.2.1 To the extent that adverse ground conditions not revealed by the Stock Condition Survey and/or Contamination exist in any parts of the Site as at Financial Close the Contractor shall not be responsible for them. If the Contractor is not responsible for such ground conditions and/or Contamination under this Clause 17.2.1 then the Authority shall be so responsible.

17.2.2 Where pursuant to Clause 17.2.1 the Authority is responsible for any of the matters referred to then the following provisions shall apply:

- (a) the matter shall be deemed to be a Compensation Event for the purposes of this Contract and any work which is required or instructed to be done in consequence of it shall be deemed to be an Authority Change;
- (b) no Unavailability Deductions or Performance Deductions may be made in respect of the Dwelling or Property pursuant to Schedule 6 (**Payment and Performance Mechanism**) and any work or change to the Services required or instructed to be done in consequence of it, shall be deemed to be an Authority Change;
- (c) where any such matter is Contamination the Authority shall further hold the Contractor harmless from cleaning up and otherwise dealing with such Contamination and shall indemnify the Contractor in respect of all Direct Losses incurred by the Contractor resulting from such Contamination.

17.2.3 The Contractor shall be entirely responsible for any adverse ground conditions revealed by the Stock Condition Survey and any Contamination which it shall have brought on to any land within the Site. For the avoidance of doubt this shall be without prejudice to the Contractor's obligations to make safe any Contamination found at the Sites. For the further avoidance of doubt, the obligation to "make safe" pursuant to this sub-clause 17.2.3 is to cordon off the area around the Contamination and/or to cover it with suitable materials as appropriate in order to prevent it constituting an

immediate hazard to persons and does not imply a requirement to remove or remediate any such Contamination.

17.2.4 The Contractor shall indemnify the Authority in respect of all Direct Losses and hold the Authority harmless from cleaning up and otherwise dealing with any Contamination within the Site where Clause 17.2.3 applies.

17.2.5 Without prejudice to Clause 6.5 (Authority Warranted Data) and Clause 8A.4 (Adverse Rights) the Contractor shall be deemed to have:-

- (a) satisfied itself as to the adequacy of the means and rights of access to and through the Sites and any accommodation it may require for the purposes of fulfilling its obligations under this Contract (such as additional land or buildings outside the Sites);
- (b) satisfied itself as to the possibility of interference by persons of any description whatsoever (other than the Authority or Authority Related Party), with access to or use of, or rights in respect of, the Sites with particular regard to the owners of any land adjacent to the Sites; and
- (c) satisfied itself as to the precautions, times and methods of working necessary to prevent any nuisance or interference, whether public or private, being caused to any third parties.

### 17.3 No Warranty

Subject to Clause 17.6 (**Defects**) and without prejudice to any rights of the Contractor to assert the existence of a Force Majeure Event in accordance with the terms of this Contract, the Contractor shall take the Sites in their state and condition in all respects as at the date of this Contract. Nothing in this Contract or otherwise shall constitute or imply a warranty by or on the part of the Authority as to the fitness and suitability of the Sites or any part thereof for the Works or any other purpose.

### 17.4 Third Party Rights

Subject to Clause 8A.4 (**Adverse Rights**) the Contractor shall observe and comply with any third party rights (including public rights) which may exist from time to time in respect of land comprising and adjoining the Sites, and the Contractor shall ensure that the Works are carried out in such a way as not to interfere adversely with access to and use and occupation of public or private roads or footpaths by any person who is entitled to any such access, use or occupation.

### 17.5 Safety, Security and Cleaning

The Contractor shall procure that at all times prior to the issue of a Certificate of Availability in respect of any Properties that the Works in question are maintained in a clean, orderly, safe and secure state provided that no act or omission on the part of the Authority shall result in the Contractor being in breach of the provisions of this Clause 17.5 (**Safety, Security and Cleaning**).

### 17.6 Defects

17.6.1 The Authority accepts, in relation to the Dwellings and Properties, responsibility (including any financial and other consequences which result either directly or indirectly) for:

- (a) any Defect which is not revealed by the data contained in the Stock Condition Survey as a reasonable and prudent Contractor would interpret such data in the context of the Project other than any such

Defect which should have been revealed by the data in the Stock Condition Survey had the Stock Condition Surveyor undertaken the Stock Condition Survey in accordance with the Stock Condition Surveyor's Appointment; and

(b) (i) any asbestos in a Dwelling after the issue of a Certificate of Availability in respect of such Dwelling except for either:

(1) any asbestos which a reasonable and prudent contractor could have reasonably been expected to identify and either remove or encapsulate or otherwise make safe as part of the Works (save for asbestos which was encapsulated or otherwise made safe and needs to be disturbed to allow the provision of the Services); or

(2) any asbestos which a reasonable and prudent contractor could reasonably have been expected to identify in carrying out the Services and which as a result of its negligence the Contractor has exposed or caused to escape;

(ii) any asbestos found prior to the date the Refurbishment Works have been commenced at a Dwelling (other than any Out of Sequence Works),

in either case to the extent a specialist licensed sub-contractor is required to be employed to deal with and/or dispose of such asbestos.

17.6.2 Where pursuant to Clause 17.6.1 the Authority is responsible for any of the matters referred to then the following provisions shall apply:

(a) the matter shall be deemed to be a Compensation Event for the purposes of this Contract and any work which is required or instructed to be done in consequence of it shall be deemed to be an Authority Change;

(b) no Unavailability Deductions or Performance Deductions may be made in respect of the relevant Dwelling or Property pursuant to Schedule 6 (Payment and Performance Mechanism) and any work or change to the Services required instructed to be done in consequence of it, shall be deemed to be an Authority Change; and

(c) where any such matter is asbestos the Authority shall further hold the Contractor harmless from cleaning up and otherwise dealing with such asbestos and shall indemnify the Contractor in respect of all Direct Losses incurred by the Contractor resulting from such asbestos.

17.6.3 Without prejudice to Clause 27.3.5, for the avoidance of any doubt the Contractor accepts, in relation to the Dwellings and Properties, entire responsibility (including any financial and other consequences which result either directly or indirectly) for any Defect or asbestos not covered by Clause 17.6.1.

17.6.4 Where a Dwelling shall contain Defects, the Authority may on notice in writing to the Contractor withdraw that Dwelling from the Project and a

Voluntary CNDT shall have been deemed to have occurred and Clause 27.7 (Changes to Numbers of Dwellings by Tenure) shall apply as if the Dwelling had been subject to a CNDT.

**17.7 Fossils and Antiquities**

- 17.7.1 As between the parties, all fossils, antiquities and other objects having artistic, historic or monetary value and human remains which may be found on or at all the Sites are or shall become, upon discovery, the absolute property of the Authority;
- 17.7.2 Upon the discovery of such item during the course of the Works, the Contractor shall:
- (a) immediately inform the Authority's Representative of such discovery;
  - (b) take all steps not to disturb the object and, if necessary, cease any Works in so far as the carrying out of such Works would endanger the object or prevent or impede its excavation; and
  - (c) take all necessary steps to preserve the object in the same position and condition in which it was found.
- 17.7.3 The Authority shall procure that the Authority's Representative promptly, and in any event within five (5) Working Days, issues an instruction to the Contractor specifying what action the Authority's Representative requires to be taken in relation to such discovery provided that if no instruction is forthcoming within such five (5) Working Days the Contractor may continue to carry out the Works.
- 17.7.4 The Contractor shall promptly and diligently comply with any instruction issued by the Authority's Representative referred to in Clause 17.7.3 (**Fossils and Antiquities**) (except and to the extent that such instruction constitutes an Authority Change pursuant to Clause 17.7.6 (**Fossils and Antiquities**), in which case the provisions of Clause 52 (**Variations**) shall apply) at its own cost.
- 17.7.5 If directed by the Authority's Representative, the Contractor shall allow representatives of the Authority to enter the Sites for the purposes of removal or disposal of such discovery, provided that such entry shall be subject to the Authority complying with all relevant safety procedures, which shall include any relevant health and safety plans for the refurbishment of the Dwellings from time to time and any reasonable directions with regard to site safety that may be issued by or on behalf of the Contractor's Representative from time to time.
- 17.7.6 If any instruction referred to in this Clause 17.7 (**Fossils and Antiquities**) includes a requirement for the Contractor to suspend the carrying out of the Works and/or to carry out works (being any work of alteration, addition, demolition or extension or variation in the Dwellings and/or Properties) which are not works which would be necessary for the purpose of compliance with Legislation or any Consents, such works shall be deemed to be an Authority Change and the provisions of Clause 52 (**Variations**) shall apply.
- 17.7.7 The Authority shall act promptly and diligently in dealing with its obligations hereunder in relation to any find so as to mitigate any effect on the Contractor, the Works and/or Services

## 18. MONITORING AND INSPECTION

### 18.1 Right of Inspection

- 18.1.1 The Contractor shall procure that the Authority or any representative or adviser of the Authority shall have at all reasonable times and upon giving reasonable notice the right (but not so as to delay or impede the progress of the Works) to enter any of the Sites in order to inspect the state and progress of the Works (and to ascertain whether they are being properly executed) the operation and maintenance of the Project and to monitor compliance by the Contractor with its obligations under this Contract.

#### Inspection of Facilities

- 18.1.2 The Authority and a representative of the Authority may at all reasonable times and having given reasonable notice enter upon any property used by the Contractor as training or workshop facilities and places where work is being prepared or materials being obtained for the Project.

#### Contractor's Reasonable Assistance

- 18.1.3 The Contractor will procure that satisfactory facilities are made available to the Authority and any representative of the Authority and that reasonable assistance is given for the purposes of Clauses 18.1.1 (Right of Inspection) and 18.1.2 (***Right of Inspection***), subject to the Contractor's and Sub-Contractors' construction or operational requirements not being adversely affected and to the Authority reimbursing the Contractor for any reasonable costs or expenses incurred as a result of the action taken by the Authority under Clauses 18.1.1 (***Right of Inspection***) and 18.1.2 (***Inspection of Facilities***).

#### Health and Safety

- 18.1.4 The Authority and its representative shall at all times comply with any health and safety requirements when exercising its rights under this Clause 18 (***Monitoring and Inspection***).

#### Damages

- 18.1.5 If the Authority causes material damage to the Site in exercising any right under this Clause 18 (***Monitoring and Inspection***), then the Authority shall be liable to the Contractor for the reasonable costs directly caused by such damage.

#### Supply of Information

- 18.1.6 The Contractor shall supply to the Authority and any representative or adviser of the Authority visiting any of the Sites pursuant to Clause 18.1.1 (***Right of Inspection***) and 18.1.2 (***Inspection of Facilities***) such information in respect of the Works as may reasonably be required.

## 19. NOTIFICATION OF AVAILABILITY

### 19.1 Self Certification of Works

Without prejudice to Clause 19.4B, the Contractor shall not issue and shall procure that the Employers' Certifier shall not issue a Certificate of Availability Rented (Interim Standard), Certificate of Availability Rented (Full Standard) or a Certificate of Availability Leasehold (Full Standard) in relation to any Dwelling unless that Dwelling has reached the Availability Standards Rented (Interim), Availability Standards Rented

(Full) or the Availability Standards Leasehold (Full) (respectively) and all outstanding Refurbishment Works detailed in the Snagging List can be carried out within twenty (20) Working Days or such other time as is reasonably practicable of the issue of the Certificate of Availability Rented (Interim Standard), Certificate of Availability Rented (Full Standard) or a Certificate of Availability Leasehold (Full Standard) as relevant. For the avoidance of doubt, a Tenant Waiver Event shall not prevent or otherwise delay a Dwelling from reaching any Availability Standard.

## **19.2 Issue of Certificate**

The Contractor shall give the Authority or shall procure that the Authority is given not less than five (5) Working Days notice of its intention to issue any Certificate of Availability in respect of a Dwelling and the Authority shall have an opportunity to inspect such Dwelling.

## **19.3 Issue of Certificate of Availability**

19.3.1 Subject to Clause 19.4B the Contractor may at any time procure that the Employers' Certifier issues a Certificate of Availability Rented (Interim Standard), Certificate of Availability Rented (Full Standard) or a Certificate of Availability Leasehold (Full Standard) (as relevant) stating the date on which the Availability Standards Rented (Interim) or Availability Standards Rented (Full) or the Availability Standards Leasehold (Full) (as relevant) have been met by such Dwellings.

19.3.2 Notwithstanding the issue of a Certificate of Availability a Dwelling may (at any time thereafter) become Unavailable for the purposes of Schedule 6 (Payment and Performance Mechanism).

## **19.4 Effect of Certificate of Availability**

19.4.1 At the end of each Contract Month the Contractor shall provide to the Authority a report and invoice showing the dates of issue of all Certificates of Availability in respect of the Dwellings which have reached the relevant Availability Standards during that Contract Month.

19.4.2 Where a Certificate of Availability has been issued in respect of a Dwelling in a Contract Month the Unitary Charge for that Contract Month shall be increased to reflect, as applicable:-

- (a) the Interim or Full Standard Daily Rate for Rented Dwellings if the Dwelling is a Rented Dwelling; or
- (b) the Full Standard Daily Rate for Leasehold Dwellings if the Dwelling is a Leasehold Dwellings

so that the increase shall take effect as from the day immediately following the date of issue of the relevant Certificate of Availability, but subject to the limitation contained in paragraph 2.6 of Schedule 6 (Payment and Performance Mechanism).

## **19.4A Snagging Items**

In the event that a Certificate of Availability for a Dwelling is expected to be subject to Snagging Items:

19.4A.1 the Contractor shall within five (5) Working Days of the issue of the relevant Certificate of Availability issue to the Authority a list of the relevant snagging items for that Dwelling (the "**Snagging List**"). Within five (5) Working Days of receipt of the Snagging List the Contractor shall provide to the Authority a

reasonable programme for making good each Snagging Item set out in the Snagging List provided that such programme shall require that each Snagging Item shall be made good within twenty (20) Working Days of the date of the agreement or determination of that programme or within such time as is reasonably practicable. The parties shall seek to agree such programme and in default of agreement shall refer the matter for determination under the Dispute Resolution Procedure. The programme agreed or determined in accordance with this Clause 19.4A (**Snagging Items**) shall be known as the "**Snagging Programme**"; and

19.4A.2 the Contractor shall procure that each Snagging Item is made good in accordance with the Snagging Programme to the satisfaction of the Contractor. If any Snagging Item has not been rectified by the date set out in the Snagging Programme then the Authority shall be entitled to effect such repairs as may be necessary and recover the costs of doing so from the Contractor.

**19.4B Issue of Certificate in case of Refurbishment Works or Services Denial Event**

Where at any time on or after the Planned Refurbishment Completion Date any Certificate of Availability shall not have been issued in relation to a Dwelling as a consequence of a Refurbishment Works or Services Denial Event, Damage from a Non-PFI Property, a Leasehold Non Standard Works Refusal and/or a Call Off Services Refusal such Certificate of Availability shall be issued notwithstanding that the relevant Availability Standard shall not have been achieved provided that in the case of a Tenant Waiver Event, Damage from a Non PFI Property, a Leasehold Non Standard Works Refusal and/or a Call Off Services Refusal the relevant Certificate(s) of Availability shall be issued when the relevant Dwelling has otherwise achieved the relevant Availability Standard.

**19.4C Deemed Accrual of Completion Points**

Where a Refurbishment Works or Services Denial Event, Damage from a Non-PFI Property, a Leasehold Non Standard Works Refusal and/or a Call Off Services Refusal prevents the Contractor from being able to carry out Works to a Dwelling and/or a Property so that a Certificate of Availability cannot be issued in relation to such Dwelling, Completion Points which do or will not otherwise accrue as a result shall be deemed to accrue on the date of the occurrence of such Refurbishment Works or Services Denial Event, Damage from a Non-PFI Property, a Leasehold Non Standard Works Refusal and/or a Call Off Services Refusal.

**19.5 Deemed Refurbishment Works Completion Date**

The Refurbishment Works Completion Date and/or the Milestone Works Completion Date (as relevant) shall be deemed to have occurred notwithstanding that a Certificate of Availability has not been issued (or deemed to have been issued) in relation to any of the Dwellings provided that the reason why a Certificate of Availability has not been issued (or been deemed to have been issued) is the occurrence of a Refurbishment Works or Services Denial Event (other than a Tenant Waiver Event), Damage from a Non-PFI Property, a Leasehold Non Standard Works Refusal and/or a Call Off Services Refusal.

**19.6 Subsequent Works to Dwellings**

Without prejudice to the Access Protocol and the Tenant Waiver Protocol if any Works have not been carried out as a consequence of a Refurbishment Works or Services Denial Event, Damage from a Non-PFI Property, a Leasehold Non Standard Works Refusal and/or a Call Off Services Refusal and are subsequently required and able to be carried out at such Dwelling, the Contractor shall only be obliged to carry out such Works if and to the extent the Authority issues an Authority Notice of Change in

respect thereof, provided that no payment for any such change shall be made by the Authority in the event of a Tenant Waiver where the Authority has not received a repayment from the Contractor in relation to such Tenant Waiver in accordance with the Tenant Waiver Protocol.

**19.7 Withdrawal of Dwelling**

The Authority may elect to withdraw a Rented Dwelling from the Project if, by the expiry of the Works Period, the Contractor has been unable to gain access to that Rented Dwelling to carry out the Works due to an Access Failure Event in accordance with the procedure set out in Clause 27.7 (***Changes to Numbers of Dwelling by Tenure***) on the same basis as a change of tenure from a Rented Dwelling to a Leasehold Dwelling.

**20. CALL OFF SERVICES**

20.1 The Contractor and the Authority shall comply with their obligations as set out in this Clause 20 (Call Off Services) and the Call Off Protocol.

**20.2 Health and Safety Call Off Services**

20.2.1 Where there is an H&S Incident the Contractor shall manage the H&S Incident so as to reduce its effects and make the area immediately around the location of the H&S Incident safe. The Contractor shall carry out its obligations under this Clause 20.2.1 solely at its own cost and any action taken by the Contractor pursuant to this Clause 20.2.1 shall not be a Call Off Service.

20.2.2 Where the Contractor carries out any H&S Works, the Contractor shall within 5 Working Days of carrying out such H&S Works send to the Authority brief details of the nature and extent of such H&S Works and within a reasonable period thereafter provide an invoice to the Authority in accordance with paragraph 2.2 of the Call Off Protocol and Clause 20.4 below. The Authority shall ensure payment of any such costs in accordance with Clause 30.1.4 of this Contract.

20.2.3 Where the Contractor is requested by the Authority to carry out Additional H&S Works in accordance with paragraph 3.1 of the Call Off Protocol, the Authority shall reimburse the Contractor for its incurred costs arising from such Additional H&S Works in accordance with paragraph 3.1 of the Call Off Protocol and Clause 20.4 below. The Authority shall ensure payment of any such costs in accordance with Clause 30.1.4 of this Contract.

**20.3 Call Off Events**

20.3.1 Within 5 Working Days of becoming aware of a potential Call Off Event (as listed in Table 1 of the Call Off Protocol), the Contractor shall notify the Authority of the potential Call Off Event.

20.3.2 If requested by the Authority, the Contractor shall within 5 Working Days following the notification given pursuant to Clause 20.3.1 above (or of the Authority otherwise notifying the Contractor of the need for a Call off Event), submit to the Authority the Contractor's Proposal (as defined in paragraph 4.1 of the Call Off Protocol) in accordance with the Call Off Protocol;

20.3.3 The Authority shall within 5 Working Days of receipt of the Contractor's Proposal confirm to the Contractor if it requires the Contractor to carry out the Call Off Services set out in the Contractor's Proposal. If the Authority fails to respond to the Contractor within this period or does not request a Contractor's Proposal within 5 Working Days of the Contractor's notification

pursuant to Clause 20.3.1, the Authority shall be deemed to have refused to allow the Contractor to carry out such Call Off Services.

- 20.3.4 Where the Authority permits the Contractor to carry out Call Off Services then the Contractor shall promptly carry out the Call Off Services in accordance with the relevant Contractor's Proposal as supplemented by any reasonable instructions of the Authority, and the Contractor shall invoice the Authority on a monthly basis in accordance with Clause 30.3.1 of the Contract. The Authority shall ensure payment of such costs in accordance with Clause 30.1.4 of the Contract.
  - 20.3.5 If the Authority does not procure a Call Off Service, or the Authority is deemed to have refused to allow the Contractor to carry out the relevant Call Off Services then the Authority shall indemnify the Contractor for any Direct Losses incurred by the Contractor as a result of such failure or deemed refusal and the reliefs set out in column 2 of Table 1 in the Call Off Protocol shall apply, in addition to (without double counting) any other reliefs specified in this Contract in each case from the date of receipt of the Contractor's notification pursuant to Clause 20.3.1.
- 20.4 Any costs payable to the Contractor pursuant to this Clause 20 (Call Off Services) and the Call Off Protocol shall be in accordance with the Agreed Rates set out in Appendix 1 of the Call Off Protocol and any Contractor's Proposal and/or estimate and shall be limited to the Contractor's reasonably and properly incurred costs arising from the implementation of the Call Off Services. The Authority and the Contractor accept that:-
- 20.4.1 The Agreed Rates set out in Appendix 1 of the Call Off Protocol are reasonable and the costs of the Contractor in providing any Call Off Services shall be calculated on the basis of such Agreed Rates; and
  - 20.4.2 All materials used to provide the Call Off Services will be of the same or of comparable quality to those materials used by the Contractor in performing the Works and Services and all costs charged to the Authority for such materials will be broadly comparable to those that would be charged by a contractor providing works and/or services the same as or similar to the works and/or services provided as part of the relevant Call Off Services.

## PART 4

### THE SERVICES

#### 21. PRINCIPAL SERVICES OBLIGATIONS

##### 21.1 Provision of Services

21.1.1 The Contractor shall provide to the Authority or procure the provision to the Authority of the Services in accordance with the Output Specification and otherwise on the terms of this Contract with effect from the relevant Services Commencement Date.

21.1.2 Notwithstanding any other provision of this Contract, the Contractor shall:

- (a) not be responsible for replacing and/or reinstating; and
- (b) have no liability in respect of removing or altering

any fixtures, fittings and internal decorations in a Leasehold Dwelling if, in complying with its obligations under this Contract, the Contractor has to remove or alter any such fixtures, fittings and internal decorations in the course of carrying out works at such Leasehold Dwelling, except where such replacement, reinstatement, removal or alteration is the result of the Contractor or Subcontractor failing to act in accordance with Good Industry Practice or is due to their negligence under this Contract or is due to a failure by the Contractor to comply with the Leaseholder Works Protocol.

##### 21.2 Standard of Performance

The Contractor will at all times ensure that the Services are performed by appropriately qualified and trained personnel in accordance with Good Industry Practice and those Authority Policies set out at Part 1 of Appendix 3 (Authority Policies). For the avoidance of doubt the Contractor shall have regard to, but shall not be obliged to comply with, those Authority Policies set out in Part 2 of Appendix 3 (Authority Policies) when providing the Services.

##### 21.3 Services Direct Agreements

Subject to Clause 63.2 (***Contractor's Permitted Sub-Contractors***), if the Contractor engages any replacement Housing Management Contractor, Responsive and Cyclical Maintenance Contractor or Heating Services Contractor in connection with the Services, the Contractor shall procure that the relevant replacement Housing Management Contractor, Responsive and Cyclical Maintenance Contractor and/or Heating Services Contractor shall provide to the Authority a duly executed agreement substantially in the form of the Direct Agreement (Sub-Contractor) immediately upon the relevant contract being entered into.

##### 21.4 Liaison Procedure

The provisions in Schedule 22 (***Liaison Procedure***) shall apply throughout the Contract Period.

## 22. **CONDITION OF THE PROPERTIES**

### 22.1 **Maintenance**

The Contractor shall ensure on a continuing basis that at all times its maintenance and operating procedures are sufficient to ensure that:-

- 22.1.1 the Services are continuously available in accordance with the Output Specification;
- 22.1.2 **[NOT USED]**
- 22.1.3 it can maintain the design intention of the Dwellings and/or Properties to achieve their full working life as set out in the Output Specification for the duration of the Contract Period;
- 22.1.4 the Dwellings and/or Properties are kept in good structural and decorative order (subject to fair wear and tear) in accordance with the Output Specification; and
- 22.1.5 the Dwellings and/or Properties are handed back to the Authority on the Expiry Date (or if earlier the Termination Date) in a condition complying with the Output Specification.

### 22.2 **Surveys**

- 22.2.1 If the Authority reasonably believes that the Contractor is in breach of its obligations under Clause 22.1 (**Maintenance**) then it may carry out or procure the carrying out of a survey of those Dwellings and/or Properties which are believed to be non-compliant to assess whether those Dwellings and/or Properties have been and are being maintained by the Contractor in accordance with its obligations under Clause 22.1 (**Maintenance**). This right may not be exercised more than once every two (2) years.
- 22.2.2 The Authority shall notify the Contractor in writing a minimum of 10 Working Days in advance of the date on which it wishes to carry out the survey. The Authority shall consider in good faith any reasonable request by the Contractor for the survey to be carried out on a different date if such request is made at least 5 Working Days prior to the notified date and the Contractor (acting reasonably) is able to demonstrate that carrying out the survey on the notified date would materially prejudice the Contractor's ability to provide the Service.
- 22.2.3 When carrying out any survey, the Authority shall use reasonable endeavours to minimise any disruption caused to the provision of the Service by the Contractor. The cost of the survey shall, except where Clause 22.2.4 (**Surveys**) applies, be borne by the Authority. The Contractor shall give the Authority (free of charge) any reasonable assistance required by the Authority during the carrying out of any survey.
- 22.2.4 If a survey shows that the Contractor has not complied or is not complying with its obligations under Clause 22.1 (**Maintenance**), the Authority shall:-
  - (a) notify the Contractor of the obligations under Clause 22.1 (**Maintenance**) with which it is failing or has failed to comply;
  - (b) notify the Contractor of the standard that the condition of the Properties and/or Dwellings should be in to comply with its obligations under Clause 22.1 (**Maintenance**);

- (c) specify a reasonable period within which the Contractor must carry out such rectification and/or maintenance work; and
  - (d) be entitled where the Contractor has not complied, or is not complying with its obligations in a material way to be reimbursed by the Contractor for the cost of the survey and any administrative costs incurred by the Authority in relation to the survey.
- 22.2.5 The Contractor shall carry out such rectification and/or maintenance work within the period specified and any costs it incurs in carrying out such rectification and/or maintenance work shall be at its own expense.
- 22.2.6 The Contractor shall undertake the repair and maintenance of the Dwellings and/or Properties and the renewal of elements within the Dwellings in accordance with the Cyclical Maintenance and Replacement Programme and, in the case of Heating Services, in accordance with the obligations set out in the Output Specification.
- 22.2.7 The Contractor shall be entitled to vary, amend or replace any Cyclical Maintenance and Replacement Programme provided that the Submitted Item has been submitted to the Authority in accordance with the Review Procedure and the arrangements set down in the Review Procedure followed.

## 23. HAZARDOUS SUBSTANCES

### 23.1 Storage

The Contractor shall ensure that any hazardous materials or equipment used or intended to be used in the provision of the Services are kept under control and in safe keeping in accordance with all applicable Legislation, and Good Industry Practice and shall ensure that all such materials are properly and clearly labelled on their containers.

## 24. EMERGENCIES

### 24.1 Authority may Instruct

- 24.1.1 If an Emergency arises in relation to a Property during the Operational Period which cannot be dealt with by performance of the Services, the Authority may instruct the Contractor to use its best endeavours to procure that such reasonable additional or alternative services are undertaken by the Contractor as and when required by the Authority to ensure that the Emergency is dealt with and normal performance of the Services resumes as soon as is reasonably practicable provided that the Contractor shall not be obliged to perform any service which it is neither qualified nor competent to provide.

#### Costs

- 24.1.2 The cost incurred by the Contractor of any additional or alternative services required by the Authority under Clause 24.1.1 (**Authority may Instruct**) or any revenue lost by the Contractor shall be borne by the Authority and paid against the Contractor's invoice in accordance with Clause 30 (**Payment Provisions**). The Contractor shall be put in a position no better no worse than it would have been in had the Emergency not occurred, if such costs are not agreed, the matter should be referred to the Dispute Resolution Procedure.

## 25. PERFORMANCE MONITORING

### 25.1 Contractor Monitoring

The Contractor shall monitor its performance in the delivery of the Services in accordance with the requirements contained in Schedule 6 (***Payment and Performance Mechanism***).

### 25.2 Authority Monitoring

The Authority may elect, at its own cost, to undertake its own performance monitoring at any stage in order to ensure that the Services are being provided in accordance with this Contract. The Contractor will use its reasonable endeavours to assist the Authority in such an exercise. The Authority shall be entitled to notify the Contractor of the outcome of the performance monitoring exercise, and the Contractor shall have regard to the Authority's comments in relation to the future provision of the Services.

## 26. MARKET TESTING AND BENCHMARKING

### 26.1 Benchmarking

26.1.1 For the purposes of this Clause 26 (***Market Testing and Benchmarking***) the Market Testing Review Dates in respect of those Services set out in the first column of the table (the "***Market Testing Services***") shall be those dates set out in the second column of the table below:

Services	Market Testing Review Dates
<p>The Services performed or to be performed:</p> <p>(a) by the Housing Management Contractor in accordance with the Housing Management Contract; and</p> <p>(b) in the case of the second Market Testing Review Date, by any other Sub-Contractor where such Services were previously performed by the Housing Management Contractor pursuant to the Housing Management Contract</p> <p>as such Services are varied in accordance with this Contract.</p>	<p>(a) The first Market Testing Review Date shall be the date of the fifth anniversary of the Services Commencement Date; and</p> <p>(b) the second Market Testing Review Date shall be the date of the tenth anniversary of the Services Commencement Date.</p>

26.1.2 The Contractor shall undertake a benchmarking exercise (the "***Benchmarking Exercise***") at its own cost at least six months before any Market Testing Review Date in relation to the Market Testing Services.

26.1.3 Each Benchmarking Exercise will be undertaken to ascertain the relative quality and competitiveness of the Market Testing Services. The Benchmarking Exercise will be undertaken in good faith by the Contractor (and with the reasonable co-operation of the Authority) and on the basis of an objective comparison by comparing the standards and prices of the

Market Testing Services and the costs of providing them, with the standards and prices of equivalent services and the cost of their provision by reputable organisations of comparable size and quality to the Housing Management Contractor possessing experience of PFI within the South East of England and an appropriate degree of skill, resources, reputation and financial standing relative to the provision of the Market Testing Services as part of a stand alone organisation of comparable size and quality pursuant to contracts which are the same as or similar to this Contract (taking into account regional salaries weightings and the Contractor's and the Housing Management Contractor's obligations in relation to Clause 27.1) but excluding any Local Authorities and arms length management organisations (the "**Comparator Group**").

26.1.4 The Contractor will make the results of any Benchmarking Exercise available to the Authority by the date occurring at least three months before the relevant Market Testing Review Date. The results shall indicate the extent to which (if at all) the costs ("**Market Costs**") of the Comparator Group differ from the element within the Financial Model at the time of the Benchmarking Exercise showing the costs of providing the Market Testing Services (as such element may have been adjusted in accordance with this Contract) (the "**Relevant Costs**").

26.1.5 Where the Market Costs are between 95 and 110% of the Relevant Costs, no change shall be made to the Unitary Payment. Where the Market Costs are less than 95% or more than 110% of the Relevant Costs the parties shall agree an adjustment to the Unitary Payment in accordance with Clause 31 (Financial Adjustments) on that basis that if a Benchmarking Exercise is carried out:

- (a) the Authority will assume the risk of any agreed increase in the Unitary Payment arising as a result of the Market Costs exceeding 110% of the Relevant Costs; and
- (b) the Contractor will assume the risk of any agreed decrease in the Unitary Payment arising as a result of the Market Costs being less than 95% of the Relevant Costs

and in the event of any failure to carry out or procure the carrying out of the Benchmarking Exercise or any dispute arising out of the Benchmarking Exercise (excluding in relation to a failure to agree an adjustment to the Unitary Payment), the matter shall be determined under the Dispute Resolution Procedure as a Fast Track Matter.

26.1.6 Where it has not been possible in accordance with Clause 26.1.5 above to:

- (a) conduct a Benchmarking Exercise;
- (b) agree an adjustment to the Unitary Payment pursuant to Clause 26.3 (Adjustments to Unitary Payment) following a Benchmarking Exercise; or
- (c) the Contractor fails to carry out or procure the carrying out of a Benchmarking Exercise;

by the date which is forty (40) Working Days prior to the Market Testing Review Date, the Contractor shall commence Market Testing in respect of the Market Testing Services. If, following the commencement of Market Testing the matters to be agreed or determined under Clause 26.1.5 are agreed or determined, the Contractor shall terminate the Market Testing.

## 26.2 **Market Testing Procedure**

- 26.2.1 At least 3 months before each Marketing Testing Review Date, the parties shall meet together as often as may be necessary in respect of the Market Testing Services to;
- (a) consider any changes required to the Market Testing Services;
  - (b) discuss and agree the appropriate manner of advertising the Market Testing Services and the means of identifying prospective tenderers;
  - (c) discuss and agree the tender requirements (the "Tender Documents") which must include:
    - (i) a statement of the tender validity period;
    - (ii) details of the tender evaluation criteria;
    - (iii) the terms and conditions under which the Market Testing Services will be contracted;
    - (iv) information relating to employees and their conditions of employment;
    - (v) the information that tenderers are required to provide; and
    - (vi) how many tenderers are required for the market testing to be valid.
- 26.2.2 The Market Tested Services shall be market tested or tendered as a whole.
- 26.2.3 No later than four weeks before each Market Testing Review Date the Contractor shall prepare and deliver to the Authority a draft market testing proposal (the "**Market Testing Proposal**") taking into account Clause 26.2.1 and describing in detail the proposed tenderers and the Tender Documents for the Market Testing Services, which Market Testing Proposal shall incorporate all of the matters agreed by the parties and shall reflect the payment structure contained in this Contract.
- 26.2.4 If the parties are unable to agree any of the matters set out in the Market Testing Proposal or if the Authority reasonably considers that the Contractor has made a material error or omission in the Market Testing Proposal the Authority may refer the matter to the Disputes Resolution Procedure for determination as a Fast Track Matter.
- 26.2.5 The Contractor shall manage the Market Testing tendering process in accordance with the Market Testing Proposal agreed or determined in accordance with this Clause 26.2 (Market Testing Procedure).
- 26.2.6 The Contractor shall bear all of its own costs, fees and expenses associated with the Market Testing.
- 26.2.7 The Contractor shall provide to the Authority as soon as reasonably practicable a copy of the Tender Documents and each response to the Tender Documents.

- 26.2.8 The Contractor shall be responsible for compiling the list of prospective tenderers and selecting the tenderers from the list of prospective tenderers on the basis of their:
- (a) financial standing; and
  - (b) technical and managerial experience and ability (taking into account any relevant references).
- 26.2.9 The Authority shall have a right to object to the selection of any person as a prospective tenderer if it reasonably believes that such person does not (or could not reasonably be considered to) comply with any of the criteria referred to in Clause 26.2.8 (Market Testing Procedure).
- 26.2.10 The Authority shall in its absolute discretion have the right to prevent the selection of any person as a tenderer on the grounds that the prospective tenderer has committed a Prohibited Act.
- 26.2.11 The Contractor shall provide any prospective tenderer which is unsuccessful in being selected with an explanation of the reasons behind its non-selection, if so requested by the person in question.
- 26.2.12 The Contractor shall determine which compliant tender in respect of the Market Tested Services represents the most economically advantageous tender.
- 26.2.13 On making this determination, the Contractor shall supply to the Authority a copy of its tender evaluation, together with sufficient supporting information concerning the tender evaluation to enable the Authority to analyse and understand the basis of the Contractor's determination;
- 26.2.14 If the Authority (acting reasonably) does not agree with the Contractor's determination under Clause 26.2.12, the Authority may, within 15 Working Days of being provided with the tender evaluation, dispute such determination and, if the parties do not resolve such dispute within a further 15 Working Days, the dispute shall be dealt with in accordance with Clause 60 (Dispute Resolution);
- 26.2.15 Nothing in this Clause 26.2 (Market Testing Procedure) shall oblige the Contractor to accept the lowest tender;
- 26.2.16 Any dispute under Clause 26.2 (Market Testing Procedure) shall be determined in accordance with the Disputes Resolution Procedure.

### **26.3 Adjustments to Unitary Payment**

- 26.3.1 Where the tender price of a Sub-Contractor appointed by the Contractor pursuant to Clause 26.2 (Market Testing Procedure) (the "Successful Tenderer") is lower than the Relevant Costs then the cost difference between the Successful Tenderer's tender price and the Relevant Cost shall be deducted from the Relevant Costs and the Unitary Payment consequently adjusted with effect from the date on which the Successful Tenderer provides services to the Contractor pursuant to the relevant Sub-Contract, where a new Sub-Contractor is appointed and otherwise and in any event, on a date not later than three months after the relevant Market Testing Review Date.
- 26.3.2 Where the tender price of the Successful Tenderer is higher than the Relevant Cost then the cost difference between the Successful Tenderer's tender price and the Relevant Cost shall be added to the Relevant Cost and

the Unitary Payment consequently adjusted with effect from the relevant Market Testing Review Date.

26.4     **Deductions not to be Inherited**

Deductions which have been accrued in respect of the acts and/or omissions of any Sub-Contractor up to the date of its replacement (for whatever reason) shall not be inherited in respect a replacement Sub-Contractor and shall be ignored for the purposes of this Contract.

27.     **HOUSING PROVISIONS**

27.1     **Leaseholders**

27.1.1     The Authority agrees that the Contractor shall or shall procure the exercise of its functions in relation to the discharge of the Authority's obligations under the Leaseholder Leases and the carrying out of the Works and the Services and any other works and services necessary to ensure compliance by the Authority with all its covenants in the Leaseholder Leases and the collection of service charges payable by Leaseholders in respect of the Works and Services and such other works and services.

27.1.2     The Contractor shall, when exercising the functions referred to in Clause 27.1.1, ensure:

- (a)        that the Works and such other works are carried out and the Services or such other services are provided as are necessary to comply with the relevant sections of the Output Specification and the landlord's covenants in the Leaseholder Leases;<sup>1</sup>
- (b)        compliance with all provisions in Sections 19 and 20 of the Landlord and Tenant Act 1985 in carrying out any works (including the Works), providing any services and levying any service charge in relation to the Leasehold Dwellings;
- (c)        that subject to the terms of this Clause 27.1 service charge demands and invoices are issued for all Collectable Leaseholder Costs.

27.1.3     Where the Works and/or Services required exceed the consultation threshold in the Landlord & Tenant Act 1985, the Contractor shall in relation to a relevant service charge period under a Leaseholder Lease and not less than 10 Working Days prior to undertaking any Works or, to the extent practicable without adversely impacting on the ability of the Contractor to comply with the Repairs Response Targets set out in Schedule 6, not less than 10 Working Days prior to undertaking any Services or other works and/or services to one or more Leasehold Dwellings notify the Authority of the:

- (a)        nature of the Works and/or Services or other works and/or services to be undertaken to such Leasehold Dwellings to satisfy the Output Specification (the "**Proposed Leaseholder Works and Services**");
- (b)        estimate of the proposed cost of the Proposed Leaseholder Works and Services which will be recoverable from the Leaseholders occupying such Leasehold Dwellings taking into account the Mandatory Reduction Directions;

- (c) amount of the estimated Irrecoverable Leaseholder Costs to the extent known at that time; and
  - (d) amount of the estimated Deemed Collected Leaseholder Costs to the extent known at that time.
- 27.1.4 The Contractor shall following completion of the Proposed Leaseholder Works and Services in relation to each such Leasehold Dwelling notify the Authority of the:
  - (a) actual cost of the Proposed Leaseholder Works and Services;
  - (b) actual cost of the Proposed Leaseholder Works and Services which will be recoverable from the relevant Leaseholders taking into account the Mandatory Reduction Directions (the **"Recoverable Leaseholder Costs"**);
  - (c) actual amount of Irrecoverable Leaseholder Costs to the extent known at that time; and
  - (d) actual amount of the Deemed Collected Leaseholder Costs to the extent known at that time.
- 27.1.5 All Collected Leaseholder Costs and an amount equivalent to the actual Irrecoverable Leaseholder Costs (to the extent known) shall be paid into an account either in the joint name of the Contractor and the Housing Management Contractor held at the Account Bank (the **"Leaseholder Recovery Account"**).
- 27.1.6 The Authority shall be paid from the Leaseholder Recovery Account the Leaseholder Costs (Authority Share) for the relevant Contract Year no later than the relevant Leaseholder Costs Payment Date.
- 27.1.7 Immediately following payment to the Authority pursuant to Clause 27.1.6, the Contractor shall be paid the Leaseholder Costs (Contractor Share) for the relevant Contract Year.
- 27.1.8 The parties acknowledge and agree that any interest accruing on the Leaseholder Recovery Account shall accrue to the benefit of Housing Management Contractor for application in awarding discounts to Leaseholders.
- 27.1.9 The Authority shall:
  - (a) set the Management Fee; and
  - (b) notify the Contractor of the cost of providing insurance cover for Leasehold Dwellings in accordance with Clause 57A (**Insurance**)

for each Contract Year no later than 2 Contract Months prior to the commencement of each such Contract Year save in relation to the first Contract Year where such information shall be provided to the Contractor on or prior to the date of this Contract.
- 27.1.10 The provisions of Clause 27.7 (**Change to Numbers of Dwellings by Tenure**) shall apply in re-calculating the Recoverable Leaseholder Costs on any change from a Rented Dwelling to a Leasehold Dwelling or where a Rented Dwelling or Leasehold Dwelling is subject to a disposal of the freehold, including by way of enfranchisement.

- 27.1.11 [not used];
- 27.1.12 The Contractor may take any reasonable steps to enforce the terms of any Leaseholder Lease in the name of the Authority.
- 27.1.13 Where the Contractor becomes aware of any:
- (a) Irrecoverable Leaseholder Costs; and/or
  - (b) Deemed Collected Leaseholder Costs
- in addition to those estimated or notified in Clauses 27.1.3 and 27.1.4, the Contractor shall notify the Authority of such additional costs as soon as reasonably practicable.
- 27.1.14 The Contractor shall or shall procure payment into the Leaseholder Recovery Account of any Irrecoverable Leaseholder Costs as soon as reasonably practicable after recovery from the relevant Contractor Related Party but in any event prior to the relevant Leaseholder Costs Payment Date for the Contract Year in which such Irrecoverable Leaseholder Costs are estimated or notified to the Authority in accordance with this Clause 27.1.
- 27.1.15 The Authority, the Contractor and any relevant Sub-Contractor shall no later than 40 Working Days following the end of the Works Period, meet and endeavour to agree, on the basis of
- (a) the amount of Collected Leaseholder Costs at that time; and
  - (b) the re-forecast levels of Collectable Leaseholder Costs for the remainder of the Contract Period
- whether the percentages to be used for calculating the Collected Leaseholder Costs (Authority Share) should be adjusted in accordance with Clause 27.1.16.
- 27.1.16 Any adjustment pursuant to Clause 27.1.15 shall be assessed so as to:
- (a) reflect actual performance by the Contractor which has exceeded or failed to meet initial assumptions of anticipated levels of Collected Leaseholder Costs;
  - (b) incentivise future performance in collecting Collectable Leaseholder Costs;
  - (c) ensure that the anticipated Collected Leaseholder Costs (Authority Share) for the remainder of the Contract Period as at the date of the review is no less than the anticipated Collected Leaseholder Costs (Authority Share) as at the date of this Contract.
- 27.1.17 Where the parties fail to agree any change to the percentages under Clauses 27.1.15 and 27.1.16, the percentages shall remain as set out in this Contract.
- 27.1.18 Where the aggregate amount of the Collected Leaseholder Costs exceeds £, the percentage share to be used for calculating the Collected Leaseholder Costs (Authority Share) for such excess amount in the relevant Contract Year shall be calculated in accordance with the following table:

## 27.2 Management Agreements

- 27.2.1 In accordance with an approval dated 14 September 2006 given by the Secretary of State under Section 27 (the "**Section 27 Consent**"), the Authority agrees that the Contractor shall exercise, such of the Authority's housing management functions in relation to Dwellings and Properties as shall be set out in Schedule 23 (**Housing Management Functions**) and such other housing management functions as shall be necessary to enable the Contractor properly to perform its obligations under this Contract (the "**Housing Management Functions**") (and this Contract shall be a "**Management Agreement**" for the purpose of Section 27).
- 27.2.2 The Authority agrees that from the date of the Section 27 Consent that the Contractor is authorised to appoint the Sub-Contractors to exercise any Housing Management Function exercisable by the Contractor in relation to the Dwellings or Properties under this Contract (and any Sub-Contract, whether those to which the Sub-Contractors are party or whether a replacement of the Sub-Contracts or a replacement of replacement Sub-Contracts containing Housing Management Functions shall be a "Sub-Agreement" for the purposes of this Contract and Section 27).
- 27.2.3 Notwithstanding Clauses 7.1 (**Ancillary Documents**), 26 (**Market Testing and Benchmarking**) and 63 (**Assignment and Sub-Contracting**) but subject to Clause 27.2.5 the approval of the Authority (such approval not to be unreasonably withheld or delayed) and of the Secretary of State will be required for:-
- (a) any variations or amendments to the provisions of this Contract or a Sub-Agreement which are of a description specified in the Section 27 Consent;
  - (b) the making of any new Management Agreement or Sub-Agreement; and
  - (c) any other matter stipulated by the Secretary of State in the Section 27 Consent
- and the Authority shall determine which Tenants with whom it is necessary to consult and shall undertake all consultation required by Law.
- 27.2.4 As stipulated by the Secretary of State in the Section 27 Consent the moratorium period for the purposes of Section 27 shall be 6 months commencing upon the termination of a Sub-Agreement (which shall be an emergency for the purposes of the RRO) and such additional period as may be further stipulated by the Secretary of State from time to time (the "**Moratorium Period**").
- 27.2.5 The Contractor may make a new Sub-Agreement for a period no longer than a Moratorium Period without the approval of the Secretary of State but with the approval of the Authority (such approval not to be unreasonably withheld or delayed).
- 27.2.6 No later than 5 Working Days after the termination of any Sub-Agreement where approval of the Secretary of State is required under Section 27, the Contractor shall provide to the Authority a copy of the proposed Sub-Agreement and the identity of the proposed new Sub-Contractor and all other necessary information which the Secretary of State will require to consider such an approval in accordance with applicable Guidance.

- 27.2.7 The Authority shall within 10 Working Days of receipt of the proposed Sub-Agreement and identity of the proposed Sub-Contractor and other information referred to in Clause 27.2.6 commence to carry out the consultation of Tenants in accordance with Section 105 Housing Act 1985 and after the completion of such consultation the Authority shall (provided it has given its approval in accordance with Clause 27.2.3) submit an application for the approval for consideration by the Secretary of State.
- 27.2.8 The Authority shall within 10 Working Days of receipt by the Authority of a request for any matter for which an approval of the Secretary of State is required, in accordance with Clause 27.2.3 commence to carry out the consultation in so far as such consultation is required of Tenants in accordance with Section 105 Housing Act 1985 and after the completion of such consultation then provided all necessary information has been given to the Authority (in accordance with Guidance or otherwise) to enable the Secretary of State to consider the grant of an approval and that the Authority has itself given its approval in accordance with Clause 27.2.3, the Authority shall submit the request to the Secretary of State.
- 27.2.9 If by the expiry of the Moratorium Period the Secretary of State has not given an approval to the matters contained in Clause 27.2.3 then the Authority shall apply to the Secretary of State for an extension of the Moratorium Period and the Contractor shall be entitled to continue with the existing Sub-Agreement or make a new Sub-Agreement for a period no longer than the new Moratorium Period, and the procedure for obtaining such consent set out in this Clause 27.2 shall re-apply.
- 27.2.10 If two Moratorium Periods have expired or if the Secretary of State fails to grant an extension of the Moratorium Period or if any new Moratorium Period referred to in Clause 27.2.9 expires without having been extended and the Secretary of State has not given an approval to the matters contained in Clause 27.2.3(b) or where the Secretary of State has not (where such has a material adverse affect upon the Sub-Contractor performing of its obligations under the Sub-Agreement) given an approval to the matters contained in Clauses 27.2.3(a) or 27.2.3(c) then either the Authority or the Contractor may terminate this Contract by 20 Working Days' written notice to the other and the Authority shall pay to the Contractor compensation in accordance with the provisions of Clauses 40 (***Force Majeure Compensation***) 44 (***Method of Payment***), 46 (***Gross Up***) and 47 (***Set Off on Termination and Exclusivity***).

## 27.3 Authority Functions

### 27.3.1 Authority's Allocation

The Authority shall be entitled to allocate or nominate persons to the Contractor to become Tenants in respect of 100% of all Available Rented Dwellings throughout the Contract Period in accordance with the Allocations Policy.

### 27.3.2 Allocation

The Authority and the Contractor shall each comply with their respective obligations in the Allocations and Nominations Protocol.

### 27.3.3 Housing Benefit Administration

- (a) The Authority shall administer and process applications and determinations for housing benefit so as to avoid the occurrence of a Housing Benefit Failure Event and to a standard which is not less

than the standard to which the Authority performs such functions in connection with any Authority properties which are not included in this Project.

- (b) In the event that there is a Change in Law to the effect that Housing Benefit is paid directly to Tenants, this shall trigger a joint review by the Authority and the Contractor of KPI 11 (Rent Collection) to take account of such Change in Law and in the event of a dispute, such matter shall be determined in accordance with the Dispute Resolution Procedure by reference to what is being achieved or considered reasonably likely to be achieved on similar projects in similar circumstances to this Project (taking account of performance both before and after such Change in Law). Until the revised KPI 11 has been agreed or determined, the KPI shall be deemed to be set at the same level of rent collection as achieved by the Authority across the Borough of Islington.

#### **27.3.4 Tenancy Agreement and Leases**

The Authority shall not vary a Tenancy Agreement or Leaseholder's Lease without the consent of the Contractor, and subject to Part 1 of Schedule 11 (**Warranted Data**) shall ensure there are written Tenancy Agreements with all Tenants.

#### **27.3.5 Authority Works**

The Authority shall procure that the execution of any Authority Works do not cause any defect or other damage to the Properties and/or Dwellings which would materially and adversely affect the Contractor in performing its obligations under this Contract. The Authority Works which are an Authority responsibility to carry out and/or procure include any fire stopping compartmentalisation required to be carried out at any Dwelling and/or Property in accordance with applicable Law.

### **27.4 Repair and condition of the accommodation**

- 27.4.1 Each of the Contractor and the Authority shall comply with their respective obligations in the Disrepair Protocol.

- 27.4.2 The Authority shall be responsible for all costs in connection with, and shall release and indemnify the Contractor, its Sub-Contractors, its employees, agents and contractors on demand from and against all liability for:-

- (a) actions, claims, demands, cost, charges, damages, compensation and expenses (including legal expenses on an indemnity basis); and
- (b) fines and penalties

which may arise out of, or in consequence of, any Disrepair Action in relation to a Dwelling or Property relating to an event occurring prior to the Disrepair Action Cut Off Date.

- 27.4.3 Save as otherwise expressly specified in this Contract, the Contractor shall be responsible for all costs in connection with, and shall release and indemnify the Authority, its employees, agents and contractors on demand from and against all liability for:-

- (a) actions, claims, demands, costs, charges, damages, compensation and expenses (including legal expenses on an indemnity basis); and
- (b) fines and penalties,

which may arise out of, or in consequence of, any Disrepair Action instigated in relation to a Dwelling or Property on or after the Disrepair Cut Off Date.

27.4.4 Save as provided for in paragraphs 5.3(a) and (d) and 6.6(a) and (d) of the Output Specification the Contractor shall undertake the remedial works required to satisfy the requirements of a Disrepair Action in a manner so as to mitigate all liabilities of the Authority arising from the Disrepair Action.

27.4.5 The provisions of Clauses 56.5 (**Responsibility for Related Parties**), 56.6 (**Notification of Claims**), 56.7 (**Conduct of Claims**), 56.8 (**Costs of Claims**) and 56.10 (**Exclusions**) (**Other Indemnities**) shall apply to the indemnities in Clauses 27.4.2 and 27.4.3.

## 27.5 Decant

The Authority shall on the written request of the Contractor and upon reasonable notice allow to remain vacant Rented Dwellings (including for the avoidance of doubt any Dwellings used for "respite" care and/or as showflat(s)) ("**Decant Voids**") for the purpose of decanting to the Decant Voids Rented Dwellings Tenants from other Rented Dwellings or Leaseholders from Leasehold Dwellings which will be the subject of the Works and/or the Services provided that:-

- 27.5.1 the aggregate period during which Decant Voids are required to be available during the Works Period shall not exceed 4,300 weeks but shall be available as and when required by the Contractor;
- 27.5.2 the aggregate number of Decant Voids which are required to be available in any one week shall not exceed 20 at any one time;
- 27.5.3 the decanting of Tenants shall comply with the Temporary Moves Protocol and the Contractor shall be responsible for meeting any expenses of Tenants in accordance with an Authority Policy and any statutory expenses of Tenants under the Housing Act 1985 as a consequence of any decanting of any Tenants; and
- 27.5.4 in any event, the Parties shall review and agree from time to time the number of weeks permitted for decanting in cases involving vulnerable tenants and the incidents of major works requiring other tenants to be decanted.

Notwithstanding the provisions of Clauses 27.5.1 to 27.5.4 inclusive, where it is necessary to decant Tenants from Rented Dwellings or Leaseholders from Leasehold Dwellings due to the existence of asbestos in such Dwellings, the aggregate period during which the Decant Voids shall be provided by the Authority during the Works Period, and the aggregate number of Decant Voids which shall be made available by the Authority in any one week, shall be increased as may be agreed by the Authority acting reasonably, taking reasonable account of the need to undertake Works at the relevant Dwellings and the needs of the Authority for Dwellings to be made available for allocation purposes, provided that the Contractor shall make all such requests prior to the Planned Refurbishment Works Completion Date.

## **27.6 Right to Buy**

- 27.6.1 Each of the Authority and the Contractor shall comply with their respective obligations in the Home Ownership Protocol.
- 27.6.2 Each of the Authority and the Contractor shall as soon as reasonably practical notify the other if it receives notice from a Tenant claiming to exercise (or that such Tenant intends to pursue his claim or that he withdraws his claim to) Right to Buy and shall at the same time provide a copy of the Tenant's notice to that effect.
- 27.6.3 The Contractor shall at the Authority's written request provide to the Authority such information as is (or ought to be if the Contractor is complying with the terms of this Contract) within its possession to enable the Authority to assess the following:-
- (a) whether or not the Tenant is entitled to exercise the Right to Buy;
  - (b) whether or not any person who is mentioned in the Tenant's notice but is not a joint tenant should share the Right to Buy with the Tenant;
  - (c) whether the Authority should or should not admit the claim to the Right to Buy and, if not, the reasons why;
  - (d) the contents of the notice required to satisfy Section 125 of the Housing Act 1985;
  - (e) (where applicable) the contents of the notice or notices required to satisfy Sections 125A, 125B and 125C of the Housing Act 1985;
  - (f) (where applicable) the contents of any notice to be served under Sections 140 or 141 of the Housing Act 1985 and the contents thereof;
  - (g) any other information in the possession or control of the Contractor as is required by the Authority to comply with its duties under the Housing Act 1985.
- 27.6.4 The Contractor shall undertake all the steps referred to in Clause 27.6.2 in sufficient time to enable the Authority to be able to comply with any time limits imposed on it by or by virtue of Part V of the Housing Act 1985 provided that the Contractor has received all relevant information required from the Authority in sufficient time to enable the Contractor to comply with any such time limits.
- 27.6.5 The Contractor shall keep (and make available to the Authority on written request) written records of those costs attributable to any Dwelling which have been incurred by it on behalf of the Authority pursuant to the Contractor's obligations under this Contract and which are or may be relevant costs for determining the cost floor for the purposes of Section 131(1) of the Housing Act 1985 such records to be in a form to enable such costs to be readily ascertainable for such purposes.

## **27.7 Changes to Numbers of Dwellings By Tenure**

- 27.7.1 The Authority may at any time serve a CNDT Notice on the Contractor for any number of Dwellings. The CNDT Notice shall specify:
- (a) each Dwelling that will be the subject of a CNDT;

- (b) the CNDT Date for each Dwelling specified in the CNDT Notice providing that any such date shall be not less than six (6) days and not more than sixty (60) days after the date of service of the CNDT Notice; and
  - (c) those Dwellings which will become Leasehold Dwellings or exit the Project on the CNDT Date;
- 27.7.2 The Authority may at any time before the CNDT Date specified in a CNDT Notice in respect of a Dwelling vary such notice by removing that Dwelling from the notice or by delaying its CNDT Date;
- 27.7.3 The Authority may at any time before the date specified in a CDNT Notice withdraw that CNDT Notice in its entirety;
- 27.7.4 The Contractor shall (subject to any other provision of this Contract) continue to provide the Works and the Services in accordance with this Contract in respect of all Dwellings specified in a CNDT Notice up to but not including the CNDT Date;
- 27.7.5 The Contractor shall cease to provide the Works and the Services in relation to a particular Dwelling with effect from the beginning of the CNDT Date;
- 27.7.6 The Authority shall be entitled to carry out a survey of the Dwellings (the “**CNDT Survey**”) which are the subject of a CNDT and which are not subject to the Right to Buy, to assess whether at the relevant CNDT Date they will meet the relevant Availability Standard, provided that for this purpose the Authority shall disregard any defects that would be cured by any Works intended to be carried out at that Dwelling or any maintenance set out in the current Cyclical Maintenance and Replacement Programme or as agreed by the Authority and Contractor which the Contractor had properly programmed to carry out after the CNDT Date (the “CNDT Standard”) ,
- 27.7.7 The Authority shall notify the Contractor in writing a minimum of 5 Working Days prior to the date it wishes to carry out the CNDT Survey. The Authority shall consider in good faith any reasonable request by the Contractor for the CNDT Survey to be carried out on a different date if such request is made at least 3 Working Days prior to the notified date and the Contractor (acting reasonably) is able to demonstrate that carrying out the CNDT Survey on the notified date would materially prejudice the Contractor’s ability to provide the Works and /or the Services.
- 27.7.8 When carrying out the CNDT Survey, the Authority shall use reasonable endeavours to minimise any disruption caused to the provision of the Refurbishment Works and/or the Services by the Contractor. The Contractor without being required to incur additional material expense shall afford the Authority, its servants and agents and authorised representatives any reasonable assistance required by the Authority in carrying out the CNDT Survey. The cost of the CNDT Survey shall be borne by the Authority.
- 27.7.9 If the CNDT Survey shows that any Dwelling which is the subject of a CNDT does not meet the CNDT Standard, the Authority may notify the Contractor of the rectification work which is required to bring the condition of such Dwellings to the relevant Availability Standard and specify a reasonable period within which the Contractor must carry out such work,
- 27.7.10 If and to the extent that the Contractor fails to carry out the rectification work to the appropriate Availability Standard within the reasonable time period set out above (as may be extended by agreement by the parties), the Authority shall be entitled to carry out such rectification work itself or procure such

rectification work at the Contractor's expense and shall be entitled to deduct the cost of such rectification work from any payment due to the Contractor under this Agreement

- 27.7.11 If there is not a reasonable period for carrying out the rectification work before the CNDT Date of the relevant Dwelling or the Contractor fails to complete such rectification work before the CNDT Date or if it is not practical for the Authority to procure the completion of such rectification work on or prior to the relevant CNDT Date, the Contractor shall pay to the Authority within 10 Working Days of the CNDT Date such amount as is agreed by the Parties or determined under the Dispute Resolution Procedure as being the reasonable cost of the rectification works specified in Clause 27.7.9.1 (Changes to Numbers of Dwellings by Tenure) if they were to be carried out by a third party as soon as reasonably practicable after the relevant CNDT Date. For the avoidance of doubt, the Contractor shall have no obligation under this Agreement to carry out any such rectification and/or maintenance work after the relevant CNDT Date.
- 27.7.12 Where a Rented Dwelling has become a Leasehold Dwelling or a Rented Dwelling has been removed from the Project by the Authority pursuant to Clause 19.7, the applicable Standard Rate for Leasehold Dwellings calculated by reference to Part 1 of Schedule 6 (**Payment Mechanism**) will apply from the next CNDT Adjustment Date and where the Dwelling is subject to a disposal of the freehold the applicable Standard Rate for Rented Dwellings or the applicable Standard Rate for Leasehold Dwellings as the case may be shall cease to apply from the next CNDT Adjustment Date.
- 27.7.13 On each CNDT Adjustment Date, the CNDT Compensation shall be calculated in respect of each Dwelling which has been subject to a CNDT prior to such CNDT Adjustment Date in accordance with the following sub-Clauses:-
- (a) the CNDT Compensation shall be adjusted to reflect the actual rate of inflation (measured by reference to RPI) since the last inflation adjustment, in accordance with the Payment Mechanism;
  - (b) the Relevant Part of the Unitary Charge (as referred to in Clause 27.7.13(c)(i)) shall be:
    - (i) where a Rented Dwelling has become a Leasehold Dwelling or has been removed from the Project pursuant to Clause 19.7, the difference between the applicable Standard Rate for Rented Dwellings and the applicable Standard Rate for Leasehold Dwellings;
    - (ii) where a Rented Dwelling is subject to a disposal of the freehold, the whole of the applicable Standard Rate for Rented Dwellings; and
    - (iii) where a Leasehold Dwelling is subject to a disposal of the freehold, the whole of the applicable Standard Rate for Leasehold Dwellings;
  - (c) on each CNDT Adjustment Date a calculation shall be undertaken to determine the following in relation to each Dwelling which has been the subject of a CNDT prior to such CNDT Adjustment Date to calculate:-
    - (i) the Relevant Part of the Unitary Charge shall be reduced to reflect the percentage savings in Variable Costs and

Semi-Variable Costs only as shown in Table A in Schedule 15 (**Changes to Numbers of Dwellings by Tenure**);

- (ii) when the relevant number of Dwellings which are subject of CNDT attains the number of Total Rental to Leasehold or Total Leasehold to Freehold as applicable in each of the Columns headed Step 1, to Step 4 in Table B in Schedule 15 (**Changes to Numbers of Dwellings by Tenure**) the reduction in the Relevant Part of the Unitary Charge shall, in respect of Semi-Variable Costs, in respect of each "step", reflect the percentage of the savings shown in Table B and not Table A in Schedule 15 (**Changes to Numbers of Dwellings by Tenure**).

- (d) the amount of CNDT Compensation for a Dwelling which has been the subject of a CNDT shall be calculated from the relevant CNDT Adjustment Date for that Dwelling as follows:

$$\text{CNDT Compensation} = \text{RPUC} - (\text{VCS} + \text{SVCS})$$

Where:

CNDT Compensation – is the amount of CNDT Compensation for a Dwelling;

RPUC – is the Relevant Part of the Unitary Charge defined in Clause 27.7.13(b)

VCS – are the savings in Variable Costs calculated in accordance with Clause 27.13(c)(i)

SVCS – are the savings in Semi-Variable Costs calculated in accordance with Clauses 27.13(c)

- 27.7.14 The reduction of the Unitary Charge in accordance with Clause 27.7.13.1(c)(ii) and the payment of the aggregate CNDT Compensation for all relevant Dwellings calculated in accordance with Clause 27.7.13 shall commence from the Contract Month following each CNDT Adjustment Date, as calculated with reference to each such CNDT Adjustment Date.

- 27.7.15 In respect of any Dwelling to be subject to a CNDT Adjustment prior to reaching either the Availability Standard Rented (Full) or the Availability Standard Leasehold (Full) (in accordance with Part 1 of Schedule 6 (Payment Mechanism)), on the earlier to occur of:

- i. the Refurbishment Works Completion Date
- iii. the Termination Date

the Contractor shall pay to the Authority in respect of each Dwelling to be subject to a CNDT prior to reaching Availability Standard Rented (Full) or the Availability Standard Leasehold (Full) (as the case may be and in accordance with Part 1 of Schedule 6 (Payment Mechanism)) the amount set out in column 2 of Table C in Schedule 15 applicable to the relevant type of Dwelling shown in Column 1 of that Table, as indexed.

- 27.7.16 Any dispute relating to the amount of CNDT Compensation payable shall be resolved in accordance with Clause 60 (**Dispute Resolution**).

- 27.7.17 Prior to the first Market Testing Review Date, if 750 Dwellings are the subject of a Change of Tenure (as defined in Clause 27.7.18 below) the provisions of Clause 26 (**Market Testing and Benchmarking**) shall be triggered.
- 27.7.18 After the second anniversary of the first Market Testing Review Date but prior to the second Market Testing Review Date the provisions of Clause 26 (**Market Testing and Benchmarking**) shall be triggered if after such date 20% or more of the Dwellings remaining are the subject of a Change in Tenure (as defined below) provided that a Rented Dwelling which becomes a Leasehold Dwelling and then exits the Project shall only be counted once for the purposes of determining the number of Dwellings which are the subject of a Change in Tenure. For the purposes of this Clause 27.7.18 and Clause 27.7.17, Change in Tenure means a Rented Dwelling becoming a Leasehold Dwelling and/or a Dwelling exiting the Project.
- 27.7.19 Where the provisions of Clause 26 (**Benchmarking and Market Testing**) are triggered pursuant to Clause 27.7.17, no Benchmarking Exercise or Market Testing shall be undertaken on the first Market Testing Review Date.
- 27.7.20 Where the provisions of Clause 26 (**Benchmarking and Market Testing**) are triggered pursuant to Clause 27.7.18 within the 2 year period immediately prior to the second Market Testing Review Date, no Benchmarking Exercise or Market Testing shall be undertaken on the second Market Testing Review Date.

## 27.8 Tenants Improvements

- 27.8.1 The Authority and the Contractor shall make arrangements such that the Contractor shall receive all requests to exercise their Right to Carry Out Improvements direct from the Tenants.
- 27.8.2 The Contractor, acting on behalf of the Authority shall:-
- (a) refuse permission to exercise the Right to Carry Out Improvements; or
  - (b) give permission to exercise the Right to Carry Out Improvements subject to such conditions as the Contractor may reasonably require,
- within 10 Working Days of the Contractor's receipt of such a request as provided for in Clause 27.8.1, and all supporting information required to be provided by the Tenant such refusal or giving of permission under this Clause to be in accordance with any Legislation and such that the Authority would not be unreasonable in withholding its consent.
- 27.8.3 Where the Contractor is in breach of Clause 27.8.2 the Authority shall be entitled to serve a notice upon the Contractor demanding that it take such steps to rectify such breach.
- 27.8.4 If the Contractor fails to rectify the breach of Clause 27.8.2 within 10 Working Days of receipt of a notice from the Authority pursuant to Clause 27.8.3 then the Authority shall be entitled to take such steps as it reasonably considers necessary to determine its response to a request from a Tenant received in accordance with Clause 27.8.1.

27.9 **Right to Manage**

Where the Right to Manage is exercised the Authority shall elect as to which of Clause 52 (**Variations**) or Clause 27.7 (**Changes to Number of Dwellings by Tenure**) shall apply and shall notify the Contractor of that election.

27.10 **Unconverted Properties**

[NOT USED]

27.11 **Third Party Managed Properties**

[NOT USED]

27.12 **Miscellaneous Protocols**

The Authority and Contractor shall comply with their respective obligations under the Authority's Protocols.

27.13 **Housing Health and Safety Rating System**

27.13.1 The parties acknowledge that the Contractor has not priced for compliance with the Housing Health and Safety Rating System to the extent such requirements exceed the requirements set out in Schedule 2 (Output Specification) of this Contract;

27.13.2 To the extent that the requirements of the Housing Health and Safety Rating System overlap with the Availability Standards set out in Schedule 2 (Output Specification) of this Contract the Contractor shall comply with such requirements;

27.13.3 Notwithstanding anything to the contrary in this Contract, where the Contractor becomes aware that the requirements of the Housing Health and Safety Rating System go beyond the requirements of meeting the Availability Standards set out in Schedule 2 (Output Specification) ("**Additional HHSRS Requirements**") the parties agree that:

- (a) the Contractor shall give written notification setting out in detail the Additional HHSRS Requirements to the Authority's Representative;
- (b) following receipt and consideration of the notification given to the Authority pursuant to Clause 27.13.3(a) above, the Authority may request implementation of such Additional HHSRS Requirements by the Contractor pursuant to an Authority Notice of Change issued in accordance with Clause 52.1.2 (Authority Changes); and
- (c) the Authority shall from the date the Authority receives the written notification from the Contractor in accordance with this Clause 27.13.3 indemnify the Contractor against any claims arising as a result of a failure by the Contractor to comply with such Additional HHSRS Requirements until such time as an Authority Notice of Change is issued in respect of such Additional HHSRS Requirements.

27.14 **Part L of the Building Regulations (Windows and Heating Systems)**

**Part L - Windows**

27.14.1 The parties acknowledge and agree that the Contractor has not priced in full for compliance with the requirements of Part L of the Building Regulations in

respect of replacement or removal of windows. The Contractor shall carry out all works to such windows as necessary to comply with such requirements and the Authority shall pay to the Contractor in accordance with Clause 30:

- (a) £ (indexed by BMI) per window renewal or replacement in respect of windows in excess of the first 5,000 windows required as part of the Works during the Works Period up to a maximum of 1,700 windows; and
- (b) £ (indexed by BMI) per window renewal or replacement in respect of windows (in excess of the first 5,000 windows) required up to an aggregate maximum (including the 1,700 windows referred to in paragraph (a) above) of 3,200 windows.

For the avoidance of doubt, any windows required in excess of the aggregate of 3,200 windows (in excess of the first 5,000 windows) referred to in this Clause 27.14.1 shall be a Contractor responsibility and at the Contractor's cost.

## **Part L – Heating Systems**

27.14.2 The parties agree that any Change in Law occurring at any time during the Works Period and/or the Services Period in respect of Part L of the Building Regulation applying to the Heating Systems or part thereof shall be a Qualifying Change in Law (as a General Change in Law within limb (d) of that definition) and Clause 50 (**Change in Law**) shall apply.

## **27.15 Enfranchisement**

27.15.1 Each of the Authority and the Contractor shall comply with their respective obligations as set out in the Home Ownership Protocol.

27.15.2 In the event Tenants of one or more Dwellings successfully exercise their enfranchisement rights in the circumstances set out in the Home Ownership Protocol or where leaseholders exercise their right to collective enfranchisement under the Leasehold Reform Housing and Urban Development Act 1993, the Authority shall issue a CNDT Notice to the Contractor specifying the CNDT Date for the Property within which the relevant Dwellings are situated and shall withdraw such Property from the Project in accordance with the procedure set out in Clause 27.7 (**Changes in Number of Dwellings by Tenure**).

## **28. TRANSFER OF EMPLOYEES**

### **28.1 Relevant Transfers**

The Authority and the Contractor agree that the following events:

28.1.1 the Service Transfer Date; and

28.1.2 where the identity of a provider (including the Authority) of any service which constitutes or which will constitute one of the Services is changed whether in anticipation of changes pursuant to this Contract or not,

shall constitute a Relevant Transfer and that the contracts of employment of any Relevant Employees shall have effect (subject to Regulation 4(7) of TUPE) thereafter as if originally made between those employees and the new provider except insofar as

such contracts relate to an occupational pension scheme. On the occasion of a Relevant Transfer (save on expiry or termination of this Contract) the Contractor shall procure that the former and the new Sub-Contractor shall both comply with their obligations under TUPE.

The Authority shall comply with its obligations under TUPE in respect of each Relevant Transfer pursuant to this Contract and the Contractor shall comply and shall procure that each Sub-Contractor shall comply with its obligations (including without limitation the obligation under Regulation 13(4) of TUPE) in respect of each Relevant Transfer pursuant to this Contract and each of the Authority and the Contractor shall indemnify the other against any Direct Losses sustained as a result of any breach of this Clause 28.1 (**Relevant Transfers**) by the party in default. The provisions of these Clauses 28.1 (**Relevant Transfers**) and 28.2 (**Offer of Employment**) shall not apply to the Market Testing Procedure which shall be governed by the provisions of Clause 26 (**Market Testing and Benchmarking**).

## 28.2 Offer of Employment

28.2.1 If TUPE does not apply to any person who is a HFI Existing Employee, the Contractor shall offer to or shall procure the offer by the relevant Sub-Contractor to each and every such employee a new contract of employment commencing on the Service Transfer Date under which the terms and conditions including full continuity of employment shall not differ from those enjoyed immediately prior to the Service Transfer Date (except insofar as such terms and conditions relate to an occupational pension scheme) and the offer shall be in writing, shall be open to acceptance for a period of not less than ten (10) Working Days and shall be made:

- (a) if it is believed that TUPE will not apply to a person, not less than ten (10) Working Days before the Service Transfer Date; or
- (b) if it is believed that TUPE applies to a person but it is subsequently decided that TUPE does not so apply, as soon as is practicable and in any event no later than ten (10) Working Days after that decision is known to the Contractor.

28.2.2 Where any such offer as referred to in Clause 28.2.1 is accepted, the Authority shall indemnify and keep indemnified in full the Contractor on the same terms and conditions as those set out in Clauses 28.12.1, 28.12.2 and 28.12.3 of this Contract as if there had been a Relevant Transfer in respect of each and every HFI Existing Employee who has accepted any such offer and the provisions of Clauses 28.4 to 28.9 shall apply in the event of any resulting increase or decrease in the Remuneration Costs and Reorganisation Costs.

28.2.3 Where any such offer as referred to in Clause 28.2.1 is accepted, the Contractor shall act and shall procure that each relevant Sub-Contractor shall act in all respects as if TUPE had applied to each and every HFI Existing Employee who has accepted any such offer and shall comply with Clause 28A (**Pensions**) of this Contract in respect of each and every such employee who was immediately before the Service Transfer Date a Authority Existing Employee.

28.2.4 For the avoidance of doubt, where any such offer as referred to in Clause 28.2.1 is not accepted and TUPE does not apply, the HFI Existing Employee shall remain an employee of the HFI.

## 28.3 Emoluments and Outgoings

- 28.3.1 The Authority shall be responsible for or shall procure that any other employer of a Relevant Employee is responsible for all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees, including without limitation all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise, up to the Service Transfer Date.
- 28.3.2 The Contractor shall be responsible or shall procure that any relevant Sub-Contractor is responsible for all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees and any other person who is or will be employed or engaged by the Contractor or any Sub-Contractor in connection with the provision of any of the Services, including without limitation all wages, holiday pay, bonuses, commission, payment of PAYE, national insurance contributions, pension contributions and otherwise, from and including the Service Transfer Date.

## 28.4 Employment Costs

- 28.4.1 The Authority has supplied to the Contractor the information, as at the date of this Agreement, which is contained in Part 2 of Schedule 11 (**Authority Warranted Data**) (the **First Employee List**) regarding the identity, number, age, sex, length of service, job title, grade and terms and conditions of employment of and other matters affecting each of those employees of HFI and of any sub-contractor of HFI who it is expected, if they remain in the employment of HFI or of the sub-contractor of the Authority as the case may be until immediately before the Service Transfer Date, would be Relevant Employees but the Authority gives no warranty as to the accuracy or completeness of this information.
- 28.4.2 The Authority shall supply to the Contractor an update of the First Employee List at three monthly intervals from the date of this Contract and an updated list ten (10) Working Days before the Service Transfer Date. The Authority shall also supply to the Contractor within five (5) Working Days after the Service Transfer Date information, which was correct as at the Service Transfer Date, in respect of the Relevant Employees on all the same matters as should be provided in the First Employee List. This list is the "Final Employee List". The Authority gives and shall give no warranty as to the accuracy or completeness of any information contained in any update of the First Employee List or in the Final Employee List.
- 28.4.3 The parties acknowledge that:
- (a) monthly costs of employing the Relevant Employees who are expected to be engaged in the provision of the Services (the "**Remuneration Costs**") have been calculated on the basis of (amongst other things) the information contained in the First Employee List; and
  - (b) the costs, including any lump sum payments, which have been agreed between the parties for the purposes of any reorganisation which may be required to establish the proposed workforce (including costs associated with dismissal by reason of redundancy) (the "**Reorganisation Costs**") have been calculated by the Contractor and the Sub-Contractors on the basis of (amongst other things) the information contained in the First Employee List.

- 28.5 If at any time (including, for the avoidance of doubt, after the submission of the Final Employee List) the Remuneration Costs and/or the Reorganisation Costs require to be adjusted on account of any differences between the information contained in the First Employee List and that contained in the Final Employee List, or on account of any inaccuracies in or omissions from the information contained in the First Employee List or the Final Employee List then (subject to Clauses 28.6, 28.7 and 28.8) there shall be a corresponding adjustment to the Unitary Charge to compensate for any such difference.
- 28.6 If the circumstances described in Clause 28.4.3 arise:
- 28.6.1 in circumstances where there are more Relevant Employees than shown on the Final Employee List then the parties shall discuss the implications for the provision of Services; and
- 28.6.2 the Contractor and the relevant Sub-Contractor shall take all reasonable steps to mitigate any additional costs and any adjustment to the Unitary Charge shall be calculated as if they had done so.
- 28.7 In calculating any adjustment to be made to the Unitary Charge pursuant to Clause 28.4.3:
- 28.7.1 no account shall be taken of a decrease in the Remuneration Costs or Reorganisation Costs to the extent that it arises from a reduction in the number of Relevant Employees or their whole time equivalent such that there are, immediately after the Service Transfer Date, fewer suitably qualified persons available than are required in order to establish the proposed workforce;
- 28.7.2 to avoid double counting, no account shall be taken of any change to the Remuneration Costs or the Reorganisation Costs to the extent that the Contractor has been or will be compensated as a result of any indexation of the Unitary Charge under this Contract;
- 28.7.3 to avoid doubt any changes in costs which fall to be dealt with under Clause 28.5 and which arise from a Change in Law shall be dealt with in accordance with the provisions of Clause 28.5 and shall not be taken into account for the purposes of Clause 50 (**Change in Law**);
- 28.7.4 no adjustments under Clause 28.4.3 shall be made in respect of overpayments made by the Contractor or a Sub-Contractor to Relevant Employees which arise from reliance on the Final Employee List to the extent that the Contractor or the Sub-Contractor is unable to correct overpayments in respect of continuing employment having taken reasonable steps to do so;
- 28.7.5 if there are underpayments by the Contractor or a Sub-Contractor to Relevant Employees, whether claimed or established as unlawful deductions from wages or as a breach of contract, which arise from reliance on the Final Employee List, there shall be an immediate increase to the Unitary Charge in respect of all such liabilities of the Contractor or the Sub-Contractor for all such underpayments which are retrospective (save that any such liabilities which relate to the period prior to the Service Transfer Date shall be dealt with in accordance with Clauses 28.3.1 or 28.12.1 to 28.12.2) and an appropriate increase in respect of such liabilities of the Contractor which represent ongoing costs; and
- 28.7.6 in order to prevent duplication, no adjustment shall be made under this Clause 28.7 if any indemnity given by the Authority under any other provision of this Contract would apply.

- 28.8 Either party may propose an adjustment to Unitary Charge pursuant to Clause 28.5 by giving not less than ten (10) Working Days notice to the other. Each party will provide or procure the provision to the other, on an open book basis, access to any information or data which the other party reasonably requires for the purpose of calculating or confirming the calculation of any adjustment pursuant to Clause 28.5.
- 28.9 In relation to all matters described in Clauses 28.6 and 28.7 the Contractor and the Authority shall, and the Contractor shall procure that the relevant Sub-Contractor shall, co-operate with the other or others and take all reasonable steps to mitigate any costs and expenses and any adverse effect on industrial or employee relations.
- 28.10 The Authority shall and the Contractor shall and shall procure that each and every Sub-Contractor shall take all reasonable steps, including co-operation with reasonable requests for information, to ensure that each and every Relevant Transfer pursuant to this Contract takes place smoothly with the least possible disruption to the services of the Authority including the Services and to the employees who transfer.
- 28.10A In addition to the other information set out in this Contract to be provided by the Authority and/or HFI to the Contractor, the Authority undertakes to comply with its obligations under Regulation 11 of TUPE (Employee Liability Information) and shall procure that HFI complies with its obligations under the same.

28.11 **Union Recognition**

- 28.11.1 The Authority shall procure that HFI shall supply to the Contractor no later than five (5) Working Days prior to the Service Transfer Date true copies of its union recognition agreement(s) and the Contractor shall and shall procure that each and every Sub-Contractor shall in accordance with TUPE recognise the trade unions representing Relevant Employees (as relevant to each Sub-Contractor) after the transfer to the same extent as they were recognised by the Authority or HFI or the relevant sub contractor before the Service Transfer Date.
- 28.11.2 The Contractor shall procure that, on each occasion on which the identity of a Sub-Contractor changes pursuant to this Contract, in the event that there is a Relevant Transfer, the new Sub-Contractor shall in accordance with TUPE recognise the trade unions representing the employees whose contracts of employment transfer to the new Sub-Contractor to the same extent as they were recognised before the change of identity of the Sub-Contractor in respect of the provision of the Services at the Authority's premises. The provisions of this Clause 28.11 do not apply to the Market Testing procedure which shall be governed by the provisions of Clause 26 (***Market Testing and Benchmarking***).

28.12 **Indemnities**

- 28.12.1 The Authority shall indemnify and keep indemnified in full the Contractor (for itself and for the benefit of each relevant Sub-Contractor) against all Direct Losses incurred by the Contractor or any relevant Sub-Contractor in connection with or as a result of:
- (a) a breach by the Authority of its obligations under Clause 28.3.1 above;
  - (b) any claim or demand by any Transferring Employee arising out of the employment of any Transferring Employee provided that this arises from any act, fault or omission of HFI in relation to any Transferring Employee prior to the date of the Relevant Transfer.

- 28.12.2 Where any liability in relation to any Transferring Employee, in respect of his or her employment by HFI or its termination which transfers in whole or part in accordance with TUPE and/or the Directive arises partly as a result of any act or omission occurring on or before the Service Transfer Date and partly as a result of any act or omission occurring after the Service Transfer Date, the Authority shall indemnify and keep indemnified in full the Contractor or the relevant Sub-Contractor against only such part of the Direct Losses sustained by the Contractor or any Sub-Contractor in consequence of the liability as is reasonably attributable to the act or omission occurring before the Service Transfer Date.
- 28.12.3 The indemnities contained in Clauses 28.12.1 and 28.12.2 shall apply as if references in those Clauses to any Transferring Employee also included a reference to any employee of the Authority, any sub-contractor of the Authority and any sub-contractor of HFI who is a Relevant Employee and references to any act, fault or omission of the Authority also included a reference to Authority or HFI sub-contractor employer of the Relevant Employee prior to the Service Transfer Date.
- 28.12.4 The Contractor shall indemnify and keep indemnified in full the Authority, and at the Authority's request HFI and any sub-contractor engaged by or on behalf of HFI or the Authority and each and every service provider who shall provide any service equivalent to any of the Services after expiry or earlier termination of this Contract ("**Future Service Provider**") against:
- (a) all Direct Losses incurred by the Authority HFI and any sub-contractor engaged by or on behalf of HFI or the Authority and/or any Future Service Provider in connection with or as a result of any claim or demand against the Authority or HFI or any Future Service Provider by any person who is or has been employed or engaged by the Contractor or any Sub-Contractor in connection with the provision of any of the Services where such claim arises as a result of any act, fault or omission of the Contractor and/or any Sub-Contractor after the Service Transfer Date;
  - (b) all Direct Losses incurred by the Authority HFI and any sub-contractor engaged by or on behalf of HFI or the Authority and/or any Future Service Provider in connection with or as a result of a breach by the Contractor of its obligations under Clause 28.3.2 above; and
  - (c) all Direct Losses incurred by the Authority HFI and any sub-contractor engaged by or on behalf of HFI or the Authority and/or any Future Service Provider in connection with or as a result of any claim by any trade union or staff association or employee representative (whether or not recognised by the Contractor and/or the relevant Sub-Contractor in respect of all or any of the Relevant Employees) arising from or connected with any failure by the Contractor and/or any Sub-Contractor to comply with any legal obligation to such trade union, staff association or other employee representative whether under Regulation 13 of TUPE, under the Directive or otherwise and, whether any such claim arises or has its origin before or after the date of the Service Transfer Date.
- 28.12.5 The Contractor shall indemnify and keep indemnified in full the Authority, against all Direct Losses incurred by the Authority HFI and any sub-contractor engaged by or on behalf of HFI or the Authority and in connection with or as a result of:

- (a) any claim by any Relevant Employee that the identity of the Contractor or the relevant Sub-Contractor is to that Relevant Employee's detriment or that any proposed or actual substantial change by the Contractor or any Sub-Contractor to the Relevant Employees' working conditions or any proposed measures of the Contractor or the relevant Sub-Contractor are to that employee's detriment whether such claim arises before or after the Service Transfer Date; and
- (b) any claim arising out of any misrepresentation or mis-statement whether negligent or otherwise made by the Contractor or Sub-Contractor to the Relevant Employees or their representatives whether before on or after the Service Transfer Date and whether liability for any such claim arises before on or after the Service Transfer Date.

28.12.6 For the avoidance of doubt, the indemnities in Clauses 28.12.4 and 28.12.5 shall not apply in respect of any sum for which the Authority is to indemnify the Contractor or a relevant Sub-Contractor pursuant to Clause 28.12.1 or as a result of any adjustment to the Unitary Charge in accordance with Clause 28.4.3 or to the extent that the claim arises from a wrongful act or omission of the Authority.

28.12.7 Clause 56.7 (**Conduct of Claims**) of this Contract shall apply where any claim is made in respect of the indemnities given under Clause 28.12.

#### 28.13 **Provision of Details and Indemnity**

The Contractor shall immediately upon request by the Authority provide to the Authority details of any measures which the Contractor or any Sub-Contractor envisages it or they will take in relation to any employees who are or who will be the subject of a Relevant Transfer, and if there are no measures, confirmation of that fact, and shall indemnify the Authority or HFI or any sub-contractor engaged by or on behalf of HFI or the Authority and against all Direct Losses resulting from any failure by the Contractor to comply with this obligation.

#### 28.14 **Compliance with Code Obligations**

28.14.1 The Authority and HFI and the Contractor shall have regard to the Code in interpreting and applying the Code Obligations.

28.14.2 Subject to Cause 28.14.4, the Contractor shall procure that any New Employees shall be employed on terms and conditions of employment which are, overall fair and reasonable and no less favourable than those of the Transferring Employees engaged in the provision of the Services who are working alongside and holding the same or a similar position to that of the New Employees.

28.14.3 The Contractor shall procure that any relevant Sub-Contractor shall consult with the recognised trade unions and where there is no recognised trade union any other employee representative body on the terms to be offered to the New Employees pursuant to Clause 28.14.2.

28.14.4 In addition to its obligations under Clause 28.14.2 above, the Contractor shall procure that the New Employees are offered either:

- (a) membership of the LGPS where the employer has Admitted Body status within the LGPS and makes the requisite contribution; or

- (b) membership of a good quality employer pension scheme, being either
    - (i) a contracted-out final salary based defined benefit scheme, or
    - (ii) a defined contribution scheme under which the employer must match employee contributions up to six percent (6%); or
  - (c) a stakeholder pension scheme, under which the employer matches employee contributions up to at least six percent (6%).
- 28.14.5 During the term of this Contract, the Contractor shall on request by the Authority provide or procure that the Authority is provided with such accurate and complete information as reasonably requested by the Authority as soon as reasonably practicable, including the terms and conditions of employment of the Transferring Employees and the New Employees, where this is required to monitor the Contractor's compliance with its Code Obligations.
- 28.14.6 The Contractor shall and shall procure that any relevant Sub-Contractor shall support any central Government sponsored review and monitoring programme on the impact of the Code and on request by the Authority provide the Authority with such accurate and complete information as reasonably requested by the Authority as soon as reasonably practicable in order to assist the Authority in doing this.
- 28.14.7 The Authority and the Contractor shall in the first instance seek to resolve by discussions between them any complaints from any employee or any recognised trade union in relation to compliance by the Contractor and any Sub-Contractor of its Code Obligations.
- 28.14.8 Where it appears to the Authority or the Contractor that it is not possible to resolve the matter by continuing discussions between them pursuant to Clause 28.14.7 or where an employee of the Contractor or any recognised trade union writes to the Authority to confirm that it has been unable to resolve its complaint directly with the Contractor or any Sub-Contractor in relation to the Contractor's Code Obligations:
- (a) the Authority shall first write to the Contractor to seek an explanation for the alleged failure by the Contractor to comply with its Code Obligations. The Contractor shall or shall procure that the relevant Sub-Contractor provide such an explanation in writing within five (5) Working Days of receipt of the request from the Authority;
  - (b) if the response provided by the Contractor or any Sub-Contractor satisfies the Authority that the Code Obligations have been met, then the Authority will inform the complainant of this and the matter will be deemed to have been concluded;
  - (c) in the event that the Authority is not satisfied with the response provided by the Contractor or any Sub-Contractor the Authority shall write to the Contractor within five (5) Working Days to require the Contractor to take immediate action to resolve this dispute; and
  - (d) if, following such a request by the Authority the Contractor still appears to the Authority not to be complying with its Code Obligations, the matter shall be dealt with in accordance with the Code Dispute Resolution Procedure in Schedule 26.

## 28.15 Retendering

28.15.1 The Contractor shall (and shall procure that any Sub-Contractor shall) within the period of twelve (12) months immediately preceding the expiry of this Contract or following the service of a notice under Clause 34 (**Termination of this Contract**) or as a consequence of the Authority notifying the Contractor of its intention to retender this Contract and subject always to compliance with the provisions of the DPA such that the Contractor agrees that it shall and shall procure that any Sub-Contractor shall use its/their reasonable endeavours to ensure compliance with such legislation so that the Contractor and/or Sub-Contractor is in a position, as far as possible, to comply with this Clause:

- (a) on receiving a request from the Authority provide in respect of any person engaged or employed by the Contractor or any Sub-Contractor in the provision of the Services (**"the Assigned Employees"**) full and accurate details regarding the identity, number, age, sex, length of service, job title, grade and terms and conditions of employment of and other matters affecting each of those Assigned Employees who it is expected, if they remain in the employment of the Contractor or of any Sub-Contractor as the case may be until immediately before the Termination Date, would be Returning Employees (the **"Retendering Information"**);
- (b) provide the Retendering Information promptly and at no cost to the Authority;
- (c) notify the Authority forthwith in writing of any material changes to the Retendering Information promptly as and when such changes arise;
- (d) be precluded from making any material increase or decrease in the numbers of Assigned Employees;
- (e) be precluded from making any increase in the remuneration or other change in the terms and conditions of the Assigned Employees other than in the ordinary course of business and with the Authority's prior written consent; and
- (f) be precluded from transferring any of the Assigned Employees to another part of its business or moving other employees from elsewhere in its or their business who have not previously been employed or engaged in providing the Services to provide the Services save with the Authority's prior written consent.

28.15.2 The Contractor shall and shall keep indemnified in full the Authority and at the Authority's request any Future Service Provider against all Direct Losses arising from any claim by any party as a result of the Contractor or Sub-Contractor failing to provide or promptly to provide the Authority with any Retendering Information or to provide full Retendering Information or as a result of any material inaccuracy in or omission from the Retendering Information.

28.15.3 This Clause 28.15 (**Retendering**) does not apply to the market testing of any Services (which shall be governed by the provisions of Clause 26 (**Market Testing and Benchmarking**)).

28.15.4 Without prejudice to any other provision in this Contract the Contractor shall and shall procure that its Sub-Contractors shall comply with Regulation 11 of TUPE (Employee Liability Information) in respect of the Assigned Employees

and any other employees as contemplated by Regulation 11(4) of TUPE and that it shall keep the Authority and at the Authority's request any Future Service Provider indemnified in full against all Direct Losses arising from the Contractor's and any Sub-Contractor's failure to comply in full with Regulation 11 of TUPE.

## 28.16 Termination of Contract

28.16.1 On the expiry or earlier termination of this Contract, the Authority and the Contractor agree that it is their intention that TUPE shall apply in respect of the provision thereafter of any service equivalent to a Service but the position shall be determined in accordance with the Law at the date of expiry or termination as the case may be and this Clause is without prejudice to such determination.

28.16.2 For the purposes of this Clause 28.16 **"Returning Employees"** shall mean those employees wholly or mainly engaged in the provision of the Services as the case may be as immediately before the expiry or termination of this Contract whose employment transfers to the Authority or a Future Service Provider pursuant to TUPE. Upon expiry or termination of this Contract for whatever reason (such date being termed the **"Return Date"**), the provisions of this Clause 28.16 will apply:

- (a) The Contractor shall or shall procure that all wages, salaries and other benefits of the Returning Employees and other employees or former employees of the Contractor or the Sub-Contractors (who had been engaged in the provision of the Services) and all PAYE tax deductions and national insurance contributions relating thereto in respect of the employment of the Returning Employees and such other employees or former employees of the Contractor or Sub-Contractors up to the Return Date are satisfied;
- (b) Without prejudice to Clause 28.16.2(a), the Contractor shall:
  - (i) remain (and procure that Sub-Contractors shall remain) (as relevant) responsible for all the Contractor's or Sub-Contractor's employees (other than the Returning Employees) on or after the time of expiry or termination of this Agreement and shall indemnify the Authority and any Future Service Provider against all Direct Losses incurred by the Authority or any Future Service Provider resulting from any claim whatsoever whether arising before on or after the Return Date by or on behalf of any of the Contractor's or Sub-Contractor's employees who do not constitute the Returning Employees;
  - (ii) in respect of those employees who constitute Returning Employees the Contractor shall indemnify the Authority and any Future Service Provider against all Direct Losses incurred by the Authority or any Future Service Provider resulting from any claim whatsoever by or on behalf of any of the Returning Employees in respect of the period on or before the Return Date (whether any such claim, attributable to the period up to and on the Return Date, arises before, on or after the Return Date) including but not limited to any failure by the Contractor or any Sub-Contractor to comply with its or their obligations under Regulation 13 of TUPE and/or Article 6 of the Directive as if such legislation applied, even if it does not in fact apply save to the extent that any such failure to comply

arises as a result of an act or omission of the Authority or any Future Service Provider.

28.16.3 The Authority shall be entitled to assign the benefit of this indemnity to any Future Service Provider.

28.16.4 The Authority shall and shall procure that any Future Service Provider shall indemnify the Contractor (for itself and any Sub-Contractors) against all Direct Losses incurred by the Contractor or any Sub-Contractors in connection with or as a result of any claims (which were not brought frivolously or vexatiously) by any Returning Employee alleging that the identity of the Authority or the Future Service Provider is to that Returning Employee's detriment or that any proposed or actual substantial change by the Authority or Future Service Provider to the Returning Employee's working conditions or any proposed measures of the Authority or relevant Future Service Provider are to that Returning Employee's detriment, whether such claim arises before or after the Return Date.

## **28.17 Offer of Employment on Expiry or Termination**

28.17.1 If TUPE does not apply on the expiry or earlier termination of this Contract, the Authority shall ensure that each Future Service Provider (including the Authority) shall offer employment to the persons employed by the Contractor or a Sub-Contractor in the provision of the Services immediately before the Return Date.

28.17.2 If an offer of employment is made in accordance with Clause 28.17.1, the employment shall be on the same terms and conditions (except for entitlement to membership of an occupational pension scheme, which shall be dealt with in accordance with Clause 28A as applied immediately before the expiry or earlier termination of this Agreement including full continuity of employment, except that the Authority or Future Service Provider may at its absolute discretion not offer such terms and conditions if there has been any change to the terms and conditions of the persons concerned in breach of Clause 28.15.

28.17.3 Where any such offer as referred to in Clause 28.17.1 is accepted, the Contractor shall indemnify and keep indemnified in full the Authority and/or any Future Service Provider on the same terms and conditions as those set out in Clause 28.11 of this Contract as if there had been a Relevant Transfer in respect of each and every employee who has accepted any such offer and for the purposes of this Clause 28 each and every such employee shall be treated as if they were a Returning Employee.

28.17.4 For the avoidance of doubt, where any such offer as referred to in Clause 28.17.1 is not accepted and TUPE does not apply, the employee shall remain an employee of the Contractor or Sub-Contractor as appropriate.

## **28.18 Sub-Contractors**

In the event that the Contractor enters into any Sub-Contract in connection with this Agreement, it shall impose obligations on its Sub-Contractors in the same terms as those imposed on it pursuant to Clauses 28, 28A and 29 and shall procure that the Sub-Contractor complies with such terms. The Contractor shall indemnify and keep the Authority indemnified in full against all Direct Losses, incurred by the Authority or any Future Service Provider as a result of or in connection with any failure on the part of the Contractor to comply with this Clause and/or the Sub-Contractor's failure to comply with such terms.

28A. **PENSIONS**

28A.1 **Contractor to Become an Admission Body**

Where the Contractor or a Sub-Contractor employs any Eligible Employees from a Relevant Transfer Date and wishes to offer those Eligible Employees membership of the LGPS, the Contractor shall procure that it and/or each relevant Sub-Contractor shall become an admitted body ("Admitted Body") (for the purposes of the Local Government Pension Scheme Regulations 1997 (as amended), and with effect from and including the Relevant Transfer Date, the Contractor shall execute and procure that each relevant Sub-Contractor executes a Partner Admission Agreement.

28A.2 **Partner Admission Agreement**

The Authority shall before the Relevant Transfer Date execute each of the Partner Admission Agreements referred to in Clause 28A.1 (***Contractor to Become an Admitted Body***)

28A.3 **Indemnity for a Breach of the Partner Admission Agreement**

Without prejudice to the generality of this Clause 28A, the Contractor hereby indemnifies the Authority and/or any Future Service Provider and, in each case, their sub-contractors from and against all Direct Losses suffered or incurred by it or them which arise from any breach by the Contractor or any Sub-Contractor of the terms of the Partner Admission Agreement to the extent that such liability arises before or as a result of the termination or expiry of this Agreement (howsoever caused).

28A.4 **Indemnity or Bond**

Without prejudice to the generality of the requirements of this Clause 28A, the Contractor shall procure that it and each relevant Sub-Contractor shall as soon as reasonably practicable obtain any indemnity or bond required in accordance with the Partner Admission Agreements.

28A.5 **Right of Set Off**

The Authority shall have a right to set off against any payments due to the Contractor under this Contract an amount equal to any overdue employer and employee contributions and other payments (and interest payable under the Regulations) due from the Contractor or from any relevant Sub-Contractor (as applicable) under the Partner Admission Agreement.

28A.6 **Contractor Ceases to be an Admitted Body**

If the Contractor or any Sub-Contractor employs any Eligible Employees from a Relevant Transfer Date and:

28A.6.1 the Contractor or any relevant Sub-Contractor does not wish to offer those Eligible Employees membership of the LGPS; or

28A.6.2 the Authority, the Contractor or any relevant Sub-Contractor are of the opinion that it is not possible to operate the provisions of Clauses 28A.1 (***Contractor to Become an Admitted Body***) to 28A.5 (***Right of Set Off***) inclusive; or

28A.6.3 if for any reason after the Relevant Transfer Date the Contractor or any relevant Sub-Contractor ceases to be an Admitted Body other than on the date of termination or expiry of this Contract or because it ceases to employ any Eligible Employees,

then the provisions of Clauses 28A.1 (**Contractor to Become an Admitted Body**) to 28A.5 (**Right of Set Off**) inclusive shall not apply (without prejudice to any rights of the Authority under Clauses 28A.3 and 28A.5) and the provisions of Clause 28A.7 (**Contractor Scheme**) shall apply.

## 28A.7 Contractor Scheme

28A.7.1 The Contractor shall or shall procure that any relevant Sub-Contractor shall not later than the Relevant Transfer Date or the Cessation Date (as the case may be) nominate to the Authority in writing the occupational pension scheme or schemes which it proposes shall be “the Contractor Scheme” for the purposes of this Clause 28A.7. Such pension scheme or schemes must be:

- (a) established within three (3) months of the Relevant Transfer Date or Cessation Date (as the case may be) and maintained until any payment to be made under Schedule 28 (**Bulk Transfer Terms**) is made;
- (b) reasonably acceptable to the Authority (such acceptance not to be unreasonably withheld or delayed);
- (c) registered within the meaning of the Finance Act 2004; and
- (d) certified by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the LGPS;

28A.7.2 The Contractor undertakes to the Authority (for the benefit of the Authority itself and for the Authority as agent and trustee for the benefit of the Eligible Employees) that:

- (e) it shall and shall procure that any relevant Sub-Contractor shall procure that:
  - (i) the Eligible Employees shall by two (2) months before the Relevant Transfer Date or as soon as practicable after the date of this Contract or the Cessation Date (as the case may be) be offered membership of the Contractor Scheme with effect from and including the Relevant Transfer Date or Cessation Date (as the case may be);
  - (ii) the Contractor Scheme shall, subject to Clause 28A.8.4, provide benefits in respect of the Eligible Employees' periods of service on and after the Relevant Transfer Date or Cessation Date (as the case may be) which the Government Actuary's Department shall certify to be broadly comparable to the benefits which the Eligible Employees were entitled to under the LGPS immediately prior to the Relevant Transfer Date;
  - (iii) if the Contractor Scheme is terminated, a replacement pension scheme shall be provided with immediate effect for those Eligible Employees who are still employed by the Contractor or relevant Sub-Contractor. The replacement scheme must comply with this Clause 28A.7 (Contractor Scheme) as if it were the Contractor Scheme; and
- (f) it shall and shall procure that any relevant Sub-Contractor shall before the Relevant Transfer Date or Cessation Date (as the case may be) use reasonable endeavours to procure that the trustees of the Contractor Scheme shall undertake by deed to the Authority and to the Administering Authority that they shall comply with the provisions of Clauses 28A.7.1 to

28A.7.2.3 (Contractor Scheme), 28A.8.1, 28A.8.3 and 28A.8.4 (Undertaking from the Contractor) and Schedule 28 (Bulk Transfer Terms).

28A.7.3 Schedule 28 (**Bulk Transfer Terms**) shall apply in relation to the terms for bulk transfers from the LGPS to the Contractor's Scheme following the Relevant Transfer Date and any subsequent bulk transfers on termination or expiry of this Contract.

#### 28A.8 Undertaking from the Contractor

The Contractor undertakes to the Authority (for the benefit of the Authority itself and for the Authority as agent and trustee for the benefit of the Eligible Employees) that:

28A.8.1 all information which the Authority or the Administering Authority or their respective professional advisers may reasonably request from the Contractor or any relevant Sub-Contractor for the administration of the LGPS or concerning any other matters raised in Clauses 28A.7 (**Contractor Scheme**), 28A.8 (**Undertaking from the Contractor**) or Schedule 28 (**Bulk Transfer Terms**) shall be supplied to them as expeditiously as possible;

28A.8.2 where the Contractor or any relevant Sub-Contractor offers the Eligible Employees membership of the LGPS and maintains such membership it shall not and shall procure that any relevant Sub-Contractor shall not, without the consent in writing of the Authority (which shall only be given subject to the payment by the Contractor or the relevant Sub-Contractor of such reasonable costs as the Authority or the Administering Authority may require) consent to instigate, encourage or assist any event which could impose on the LGPS or on the Authority a cost in respect of any Eligible Employee greater than the cost which would have been payable in respect of that Eligible Employee had that consent, instigation, encouragement or assistance not been given and such consent shall not be unreasonably withheld or delayed where the Contractor or any relevant Sub-Contractor meets any such additional costs;

28A.8.3 until the Relevant Transfer Date, it shall not and shall procure that any relevant Sub-Contractor shall not issue any announcements (whether in writing or not) to the Eligible Employees concerning the matters stated in Clauses 28A.1 (**Contractor to Become an Admitted Body**) to 28A.6 (**Contractor ceases to be an Admitted Body**) inclusive without the consent in writing of the Authority and, where membership to the LGPS is offered and maintained, the Administering Authority (such consents not to be unreasonably withheld or delayed);

28A.8.4 it shall not and shall procure that any relevant Sub-Contractor shall not take or omit to take any action which would materially adversely affect the benefits under the LGPS or under the Contractor Scheme of any Eligible Employees who are or will be employed wholly or partially in connection with the Services without the prior written agreement of the Authority (not to be unreasonably withheld or delayed and it is agreed that it would not be reasonable to withhold or delay agreement in circumstances where the level of benefits under the LGPS have reduced since the Relevant Transfer Date by reason of amendments to the rules of the LGPS from time to time) provided that the Contractor and/or such Sub-Contractor will be so entitled without the requirement of consent to give effect to any pre-existing contractual obligations to any Eligible Employees; and

28A.8.5 it shall and shall procure that any relevant Sub-Contractor shall offer any of its Eligible Employees who cease to be eligible for membership of the LGPS membership of the Contractor Scheme as soon as reasonably practicable after ceasing to be eligible for membership of the LGPS.

28A.9 [Not Used]

#### 28A.10 **Claims from Eligible Employees or Trade Unions**

28A.10.1 The Contractor hereby indemnifies the Authority and/or any Future Service Provider and, in each case, their sub-contractors from and against all Direct Losses suffered or incurred by it or them which arise from claims by Eligible Employees of the Contractor and/or of any relevant Sub-Contractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Eligible Employees which losses:

- (g) relate to pension rights in respect of periods of employment on and after the Relevant Transfer Date until the date of termination or expiry of this Contract; or
- (h) arise out of the failure of the Contractor and/or any relevant Sub-Contractor to comply with the provisions of this Clause 28A before the date of termination or expiry of this Contract.

28A.10.2 The Authority hereby indemnifies the Contractor and any relevant Sub-Contractor from and against all Direct Losses suffered or incurred by it or them which arise from claims by any Eligible Employee or by any trade unions, elected employee representatives or staff associations in respect of all or any such Eligible Employees which losses:

- (i) relate to pension rights in respect of periods of employment up to but not including the Relevant Transfer Date; or
- (j) arise out of the failure of the Authority to comply with the provisions of this clause 28A.

28A.10.3 The Authority shall and shall procure that any Future Service Provider shall indemnify and keep the Contractor and any relevant Sub-Contractor indemnified from and against all Direct Losses suffered or incurred by it or them which arise from claims by any Eligible Employee employed by the Authority or Future Service Provider or any of their sub-contractors or by any trade unions, elected employee representatives or staff associations in respect of all or any such Eligible Employers which losses:

- (k) relate to pension rights in respect of periods of employment on and after the date of termination or expiry of this Contract; or
- (l) arise out of the failure of the Authority and/or any Future Service Provider and/or any of their sub-contractors to comply with the provisions of this Clause 28A on or after the date of termination or expiry of this Contract.

#### 28A.11 **Liability for Costs**

The costs of the Authority necessarily and reasonably incurred in connection with the Partner Admission Agreement and/or obtaining the necessary certification of comparability in accordance with Clause 28A.1 (**Contractor Scheme**) shall be borne by the Contractor.

#### 28A.12 **Transfer to another Employer**

Save on expiry or termination of this Contract, if the employment of any Eligible Employee transfers to another employer (by way of a transfer under TUPE) the Contractor shall and shall procure that any relevant Sub-Contractor shall:

28A.12.1 consult with and inform those Eligible Employees of the pension provisions relating to that transfer; and

28A.12.2 procure that the employer to which the Eligible Employees are transferred (the "**New Employer**") complies with the provisions of this Clause 28A provided that references

to the “**Sub-Contractor**” will become references to the New Employer, references to “**Relevant Transfer Date**” will become references to the date of the transfer to the New Employer and references to “**Eligible Employees**” will become references to the Eligible Employees so transferred to the New Employer PROVIDED THAT any obligation of any relevant Sub-Contractor regarding underfunding or otherwise shall only relate to the period of employment of the Eligible Employees (as defined in this clause) by such relevant Sub-Contractor.

#### 28A.13 Pension Issues on Expiry or Termination

The Contractor shall (and shall procure that each relevant Sub-Contractor shall):

28A.13.1 maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any person engaged or employed by the Contractor or any relevant Sub-Contractor in the provision of the Services on the expiry or termination of this Contract (including without limitation identification of the Eligible Employees);

28A.13.2 promptly provide to the Authority such documents and information mentioned in Clause 28A.13.1 which the Authority may reasonably request in advance of the expiry or termination of this Contract; and

28A.13.3 fully co-operate (and procure that the trustees of the Contractor's Scheme shall fully co-operate) with the reasonable requests of the Authority relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the Contractor or any relevant Sub-Contractor in the provision of the Services on the expiry or termination of this Contract.

#### 29. EMPLOYEES GENERAL

##### 29.1 Criminal Records Bureau

29.1.1 The Contractor shall procure that in respect of all permanent employees performing any of the Services (other than Relevant Employees) (each a “**Named Employee**”) within four weeks after a Named Employee begins to attend the Sites to perform any of the Services:

- (a) each Named Employee is questioned as to whether he or she has any Convictions; and
- (b) where required under the Protection Legislation, the results are obtained of a check of the most extensive available kind made with the Criminal Records Bureau in respect of each Named Employee; and
- (c) to the extent permitted by Legislation or Guidance a copy of the results of such check are notified to the Authority.

29.1.2 The Contractor shall procure that no Named Employee who discloses any Convictions, or who is found to have any Convictions following the results of a Criminal Records Bureau check, continues to be employed or engaged in the performance of the Works and/or Services without the Authority's prior written consent (such consent not to be unreasonably withheld or delayed).

29.1.3 The Contractor shall procure that the Authority is kept advised at all times of any Named Employee in respect of whom the Contractor or relevant Sub-Contractor comes to know, subsequent to his/her commencement of employment, of receipt of a Conviction or previous Convictions (or any employee of a Sub-Contractor involved in the provision of the Services).

## 29.2 **Conduct of Staff**

Whilst engaged at the Sites, the Contractor shall and shall procure that any Sub-Contractor shall comply with the Authority's Policies relating to the conduct of staff and security arrangements. The Authority (acting reasonably) may, where the Authority has reasonable grounds for considering that the presence or conduct of an employee at any location relevant to the performance of the Services is undesirable, require the exclusion of the relevant employee from the relevant location(s).

## 29.3 **Admission to the Sites**

The Contractor shall at least 20 Working Days before the date on which the Contractor first carries out any of the Works or provides any of the Services provide the Authority with a written list of the names of all employees or other persons who it expects may require admission to each Site in connection with the carrying out of the Works or provision of the Services, specifying the capacities in which those employees or other persons are concerned with the Works or Services and giving such other particulars as the Authority may require. The Contractor shall update this information as and when any such individuals are replaced or complemented by others, within a reasonable period prior to their admission on the Site. The decision of the Authority on whether any person is to be refused admission to a Site shall be final and conclusive and the Authority shall not be obliged to give reasons for its decision. For the avoidance of doubt, the provisions of this Clause 29.3 (**Admission to the Sites**) shall not apply to those individuals who shall be required by the Contractor or any Sub-Contractor to attend on Site to provide emergency services or where such individuals are accompanied at all times while on each Site by a member of the Contractor or Sub-Contractor's staff who has been properly notified to the Authority in accordance with the terms of this Clause 29.3 (**Admission to the Sites**).

## 29.4 **Refusal of Admission**

The Authority reserves the right to refuse to admit to the Sites any person, employed or engaged by the Contractor or a Sub-Contractor, whose admission would, in the opinion of the Authority, present a risk to themselves or an Authority Related Party, Tenant or Leaseholder or property, and shall be obliged to give any reasons for such refusal.

## 29.5 **Decision to Refuse Admission**

The decision of the Authority as to whether any person is to be refused admission to the Sites pursuant to Clause 29.4 (**Refusal of Admission**) shall be final and conclusive. The Authority shall indemnify the Contractor and keep the Contractor indemnified against all Direct Losses suffered or incurred by the Contractor, or any Contractor Related Party arising out of compliance with instructions given to the Contractor by the Authority pursuant to the provisions of this Clause 29.

## 29.6 **Removal from Sites**

The Contractor shall comply with and/or procure compliance with any notice issued by the Authority from time to time requiring the removal from any of the Sites of any person employed thereon who in the opinion of the Authority (which it shall be required to explain or disclose to the Contractor) is not acceptable on the grounds of risk to themselves or an Authority Related Party, Tenant or Leaseholder or property and that such persons shall not be employed again upon the Project without the written consent of the Authority.

## 29.7 **Relief from Deductions**

Where the Authority exercises its rights under this Clause 29 (**Employees General**) and it can be shown that:

29.7.1 the Contractor or any Sub-Contractor has acted in accordance with the relevant provisions of this Clause 29 (**Employees General**); and

29.7.2 the Authority did not act reasonably in instructing the Contractor not to employ and/or in requesting any removal and/or in refusing admission;

then the Authority shall give the Contractor such relief from Deductions for a reasonable period to allow the Contractor or any Sub-Contractor to make alternative arrangements to replace the person whose employment has been refused or whose removal has been requested. For the avoidance of doubt, any relief from Deductions given under this Clause 29.7 (**Relief from Deductions**) shall only be in respect of those Services in which such person is or would have been engaged.

## 29.8 **Resources and Training**

The Contractor shall procure that:

29.8.1 there shall be at all times a sufficient number of staff (including all relevant grades of supervisory staff) engaged in the provision of the Services with the requisite level of skill and experience. This obligation shall include ensuring that there are sufficient staff to cover periods of holiday, sickness, other absences and anticipated and actual peaks in demand for each of the Works and/or the Services; and

29.8.2 all staff receive such training and supervision as is necessary to ensure the proper performance of the Works and/or the Services under this Contract.

## 29.9 **Personnel Policies and Procedures**

The Contractor shall procure that there are set up and maintained by it and by all Sub-Contractors involved in the provision of the Services, personnel policies and procedures covering all relevant matters (including discipline, grievance, equal opportunities and health and safety). The Contractor shall procure that the terms and implementation of such policies and procedures comply with Legislation and Good Industry Practice and that they are published in written form and that copies of them (and any revisions and amendments to them) are, as soon as reasonably possible following an Authority request, issued to the Authority.

## 29.10 **Operating Manual**

29.10.1 The Contractor shall throughout the Services Period maintain and update an operating and maintenance manual setting out the procedures for providing the Services (other than for the avoidance of doubt those Services provided by the Housing Management Contractor) (the "**Operating Manual**").

29.10.2 The Contractor shall at the request of the Authority provide the Authority with access to the Operating Manual in order to demonstrate that the Contractor has complied with its obligation to maintain and update the Operating Manual under Clause 29.10.1 (**Maintenance of Manual**).

29.10.3 On termination of this Contract (howsoever arising including expiry), the Contractor shall within 10 Working Days provide a copy of the Operating Manual to the Authority.

## 29.11 **Quality Assurance**

29.11.1 The Contractor shall procure that all aspects of the Works are the subject of, and are conducted in accordance with the approved quality assurance systems as set out in Clauses 29.11.2 (**Quality Assurance**) and Clause 29.11.2.3 (**Quality Assurance**).

- 29.11.2 Not later than 13 October 2006, the Contractor shall submit to the Authority's Representative a proposed quality assurance system for the Refurbishment Works complying with ISO 9001.
- 29.11.3 The Contractor shall procure that the Refurbishment Contractor is registered pursuant to BS 5750 or ISO 9001 (or such other quality standard as may replace or supersede the same or, in the absence of a replacement or a superseding quality standard or equivalent or such other quality assurance system acceptable to the Authority (acting reasonably)) in relation to the Works.
- 29.11.4 The Contractor shall appoint (or shall procure the appointment of) as soon as reasonably practicable following the date of this Contract a quality manager, who may be directly involved in the day-to-day performance of the Works and who shall in respect of the Works:
- (a) ensure the effective operation of and implementation of the aforementioned quality assurance system; and
  - (b) audit the aforementioned quality assurance system at regular intervals and report the findings of such audit to the Contractor and the Authority;
  - (c) review the aforementioned quality assurance system at intervals agreed with the Authority to ensure their continued suitability and effectiveness; and
  - (d) liaise with the Authority on all matters relating to quality assurance.
- 29.11.5 The Authority may carry out periodic audits of the aforementioned quality assurance systems at approximate intervals of three months and may carry out other periodic monitoring, spot checks and auditing of the Contractor's quality systems. The Contractor shall procure that the Authority shall have a like right in respect of any relevant Sub-Contractors. The Contractor shall co-operate and shall procure that any relevant Sub-Contractor co-operates with the Authority including providing it with all information and documentation which it reasonably requires in connection with its right under this Clause 29.11 (**Quality Assurance**).

## 29.12 Co-operation for Investigation and Security

- 29.12.1 The Contractor shall co-operate with any investigation which is carried out by or on behalf of the Authority in relation to the Project and:
- (a) shall use its reasonable endeavours to make its employees (and other Contractor Related Parties) identified by the Authority available to be interviewed by the Authority for the purposes of the investigation; and
  - (b) shall, subject to any legal restriction on their disclosure, provide all copies of documents, records or other material of any kind which may reasonably be required by the Authority for the purposes of the investigation. The Authority shall have the right to retain copies of any such material for use in connection with the investigation.
- 29.12.2 The Authority shall, insofar as is practical, inform the Contractor of any specific or general security information which would reasonably be expected to affect the security of the Contractor or any Contractor Related Party or their property.

- 29.12.3 The Contractor shall comply with the Authority's reasonable reporting requirements relating to infectious and notifiable diseases to the extent made known to the Contractor.
- 29.12.4 Any Confidential Information supplied by the Contractor to the Authority pursuant to Clause 29.12.1(b) above and which is still in the possession or control of the Authority shall as soon as the relevant investigation has concluded, be returned to the Contractor or destroyed (including all copies regardless of format) within a reasonable period following the conclusion of the relevant investigation.

## **PART 5**

### **PAYMENT**

#### **30. PAYMENT PROVISIONS**

##### **30.1 Payment of Authority's Capital Contribution Sum**

- 30.1.1 Subject to Clauses 30.1.2 and 30.1.3, the Contractor shall be entitled to invoice the Authority for the amounts set out in column 7 of Schedule 10 (Authority's Capital Contribution Sums) (referred to in this Clause 30.1 as the "Schedule"). Each such invoice shall be submitted to and paid by the Authority within ten Working Days of receipt by the Authority thereof.
- 30.1.2 Subject to Clause 30.1.3, the Authority shall not be obliged to make payment of the amount referred to in Clause 30.1.1 unless:
- (i) (save as provided for in Clause 30.1.4) the number of Completion Points listed in column 4 of the Schedule have accrued;
  - (ii) an invoice therefor has been submitted by the Contractor to the Authority; and
  - (iii) that invoice is due for payment in accordance with Clause 30.1.1.
- 30.1.3 Notwithstanding compliance by the Contractor with the condition in Clause 30.1.2, the Authority shall not be obliged to pay any sum due under Clause 30.1.1 where:
- (i) a Termination Notice has been served by the Authority in accordance with the Contract or the Authority has the right to serve a Termination Notice pursuant to Clause 34.1 (Contractor Default Termination), Clause 34.5 (Termination by the Authority for Breach of Refinancing Provisions) or Clause 74.2 (Termination for Corrupt Gifts and Fraud); or
  - (ii) the Senior Lenders are entitled to and do withhold funding pursuant to clause 4 of the credit agreement being one of the Senior Financing Agreements.
- 30.1.4 If on any of those dates on which payment of an amount is anticipated as set out in column 2 of the Schedule, the number of Completion Points accrued is more than 80% but less than 100% of the number corresponding to such date as set out in column 3 of the Schedule, the Authority shall (subject to clause 30.1.3) be obliged to pay in accordance with Clause 30.1.1 an amount equal to the sum corresponding to such date as set out in column 7 of the Schedule multiplied by the number of Completion Points which have accrued and divided by the number of Completion Points corresponding to such date as set out in column 3 of the Schedule. The Contractor shall be entitled to invoice and be paid the balance of such sum set out in column 7 of the Schedule in accordance with Clause 30.1.1 once the number of Completion Points accrued reaches the corresponding number in column 3 of the Schedule.
- 30.1.5 For the avoidance of doubt, if any payment is not made in respect of any amount claimed pursuant to Clause 30.1.1 due to a failure to meet the condition in Clause 30.1.2(ii) or because the circumstances in Clause 30.1.3

apply, the Authority will (subject to the provisions of those clauses) be liable to make such payment from the date upon which:

- (i) the Contractor is in compliance with such condition; or
- (ii) (as the case may be) the Termination Notice is revoked under Clause 34.2.2 or otherwise lapses or to the extent that the Senior Lenders make payment of any amount previously withheld in accordance with clause 4 of the credit agreement being one of the Senior Financing Agreements.

30.1.6 If and to the extent payment of an amount set out in column 7 of the Schedule is due and made earlier than the anticipated date for payment of such amount as set out in column 2 of the Schedule, the amount identified in the Schedule to be paid last of all shall be reduced by the amount of interest calculated at the rate of 3% per annum which the Authority would have received on such amount paid during the period running from date of payment thereof until the anticipated date for payment of such amount as set out in column 2 of the Schedule.

30.1.7 On each CNDT Date, the number of Completion Points set out in columns 3 and 4 of the Schedule shall be reduced by an amount equal to the Completion Points which will not accrue subsequently as a result of the extent to which the Contractor is no longer obliged to provide Works and/or Services in respect of the relevant Dwelling(s) and each and every reference in this Clause to such numbers of Completion Points shall be deemed to be to such numbers as so reduced from time to time.

#### **30.1A Payment of Leasehold Dwelling Refurbishment Amounts and Leasehold Lifecycle Amounts**

30.1A.1 The Authority shall pay the Contractor each Leasehold Dwelling Refurbishment Amount in respect of those parts of the Works carried out to each Leasehold Dwelling as identified in Schedule 5 (**Housing Accommodation**) in accordance with this Clause 30 (**Payment Provisions**), and each Leasehold Dwelling Refurbishment Amount shall become due as follows:

- (a) 50% on the date on which any Works are commenced at the Leasehold Dwelling;
- (b) 40% on the date on which the Certificate of Availability Leasehold (Full Standard) is issued in respect of such Leasehold Dwelling; and
- (c) 10% on the date on which the final account is submitted to the Leaseholder of such Leasehold Dwelling

provided that in the event of a Leasehold Dwelling ceasing to be such as provided for under Clause 27.7 (**Changes to Numbers of Dwellings by Tenure**) prior to the payment of the Leasehold Refurbishment Amount, the Leasehold Dwelling Refurbishment Amount in respect of such Leasehold Dwelling shall become due to the Contractor on the CNDT Adjustment Date therefor.

30.1A.2 The Authority shall pay the Contractor each Leasehold Lifecycle Amount in accordance with this Clause 30 (**Payment Provisions**) in advance of the period to which it relates which shall become due on the 1st April, 1st July, 1st October and 1st January falling in each Contract Year.

### 30.2 **Payment of Unitary Charge**

- 30.2.1 The Authority shall pay the Contractor the Unitary Payment in respect of each Contract Month, calculated in accordance with Schedule 6 (Payment and Performance Mechanism) and any other amounts required to be paid in accordance with this Clause 30 (Payment Provisions), subject to a maximum of 191 Contract Months and except that the provisions of Clause 30.2.2 shall apply to the payment in the first Contract Month and the provisions of Clause 30.2.3 shall apply to the payment in the last Contract Month.
- 30.2.2 The Unitary Payment for the first Contract Month shall be deemed to (i) relate to the period commencing on the Services Commencement Date and ending on the 30 September 2006 and (ii) have been paid by the Authority to the Contractor at Financial Close.
- 30.2.3 For the avoidance of doubt, the Authority shall not in paying the Unitary Payment to the Contractor be deemed to have acquired an interest in any land or buildings acquired by the Contractor in connection with the Services.

### 30.3 **Report and Invoice**

- 30.3.1 The Contractor shall submit a report and invoice to the Authority in accordance with Schedule 6 (Payment and Performance Mechanism), by the 18th day of every Contract Month immediately prior to the Contract Month to which the report relates in the case of the Unitary Payment and Unitary Charge (the "Payment Month") showing:-
- (a) the Unitary Payment and Unitary Charge for the Contract Month to which the report relates;
  - (b) any Unavailability Deductions (taking into account Excusing Events) for the Contract Month two months prior to the relevant Payment Month (where there are any) as contained in the Unavailability Report for the relevant Contract Month;
  - (c) any Performance Deductions (taking into account Excusing Events) for the Contract Month two months prior to the relevant Payment Month (where there are any) as contained in the Performance Monitoring Report for the relevant Contract Month;
  - (d) an Unavailability Report (in accordance with Schedule 6 (**Payment and Performance Mechanism**)) for the Contract Month immediately prior to the Payment Month;
  - (e) a Performance Monitoring Report (in accordance with Schedule 6 (**Payment and Performance Mechanism**)) for the Contract Month immediately prior to the Payment Month;
  - (f) any undisputed amounts owed by either party to the other in accordance with Clause 56 (**Indemnities and Responsibility**);
  - (g) any amounts owed by the Authority to the Contractor pursuant to Schedule 6 (**Payment and Performance Mechanism**);
  - (h) any amounts owed to the Contractor by the Authority in accordance with Clause 19 (**Notification of Availability**);
  - (i) any amounts owed under Clause 24 (**Emergencies**);

- (j) any adjustments to reflect previous overpayments and/or underpayments (each adjustment stated separately);
  - (k) any interest payable in respect of amounts outstanding and/or paid after the due date therefor;
  - (l) any claims by the Contractor in relation to Relief Events, Compensation Events, Qualifying Changes in Law or Force Majeure Events;
  - (m) any amounts owed to the Authority by the Contractor in accordance with the Tenant Waiver Protocol;
  - (n) any adjustment to Availability and Performance Deductions due to the Performance Bonus calculated in accordance with Schedule 6 (**Payment and Performance Mechanism**);
  - (o) where a CNDT Adjustment Date occurs during the relevant Contract Month to which the report relates, Dwellings subject to the Changes to Number of Dwellings by Tenure and the calculations giving rise to the amount of CNDT Compensation applicable to those Dwellings;
  - (p) the aggregate of the CNDT Compensation payable in respect of all Changes to Number of Dwellings by Tenure;
  - (q) any amounts owed pursuant to Clause 38 (**Surveys on Termination and Retention Fund**);
  - (r) any amounts owed pursuant to Clause 30.1A (**Payment of Leasehold Refurbishment Income and Leasehold Lifecycle Income**);
  - (s) any amounts owed to the Contractor in accordance with Clause 20 (**Call Off Services**) and/or the Call Off Protocol;
  - (t) any amounts owed to the Contractor in accordance with Clause 27.14 (**Part L of the Building Regulations (Windows and Heating Systems)**); and
  - (u) any other amount due or payable by one party to the other or in connection with this Contract.
- 30.3.2 The Contractor shall submit an invoice for the amount (if any) shown by the report as owed by the Authority to the Contractor and for any VAT payable by the Authority in respect of that amount and such invoice is to show:-
- (a) the date of the invoice;
  - (b) the date when the amount invoiced is due to be paid;
  - (c) the address to which payment is to be sent;
  - (d) the month for which the payment is due.

#### 30.4 **Payment of Invoices**

- 30.4.1 Subject to Clause 30.6 (Response to Authority Notice) the Authority shall pay the amount stated in the invoice submitted under Clause 30.3 (Report and Invoice) by the 7th day of the relevant Payment Month, except where

there is a delay in issuing the invoice in accordance with Clause 30.3, the Authority shall be entitled to an extension of time equivalent to any such delay in making such payment.

- 30.4.2 Where a report shows a net amount owed by the Contractor to the Authority, the Contractor shall pay that amount to the Authority within 15 Working Days of the report (but only to the extent it has funds available to make such payment after payment of all Eligible Costs) or, at the option of the Authority, carry forward that amount to the next report in reduction of amounts which would otherwise have been owed by the Authority to the Contractor.

### 30.5 **Disputed Amounts**

- 30.5.1 If the Authority disputes the Contractor's entitlement to any part of the amount claimed by the Contractor pursuant to Clause 30.3 (Report and Invoice) in respect of any Contract Month the provisions of Clause 30.5.2 (Disputed Amounts) shall apply.
- 30.5.2 The Authority shall notify the Contractor in writing within fifteen 15 Working Days of receipt by the Authority of the relevant invoice and supporting report of that part of the amount (insofar as at the time of such notice the Authority is reasonably able to quantify it) which the Authority (acting in good faith) disputes (a "Disputed Amount") and submit to the Contractor such supporting evidence as the Authority may have.

### 30.6 **Response to Authority Notice**

Within 5 Working Days following receipt by the Contractor of any notice served by the Authority pursuant to Clause 30.6 (**Response to Authority Notice**), the Contractor shall respond by notifying the Authority as to whether or not it agrees with the statements made in that notice. If the Contractor indicates that it does agree, the Authority shall be entitled to deduct the Disputed Amount from the payment it is required to make to the Contractor under Clause 30.4.1 (**Payment of Invoices**). Otherwise, the Authority shall include in the payment it is required to make to the Contractor under Clause 30.4.1 the Disputed Amount and the matter shall be determined under the Disputes Resolution Procedures as a Fast Track Matter.

### 30.7 **Determination of Dispute**

If the determination of any dispute referred to in Clause 30.6 (**Response to Authority Notice**) shows that the Contractor has claimed under Clause 30.3 (**Report and Invoice**) any amount which it was not entitled to be paid the Contractor shall repay such amount to the Authority with interest on that amount at the Default Interest Rate calculated on a daily basis and compounded quarterly from the date on which overpayment was made by the Authority until all relevant monies have been paid in full.

### 30.8 **Rights of Set-Off**

- 30.8.1 The Contractor shall not be entitled to retain or set off any amount due to the Authority by it but the Authority may retain or set off any amount owed to it by the Contractor under this Contract which has fallen due and payable against any amount due to the Contractor under this Contract.
- 30.8.2 If the payment or deduction of any amount referred to in Clause 30.5 (**Disputed Amounts**) and Clause 30.8 (**Rights of Set Off**) is disputed, then any undisputed element of that amount shall be paid and the disputed element shall be dealt with in accordance with the Disputes Resolution Procedure.

### 30.9 VAT

- 30.9.1 All amounts due under this Contract are exclusive of VAT.
- 30.9.2 If any supply made or referred to in this Contract is or becomes chargeable to VAT then the person receiving the supply (the "**Recipient**") shall in addition pay the person making the supply (the "**Supplier**") the amount of that VAT against receipt by the Recipient from the Supplier of a proper VAT invoice in respect of that supply.
- 30.9.3 Where under this Contract any amount is calculated by reference to any sum which has or may be incurred by any person, the amount shall include any VAT in respect of that amount only to the extent that such VAT is not recoverable as input tax by that person (or a member of the same VAT group), whether by set-off or repayment.
- 30.9.4 The Contractor shall provide the Authority with any information reasonably requested by the Authority from time to time in relation to the amount of VAT chargeable in accordance with this Contract and payable by the Authority to the Contractor.

### 30.10 Economic and Monetary Union

- 30.10.1 Without prejudice to Article 3 of Regulation (EC) No. 1103/97 of 17th June 1997 of the Council of Ministers of the European Union, the introduction of the euro shall not, of itself:
- (a) have the effect of altering any provision of, or (in whole or in part) of discharging, cancelling, rescinding, terminating or otherwise excusing performance under, any of the Project Documents; or
  - (b) give any of the parties to the Project Documents the right unilaterally to alter any provision of, or (in whole or in part) to discharge, cancel, rescind, terminate or otherwise avoid its obligations under, any of the Project Documents.
- 30.10.2 If as a result of the implementation of European economic and monetary union (Monetary Union):
- (a) sterling ceases to be the lawful currency of the United Kingdom and is replaced by the euro; or
  - (b) sterling and the euro are at the same time recognised by the Bank of England as the lawful currency of the United Kingdom, and the Authority so requires,
- then reference in the Project Documents to sterling shall be construed as reference to the euro translated at the Exchange Rate (as hereinafter defined).
- 30.10.3 For the purposes of this Clause 30.10 (**Exchange Rate**) means the rate of exchange recognised by the European Central Bank for the conversion of Sterling into the euro for the purposes of implementation of Monetary Union.
- 30.10.4 If, following the implementation of Monetary Union in the United Kingdom, or any part thereof, the Authority or the Contractor so require, the Project Documents will be amended to the extent reasonably necessary to reflect the implementation of Monetary Union and to put the Parties in the same position, so far as possible, that they would have been in had Monetary Union not occurred.

## 30.11 Construction Industry Scheme

30.11.1 This Clause 30.11 (Construction Industry Scheme) relates to the Construction Industry Scheme and in this Clause (but not otherwise):-

- (a) "ICTA" means the Income and Corporation Taxes Act 1988;
- (b) "the Legislation" means Chapter IV of Part XIII of ICTA, the Income Tax (Sub-Contractors in the Construction Industry) Regulations 1993 (SI 1993/743) as amended by the Income Tax (Sub-Contractors in the Construction Industry) Amendment Regulations 1998 (SI 1998/2622), the Finance Act 2004 and the Income Tax (Construction Industry Scheme) Regulations 2005 (SI 2005/2045);
- (c) "contractor" means a person who is a contractor for the purposes of the Legislation;
- (d) "evidence" means such evidence as is required by the Legislation to be produced to a contractor for the verification of a sub-contractor's tax status for the purpose of the Legislation;
- (e) "statutory deduction" means any deduction in payment as the Legislation may require to be made at the relevant time; and
- (f) "sub-contractor" means a person who is a sub-contractor for the purposes of the Legislation.

30.11.2 Not later than 15 Working Days before the first payment under this Contract is due to be made to the Contractor or after this Clause 30.11 applies for the first time and on each occasion when this Clause 30.11 applies following a period when it has not so applied, the Contractor shall either:-

- (a) provide the Authority with the evidence that the Contractor is entitled to be paid without statutory deduction; or
- (b) provide the Authority with the evidence that it is not entitled to be paid without statutory deduction.

30.11.3 If the Authority is not satisfied with the validity of the evidence submitted in accordance with Clause 30.11.2(a), it shall within 10 Working Days of the Contractor submitting such evidence notify the Contractor in writing that it intends to make the statutory deduction and give its reasons for that decision and thereupon Clause 30.11.8 shall apply. The Contractor may submit further documentation to the Authority, in which event the Authority shall reconsider the validity of the evidence.

30.11.4 Where Clause 30.11.2(b) applies, the Contractor shall immediately inform the Authority if that situation changes and provide evidence thereof in accordance with Clause 30.11.2(a) and thereupon Clause 30.11.3 shall apply.

30.11.5 The Contractor shall immediately inform the Authority in writing if its current evidence in accordance with Clause 30.11.2(a) is cancelled and give the date of such cancellation or it is otherwise no longer entitled to be paid without the statutory deduction, and thereupon Clause 30.11.8 will apply.

30.11.6 The Authority shall, as a "contractor" in accordance with the Legislation, comply promptly with any obligations of contractors under the Legislation as appropriate.

30.11.7 The Contractor shall, as a "sub-contractor" in accordance with the Legislation, comply promptly with any obligations of sub-contractors under the Legislation as appropriate.

30.11.8 The Authority shall be entitled to make the statutory deduction at the rate specified under the Legislation or at such other rate as may be in force from time to time, from, or to withhold payment of, the whole of any payment due to the Contractor (and not just the part of such payment that does not represent the direct cost to the Contractor or any other person of materials used or to be used in carrying out the construction operations to which the relevant payment relates) unless prior to making such payment the Authority has received written confirmation from HM Revenue & Customs (obtained by and at the expense of the Contractor) in a form which is reasonably satisfactory to the Authority directing the Authority to make a deduction against only a specified amount or proportion of any such payment to the Contractor.

30.11.9 Where any error or omission has occurred in calculating or making the statutory deduction then:-

- (a) in the case of an over deduction, the Authority shall correct that error by repayment of the sum over deducted to the Contractor; and
- (b) in the case of an under deduction, the Contractor shall correct that error or omission by repayment of the sum under deducted to the Authority.

30.11.10 The Contractor shall at the request of the Authority produce to the Authority the original of any evidence which it holds and shall permit the Authority to make a copy of such evidence and/or to record such details in respect of such evidence as the Authority may consider appropriate.

30.11.11 If compliance with this Clause 30.11 involves the Authority or the Contractor not complying with any other of the terms of this Contract, then the provisions of this Clause 30.11 shall prevail.

30.12 The provisions of this Clause 30 (**Payment Provisions**) shall not expire on the Expiry Date but shall continue for four (4) Contract Months following the Expiry Date.

### **30A. INDEXATION**

On each Review Date, the Unitary Charge shall be adjusted for the Contract Year commencing on that Review Date in accordance with Schedule 6 (**Payment and Performance Mechanism**).

### **30B. EFFECT OF TERMINATION OF ISLINGTON 1 PROJECT AGREEMENT**

If the project agreement entered into by the Authority and Partners for Improvement in Islington Limited on 12 May 2003 is terminated, the Authority recognises that the Contractor will lose the benefit of certain savings and/or otherwise incur additional costs in relation to this Project as a result and the Authority shall pay to the Contractor such compensation as and whenever necessary to leave the Contractor in a no better or no worse position in relation to this Project as a result of such termination as agreed or determined in accordance with paragraph 1.7 of Schedule 6 (**Payment and Performance Mechanism**).

## 31. FINANCIAL ADJUSTMENTS

### 31.1 Updating Financial Model

Whenever there occurs an Authority Change, Contractor Change, Compensation Event, Change in Law or other matter which may require a change permitted by this Contract to the Unitary Charge as permitted by this Contract, the financial consequence shall (save where otherwise provided in this Agreement or where the parties mutually agree otherwise) be determined in accordance with this Clause 31 (**Financial Adjustments**). Where for the purposes of this Clause 31 (**Financial Adjustments**) the Financial Model is to be adjusted by reference to such a change, this shall be carried out by the Contractor, in consultation with the Authority, to reflect the impact of any such change on the version of the Financial Model applicable immediately prior to the relevant adjustment and to reflect the impact of such a change in respect of which such adjustment is being undertaken, including the effect of Estimated Change in Project Costs. In calculating any such change and in assessing other adjustments to be made to the Financial Model, the Contractor shall be entitled to take into account, inter alia:-

31.1.1 reasonable economic assumptions prevailing at the time; and

31.1.2 changes in the prospective technical performance of the Project arising as a result of such change,

provided that the Authority shall not be required (and the Contractor shall not be entitled) to take into account the financial impact up to the date of such change of those risks which the Contractor bears under the terms of this Contract, including (to the extent so borne by the Contractor under this Contract) changes in VAT rates, taxation rates, RPI and the impact of Unavailability Deductions and Performance Deductions.

### 31.2 Application to the Financial Model

Where, pursuant to this Contract, either party is entitled to payment of any sum the assessment of which requires reference to the Financial Model (with the exception of payment of the Authority's Refinancing share to which Schedule 16 (**Refinancing**) shall apply) and that sum requires to be adjusted as the result of a matter referred to in Clause 31.1, the adjustment of the Unitary Charge due shall be that required to ensure that, by reference to the Financial Model, the Contractor is left in a no better and no worse position than under the version of the Financial Model applicable immediately prior to the relevant adjustment, and shall be ascertained by determining the adjustment to the Unitary Charge required to maintain the financial position of the Contractor with that in which it would have been under the version of the Financial Model applicable immediately prior to the relevant adjustment.

### 31.3 No Better and No Worse

Any reference in this Contract to "no better or no worse" or to leaving the Contractor in a "no better and no worse position" shall be construed by reference to the Contractor's

31.3.1 rights, duties and liabilities under or arising pursuant to this Contract, Sub-Contract and Financing Agreements; and

31.3.2 ability to perform its obligations and exercising its rights under this Contract, Sub-Contract and Financing Agreements so as to ensure that:-

(a) the Contractor is left in a position which is no better and no worse in relation to Annual Debt Service Cover Ratio and the Loan Life Cover Ratio and Project Internal Rate of Return by reference to the

version of the Financial Model applicable immediately prior to the relevant event than if the relevant event had not occurred;

- (b) the ability of the Contractor to comply with its obligations is not adversely affected or improved as a consequence of the relevant event.

#### 31.4 **Replacement of Financial Model**

Any Financial Model produced following adjustments in accordance with this Clause 31 (**Financial Adjustments**) shall become the Financial Model for the purposes of this Contract until its further amendment in accordance with this Contract.

#### 31.5 **Amendments to Logic and/or Formulae**

31.5.1 Where it is necessary to amend the logic or formulae incorporated in the Financial Model to permit adjustments to be made, this shall be done to the extent necessary and in accordance with generally accepted accounting principles.

31.5.2 Where any amendment is made to the logic or formulae incorporated in the Financial Model, the Financial Model, as amended, shall first be run with the input and assumptions included in the Financial Model immediately prior to amendment to ensure that the Annual Debt Service Cover Ratio and the Loan Life Cover Ratio and Project Internal Rate of Return from the Financial Model are maintained at no lower levels than the Annual Debt Service Cover Ratio and the Loan Life Cover Ratio and Project Internal Rate of Return immediately prior to amendment, and any increase in the Project Internal Rate of Return amendment shall not be more than 5 basis points (being 0.05% as shown in the resulting figure).

#### 31.6 **Copies of the Revised Financial Model**

Following any change to the Financial Model under the provisions of this Clause 31 (**Financial Adjustments**), the Contractor shall promptly deliver a copy of the revised Financial Model to the Authority in the same form as is established at the date of the Agreement or in such other form as may be agreed between the parties.

### 32. **BEST VALUE**

#### 32.1 **[Not Used]**

#### 32.2 **Authority's Best Value Duty**

32.2.1 The Contractor acknowledges that:-

- (a) the Authority is subject to the Best Value Duty;
- (b) the provisions of this Clause 32 (**Best Value**) are intended to assist the Authority in discharging its Best Value Duty in relation to the Services.

32.2.2 The Contractor shall, throughout the Contract Period, but only to the extent of its obligations in this Contract, make arrangements to secure continuous improvement in the way in which the Services are provided, having regard to a combination of economy, efficiency and effectiveness but not so that this Clause shall necessarily oblige the Contractor to make savings save that any savings generated shall be shared equally on a 50:50 basis as between the Authority and the Contractor.

32.2.3 Subject to the other provisions of this Contract, the Contractor shall undertake or refrain from undertaking such actions as the Authority shall reasonably request to enable the Authority to comply with its Best Value Duty including:-

- (a) supporting and assisting the Authority in preparing Best Value Performance Plans and conducting Best Value Reviews in relation to the housing service of which the Services form part.
- (b) complying with requests for information, data or other assistance made by the Authority in pursuance of its Best Value Duty including to:-
  - (i) enable the Authority to prepare a Best Value Performance Plan;
  - (ii) enable the Authority to conduct a Best Value Review;
  - (iii) facilitate the audit of the Authority's Best Value Performance Plan by the Authority's auditor pursuant to Section 7 of the 1999 Act amended by the Local Government (Best Value) Performance Plans and Reviews Amendment and Specified Dates Order 2004;
  - (iv) facilitate the Authority preparing any statement, in response to an Authority's auditor's report, pursuant to Section 9 of the 1999 Act;
  - (v) facilitate any inspection undertaken by any Relevant Authority in connection with the Best Value Duty in respect of the Services, including any inspection undertaken with a view to verifying the Authority's compliance with its Best Value Duty pursuant to Sections 10 and 11 of the 1999 Act;
  - (vi) assist the Authority in relation to any action taken by the Secretary of State under Section 15 of the 1999 Act;
  - (vii) enable the Authority to comply with any Government Departmental Direction;
  - (viii) enable the Authority to report on the Best Value Performance Indicators;
  - (ix) assist the Authority in any Comprehensive Performance Assessment; and
  - (x) enable the Authority to comply with the Restriction of Information Direction 2000 (England and Wales);
- (c) complying with all requests by the Authority to procure the attendance of specific officers or employees of the Contractor or any Sub-Contractor (or any of its or their Sub-Contractors) at any meetings of the Authority at which this Contract and/or the Services are to be discussed (but not, otherwise than in exceptional circumstances, more than 4 in any one year);
- (d) permitting any Best Value Inspector, in connection with the exercise of his statutory powers and duties, at all reasonable times and upon reasonable notice, access to:-

- (i) the Dwellings, Properties and Sites (to the extent that this is within the reasonable control of the Contractor);
- (ii) any document or data relating to the Services except where such a document or data is commercially sensitive to the Contractor and is not required to be given to the Best Value Inspector under Legislation and Guidance; and
- (iii) any Sub-Contractor, agent or employee of the Contractor.

### 32.3 **Annual Service Report**

- 32.3.1 Without prejudice to any other provision in this Contract the Contractor shall, no later than the Annual Service Report Date, at its own cost, provide to the Authority a written report (the "**Annual Service Report**") which shall contain the information set out in the relevant part of the Output Specification.
- 32.3.2 The Contractor shall upon a written request from the Authority promptly provide such written evidence or other supporting information as the Authority may reasonably require to verify and audit the information and other material contained in the Annual Service Report.
- 32.3.3 If, in the Authority's reasonable opinion, the Annual Service Report discloses that the provision, performance or delivery of the Services may be more effective, efficient and economic having regard to the Best Value Duty, then the Authority may (but only to the extent that this does not affect the ability of the Contractor in performing its other obligations under this Contract) serve a written notice upon the Contractor (a "**Best Value Service Change Notice**") stating the nature and timing of the changes to the provision, performance or delivery of the Services which the Authority desires.
- 32.3.4 The Contractor shall, within 20 Working Days of the date of receipt of a Best Value Service Change Notice, served under Clause 32.3.3 provide the Authority with a written statement (the "**Annual Service Plan**") containing the Contractor's proposals to achieve the change to the Services (or the relevant part) in accordance with the Best Value Service Change Notice.
- 32.3.5 As soon as practicable after the Authority receives the Annual Service Plan Response, the parties shall discuss and agree the issues set out in the Annual Service Plan. In such discussions the Authority may modify the Best Value Service Change Notice, served under Clause 32.3.3 in which case the Contractor shall, as soon as practicable, and in any event not more than 10 Working Days after the receipt of such modification, notify the Authority of any consequential changes to the Annual Service Plan.
- 32.3.6 If the parties cannot agree on the contents of the Annual Service Plan then the dispute will be determined in accordance with the Disputes Resolution Procedure.
- 32.3.7 As soon as practicable after the content of the Annual Service Plan has been agreed or otherwise determined pursuant to the Disputes Resolution Procedure the Authority shall:-
  - (a) confirm in writing the Annual Service Plan; or
  - (b) withdraw the Best Value Service Change Notice served under Clause 32.3.3.

- 32.3.8 If the Authority does not confirm the Annual Service Plan within 15 Working Days of the Annual Service Plan having been agreed in accordance with Clause 32.3.5 (**Annual Service Report**) or determined in accordance with the Disputes Resolution Procedure then the Best Value Service Change Notice given under Clause 32.3.3 shall be deemed to have been withdrawn.
- 32.3.9 If the Authority confirms the Annual Service Plan the Authority shall propose an Authority Change, to implement the Best Value Service Change Notice served under Clause 32.3.3, in accordance with Clause 52 (**Variations**).
- 32.3.10 To the extent that the implementation of the proposals in the Annual Service Plan will result in a decrease in the costs of the Contractor, the Unitary Payment shall be adjusted downwards to reflect a sharing in the decrease in costs 50:50 as to the Authority and Contractor respectively.
- 32.3.11 To the extent that the implementation of the proposals in the Annual Service Plan will result in an increase in the costs of the Contractor, the Unitary Payment shall be adjusted upwards as would place the Contractor in no better or no worse position as it would have been had the implementation of the proposals not occurred.
- 32.3.12 The Contractor shall take all reasonable steps to mitigate any costs arising as a consequence of a Best Value Service Change Notice and an Authority Notice of Change served pursuant to Clause 32.3.3 (**Annual Service Report**) and Clause 52 (**Variations**).

#### 32.4 **Best Value Reviews and Comprehensive Performance Assessment**

- 32.4.1 On or before each Best Value Review Date the Authority may instigate a Best Value Review in relation to the Services and thereafter the following provisions of this Clause 32.4 (**Best Value Reviews and Comprehensive Performance Assessment**) shall apply.
- 32.4.2 The parties agree that any such Best Value Review shall be carried out in accordance with the applicable Legislation.
- 32.4.3 The Authority shall carry out the Best Value Review at its own cost.
- 32.4.4 In carrying out the Best Value Review, the Authority may take into account the results of any:-
  - (a) Annual Service Reports;
  - (b) Customer Satisfaction Survey; and/or
  - (c) Performance Standard Benchmarking Exercise.

and shall consult with the Contractor on any proposals to change the Service to enable the Authority to comply with its Best Value Duty.

- 32.4.5 If in the Authority's reasonable opinion the results of the Best Value Review disclose that the provision, performance or delivery of the Services may be more efficient, effective or economic having regard to the Best Value Duty then the Authority may (but only to the extent that this does not affect the ability of the Contractor to perform its other obligations under this Contract) serve a Best Value Service Change Notice on the Contractor stating the nature and timing of the changes to the provision, performance or delivery of the Services which the Authority desires.

- 32.4.6 The Contractor shall, within 20 Working Days of the date of receipt of a Best Value Service Change Notice, served under Clause 32.4.5, provide the Authority with a written statement ("**the Best Value Review Plan**") containing the Contractor's proposals to achieve the change to the Services (or the relevant part) in accordance with that Best Value Service Change Notice.
- 32.4.7 As soon as practicable after the Authority receives the Best Value Review Plan the parties shall discuss and agree the issues set out in the Best Value Review Plan. In such discussions the Authority may modify the Best Value Service Change Notice, served under Clause 32.4.5, in which case the Contractor shall, as soon as practicable, and in any event not more than 10 Working Days after the receipt of such modification, notify the Authority of any consequential changes to the Best Value Review Plan.
- 32.4.8 If the parties cannot agree on the contents of the Best Value Review Plan then the dispute will be determined in accordance with the Dispute Resolution Procedure.
- 32.4.9 As soon as practicable after the content of the Best Value Review Plan has been agreed or otherwise determined pursuant to the Disputes Resolution Procedure the Authority shall:-
- (a) confirm in writing the Best Value Review Plan; or
  - (b) withdraw the Best Value Service Change Notice, served under Clause 32.4.5.
- 32.4.10 If the Authority does not confirm the Best Value Review Plan within 15 Working Days of the Best Value Review Plan having been agreed or determined in accordance with the Disputes Resolution Procedure then the Best Value Service Change Notice, served under Clause 32.4.5, shall be deemed to have been withdrawn.
- 32.4.11 If the Authority confirms the Best Value Review Plan, the Authority shall propose an Authority Change to implement the Best Value Service Change Notice made under Clause 32.4.5 (**Best Value Reviews**) in accordance with Clause 52 (**Variations**).
- 32.4.12 To the extent that the implementation of the proposals in the Best Value Review Plan will result in a decrease in the costs of the Contractor, the Unitary Payment shall be adjusted downwards as calculated in accordance with Clause 31 (**Financial Adjustments**).
- 32.4.13 To the extent that the implementation of the proposals in the Best Value Review Plan will result in an increase in the costs of the Contractor, the Unitary Payment shall be adjusted upwards as calculated in accordance with Clause 31 (**Financial Adjustments**).
- 32.4.14 The Contractor shall take all reasonable steps to mitigate any costs arising as a consequence of a Best Value Service Change Notice and an Authority Notice of Change served pursuant to Clause 32.3.3 (**Annual Service Report**) and Clause 52 (**Variations**).

## 32.5 Performance Standard Benchmarking Exercise

- 32.5.1 Not less than 3 months before each Best Value Review Date the Authority shall instigate a Performance Standard Benchmarking Exercise in relation to the Performance Indicators referred to in the first column of Table A and

thereafter the following provisions of this Clause 32.5 (**Performance Standard Benchmarking Exercise**) shall apply.

- 32.5.2 The parties agree that any Performance Standard Benchmarking Exercise shall be carried out in good faith and each party shall act reasonably in relation to any such Performance Standard Benchmarking Exercise.
- 32.5.3 The Performance Standard Benchmarking Exercise shall be carried out by the Authority at its own cost.
- 32.5.4 The purpose of the Performance Standard Benchmarking Exercise shall be to undertake an objective comparison as at the Best Value Review Date of the Contractor's performance against each performance indicator in column 1 of Table A in the 12 months prior to the measurement against the performance by the comparator group in column 2 of Table A against the same Performance Indicator.
- 32.5.5 Where it is not possible to undertake an objective comparison (including without limitation where the comparator group in relation to average relet times does not operate under a similarly managed and comparable system of choice based lettings), the parties (acting reasonably and in good faith) shall make such appropriate and proportionate adjustment to the Performance Standard Benchmarking Exercise to the extent necessary to make the comparison as objective as possible. If the parties cannot agree on any such adjustment, the dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 32.5.6 If, the results of the Performance Standard Benchmarking Exercise (as adjusted by Clause 32.5.5 above as relevant) disclose that the Contractor's performance against a Performance Indicator should be improved to match the comparator group the Authority may (but only to the extent that this does not affect the ability of the Contractor to perform its other obligations under this Contract) following the expiry of the fifth Contract Year serve a Best Value Change Notice in accordance with Clause 32.4.5 stating the nature of the change to the Contractor's performance to conform to the formula in Column 3 of Table A and the provisions of Clause 32.4.6 to 32.4.14 shall apply.

**TABLE A**

<b>PERFORMANCE INDICATORS</b>	<b>SOURCE OF COMPARATOR GROUP</b>	<b>FORMULA</b>
Percentage of responsive repairs completed within repairs category deadlines	Housing Corporation database:- (a) Large HA's operating on London (b) HA's <5000 operating in London	Within top quartile. (To measure performance, a composite PI is to be derived by taking the weighted averages of each defined repair category
Customer satisfaction with repairs	Audit Commission Library of Local PI's - London Authorities (If available) Or Agreed benchmarking consortium	Within top quartile
Average relet times	Housing Corporation database:- (c) Large HA's operating in London (b) HA's <5000 operating in London + Audit Commission Library of Local PI's (ref LIB/H37 – London Authorities)	Within top quartile

PERFORMANCE INDICATORS	SOURCE OF COMPARATOR GROUP	FORMULA
Percentage of gross annual rent roll collected	Audit Commission Library of Local PI's – London Authorities - (If available) Or Agreed benchmarking consortium	Within top quartile
6.15.1(c) – Customer services: compliance with requirements for normal telephony services	Audit Commission Library of Local PI's (if available) Or Agreed benchmarking consortium	Within top quartile
KPI 6.15.1(d) – Customer services: compliance with requirements for emergency telephony services	Audit Commission Library of Local PI's (if available) Or Agreed benchmarking consortium	Within top quartile
6.15.1(e) – Customer services: compliance with requirements for electronic access services	Audit Commission Library of Local PI's (if available) Or Agreed benchmarking consortium	Within top quartile
6.16.3 – Customer services: compliance with requirements for correspondence	Audit Commission Library of Local PI's (if available) Or Agreed benchmarking consortium	Within top quartile
6.16.5 – Customer services: compliance with requirements for complaints and Ombudsman enquiries	Audit Commission Library of Local PI's (if available) Or Agreed benchmarking consortium	Within top quartile
6.16.8 – Customer services: compliance with requirements for Members' enquiries	Audit Commission Library of Local PI's (if available) Or Agreed benchmarking consortium	Within top quartile

## PART 6

### TERMINATION

#### 33. DIRECT AGREEMENT

The provisions set out in this Part 6 (Termination) of this Contract are subject to the Direct Agreement.

#### 34. TERMINATION OF THIS CONTRACT

##### 34.1 Contractor Default Termination

If a Contractor Default has occurred and the Authority wishes to terminate this Contract, the Authority must serve a notice in writing on the Contractor in accordance with Clause 34.2 (***Termination by the Authority***).

##### 34.2 Termination by the Authority

34.2.1 If a Contractor Default has occurred and the Authority wishes to terminate the Contract, it must serve a termination notice on the Contractor ("**Termination Notice**"). The Termination Notice must specify:-

- (a) the type and nature of Contractor Default that has occurred, giving reasonable details; and
- (b) that the Contract will terminate on the day falling 60 days after the date the Contractor receives the Termination Notice, unless the Contractor puts forward an acceptable rectification programme within 30 days (and implements such programme in accordance with its terms and rectifies the Contractor Default in accordance with the programme) or rectifies the Contractor Default within 60 days or the provisions of the Direct Agreement apply to prevent termination.

34.2.2 If the Contractor either rectifies the Contractor Default within the time period specified in the Termination Notice, or implements the rectification programme, if applicable, in accordance with its terms, the Termination Notice will be deemed to be revoked and the Contract will continue.

34.2.3 If the Contractor fails to rectify the Contractor Default within the time period specified in the Termination Notice or in accordance with accepted rectification programme, the Contract will, subject to the terms of the Direct Agreement, terminate on the date falling sixty (60) days after the date of receipt of the Termination Notice.

34.2.4 If the Contractor fails to implement any rectification programme in accordance with its terms, the Contract will, subject to the terms of the Direct Agreement, terminate on the date falling sixty (60) days after the date of notification to the Contractor of such failure and intention to terminate.

##### 34.3 Voluntary Termination

34.3.1 The Authority may terminate the Contract at any time on or before its Expiry Date by complying with its obligations under Clause 34.3.2 (***Voluntary Termination***) below.

#### 34.3.2

- (a) If the Authority wishes to terminate the Contract under this Clause, it must give notice to the Contractor stating:
  - (i) that the Authority is terminating the Contract under this Clause 34.3 (***Voluntary Termination by Authority***);
  - (ii) that the Contract will terminate on the date falling 20 Working Days after the date of receipt of the notice; and
  - (iii) whether the Authority has chosen to exercise its option under paragraph (b) below.
- (b) On termination, the Authority shall have the option to require the Contractor to transfer to the Authority all of its rights, title and interest in and to the Assets.
- (c) The Contract will terminate on the date falling 30 days after the date of receipt of the notice referred to in paragraph (a) above.

#### 34.4 Authority Default Termination

##### 34.4.1

- (a) If an Authority Default has occurred and the Contractor wishes to terminate the Contract, it must serve a Contractor termination notice ("**Contractor Termination Notice**") on the Authority within thirty (30) Working Days of becoming aware of the Authority Default.
- (b) The Contractor Termination Notice must specify the type of Authority Default which has occurred entitling the Contractor to terminate.
- (c) The Contract will terminate on the day falling thirty (30) Working Days after the date the Authority receives the Contractor Termination Notice, unless the Authority rectifies the Authority Default within 30 days of receipt of the Contractor Termination Notice.

- 34.4.2 On termination in accordance with Clause 34.4.1 (***Authority Default Termination***) of this Contract, the Authority shall have the option to require the Contractor (such requirement to be made prior to the termination taking effect) to transfer to the Authority all of its right, title and interest in and to the Assets.

#### 34.5 Termination by the Authority for Breach of the Refinancing Provisions

- 34.5.1 If the Contractor wilfully breaches the provisions of Schedule 16 (**Refinancing**) then the Authority may terminate this Contract at any time on or before its Expiry Date by complying with its obligations under Clauses 34.5.1 to 34.5.4 below (***Termination by the Authority for Breach of the Refinancing Provisions***).
- 34.5.2 If the Authority wishes to terminate this Contract under this Clause it must give notice to the Contractor stating:-

- (a) that the Authority is terminating this Contract under this Clause 34.5 (***Termination by the Authority for Breach of the Refinancing Provisions***);
- (b) that the Contract will terminate on the date falling 20 Working Days after the date of receipt of the notice; and
- (c) whether the Authority has chosen to exercise its option under Clause 34.5.3 (***Termination by the Authority for Breach of the Refinancing Provisions***) below.

34.5.3 On termination under Clause 34.5.2 (***Termination by the Authority for Breach of the Refinancing Provisions***) of this Contract, the Authority shall have the option to require the Contractor to transfer to the Authority all of its right, title and interest in and to the Assets.

34.5.4 The Contract will terminate on the date falling 20 Working Days after the date of receipt of the notice referred to in Clause 34.5.2 (***Termination by the Authority for Breach of the Refinancing Provisions***) above.

#### 34.6 **Exclusive Rights of Termination**

The parties hereby agree that their respective rights to terminate this Contract are as set out in this Contract and neither party shall be entitled to terminate this Contract other than as provided for herein.

### 35. **PERSISTENT BREACH**

#### 35.1 **Warning Notice**

If a particular breach of this Contract relating to the provision of the Services other than any breach for which a Deduction or Deductions could have been awarded has occurred more than 4 times in any 6 month period then the Authority may serve a notice (a "**Warning Notice**") on the Contractor:-

- 35.1.1 specifying that it is a Warning Notice;
- 35.1.2 giving reasonable details of the breach; and
- 35.1.3 stating that such breach is a breach which, if it recurs frequently or continues, may result in a termination of this Contract.

#### 35.2 **Final Notice**

If, following service of a Warning Notice the breach specified has continued beyond 30 days or recurred 4 or more times within the 6 month period after the date of service then the Authority may serve another notice (a "**Final Warning Notice**") on the Contractor:-

- 35.2.1 specifying that it is a Final Warning Notice;
- 35.2.2 stating that the breach specified has been the subject of a Warning Notice served within the twelve month period prior to the date of service of the Final Warning Notice; and
- 35.2.3 stating that if such failure continues or recurs 4 or more times within the 6 month period after the date of service of the Final Warning Notice, the Contract may be terminated.

35.3 A Warning Notice may not be served in respect of any breach which has previously been counted in the making of a separate Warning Notice.

## 36. **FORCE MAJEURE**

### 36.1 **Waiver of Obligations**

No party shall be entitled to bring a claim for a breach of obligations under the Contract by the other party or incur any liability to the other party for any losses or damages incurred by that other party to the extent that a Force Majeure Event occurs and it is prevented from carrying out one or more of its obligations by that Force Majeure Event. For the avoidance of doubt, the Authority shall not be entitled to terminate this Agreement for a Contractor Default if such Contractor Default arises from a Force Majeure Event (but without prejudice to Clauses 36.5 or 36.8).

### 36.2 **Ability to make Deductions**

Nothing in Clause 36.1 (***Waiver of Obligations***) shall affect any entitlement to make Unavailability Deductions or any Performance Deductions in the period during which the Force Majeure Event is subsisting.

### 36.3 **Notification of Force Majeure Event**

On the occurrence of a Force Majeure Event, the Affected Party shall notify the other party as soon as practicable. The notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Party and any action proposed to mitigate its effect.

### 36.4 **Consultation**

As soon as practicable following such notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of the Contract.

### 36.5 **Unable to Agree**

If no such terms are agreed on or before the date falling 120 days after the date of the commencement of the Force Majeure Event and such Force Majeure Event is continuing or its consequence remains such that the Affected Party is unable to comply with its obligations under this Contract for a period of more than 180 days, then, subject to Clause 36.7 (***Consequences of Termination***), either party may terminate the Contract by giving 20 Working Days' written notice to the other party.

### 36.6 **Not all Properties Affected**

Where a Force Majeure Event prevents the Contractor from providing the Service:

36.6.1 to less than 25% of the Properties, the Authority shall after 150 days propose an Authority Change; or

36.6.2 to more than 25% of the Properties, the Authority may after 150 days propose an Authority Change;

by which the affected Properties shall cease to be subject to this Contract and the Contract shall continue.

### 36.7 Consequences of Termination

If the Contract is terminated under Clause 36.5 (**Unable to Agree**) or Clause 36.8 (**Notice to Continue**):-

- 36.7.1 compensation shall be payable by the Authority in accordance with Clause 40 (**Force Majeure Compensation**); and
- 36.7.2 the Authority may require the Contractor to transfer its title, interest and rights in and to any Assets to the Authority.

### 36.8 Notice to Continue

If the Contractor gives notice to the Authority under Clause 36.5 (**Unable to Agree**) above that it wishes to terminate the Contract, then the Authority has the option either to accept such notice or to respond in writing on or before the date falling 10 Working Days after the date of its receipt stating that it requires the Contract to continue. If the Authority gives the Contractor such notice, then:-

- 36.8.1 the Authority shall pay the Contractor the Unitary Payment from the day after the date that is 20 Working Days before the date on which the Contract would have terminated under Clause 36.5 (**Unable to Agree**) as if the Services were being fully provided; and
- 36.8.2 the Contract will not terminate in accordance with this Clause 36 (**Force Majeure**) until expiry of written notice (of at least 20 Working Days) from the Authority to the Contractor that it wishes the Contract to terminate.

### 36.9 Mitigation

The parties shall at all times following the occurrence of a Force Majeure Event use all reasonable endeavours to prevent and mitigate the effects of any delay and the Authority and the Contractor shall at all times during which a Force Majeure Event is subsisting take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

### 36.10 Event Ceases

The Affected Party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract. Following such notification the Contract shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.

## 37. CONSEQUENCES OF TERMINATION

### 37.1 Compensation Provisions

If this Contract is terminated pursuant to:-

- 37.1.1 Clause 34.1 (**Contractor Default Termination**), the provisions of Clause 41 (**Compensation on Contractor Default**) shall apply;
- 37.1.2 Clause 34.3 (**Voluntary Termination**), the provisions of Clause 42 (**Compensation on Authority Default**) shall apply;
- 37.1.3 Clause 34.4 (**Authority Default Termination**), the provisions of Clause 42 (**Compensation on Authority Default**) shall apply;

- 37.1.4 Clause 34.5 (***Termination by the Authority for Breach of the Refinancing Provisions***) the provisions of Clause 43 (***Compensation on Corrupt Gifts Fraud and Refinancing Breaches***) shall apply;
- 37.1.5 Clause 36 (***Force Majeure***), the provisions of Clause 40 (***Force Majeure Compensation Event***) shall apply;
- 37.1.6 Clause 74.2 (***Termination for Corrupt Gifts and Fraud***), the provisions of Clause 43 (***Compensation on Corrupt Gifts Fraud and Refinancing Breaches***) shall apply.

## 37.2 **Accrued Rights**

The termination of this Contract howsoever arising is without prejudice to the rights, duties and liabilities of either party accrued prior to termination. The Clauses of this Contract which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

## 37.3 **Valuation of Assets**

**[NOT USED ]**

## 38. **SURVEYS ON TERMINATION AND RETENTION FUND**

### 38.1 **Retention Fund**

If the Contractor has been notified under Clause 38.5.1 (***Results of Survey***) that rectification or maintenance work is required, 18 months prior to the Expiry Date, the Authority shall be entitled to deduct the costs of that work as quantified by that survey from the Unitary Payment payable after such date and pay such amount into an interest bearing account in the joint names of the Authority, Contractor and Senior Lenders/Security Trustee at the Account Bank (the "**Retention Fund Account**") until the Contract has expired or terminated.

### 38.2 **Final Survey**

24 months prior to the Expiry Date, the Authority shall be entitled to carry out a final survey ("**Handback Survey**") of all of the Properties to assess whether they have been and are being maintained by the Contractor in accordance with its obligations under Clause 22.1 (***Maintenance***).

### 38.3 **Notification of Survey**

The Authority shall notify the Contractor in writing a minimum of 40 Working Days in advance of the date it wishes to carry out the Handback Survey. The Authority shall consider in good faith any reasonable request by the Contractor for the Handback Survey to be carried out on a different date if such request is made at least 20 Working Days prior to the notified date and the Contractor (acting reasonably) is able to demonstrate that carrying out the Handback Survey on the notified date would materially prejudice the Contractor's ability to provide the Services.

### 38.4 **Minimise Disruption**

When carrying out the Handback Survey the Authority shall use reasonable endeavours to minimise any disruption caused to the provision of the Services by the Contractor. The Contractor shall afford the Authority free of charge any reasonable assistance required by the Authority during the carrying out of the Handback Survey. The cost of the Handback Survey shall be borne by the Authority.

### 38.5 **Results of Survey**

If the Handback Survey shows that the Contractor has not complied with or is not complying with its obligations under Clause 22.1 (**Maintenance**), the Authority shall:-

- 38.5.1 notify the Contractor of the rectification and/or maintenance work (the "**Handback Works**") which are required to bring the condition of the Properties to the standard they would have been in if the Contractor had complied or was complying with its obligations under Clause 22.1 (**Maintenance**) (the "**Required Standard**");
- 38.5.2 specify a reasonable period within which the Contractor must carry out the Handback Works (the "**Handback Works Period**"); and
- 38.5.3 where the non compliance is material of the Dwellings subject to the survey recover the cost of the Handback Survey from the Contractor by means of a withdrawal from the Retention Fund Account.

### 38.6 **Maintenance Work**

The Contractor shall carry out the Handback Works to the Required Standard within the Handback Works Period and any costs it incurs in carrying out the Handback Works shall be at its own expense.

### 38.7 **Costs**

If and to the extent that the Contractor carries out the Handback Works to the Required Standard the Authority shall reimburse the Contractor's costs for so doing by withdrawing amounts from the Retention Fund Account and paying these to the Contractor as and when incurred on a monthly basis. If such sums are insufficient to cover the Contractor's costs, the Contractor shall bear the balance of such costs itself.

### 38.8 **Failure to carry out Work**

If and to the extent that the Contractor fails to carry out the Handback Works to the Required Standard within the Handback Works Period, the Authority shall be entitled to carry out itself, or procure, the Handback Works at the Contractor's expense and shall make a withdrawal from the Retention Fund Account to pay for the Handback Works to such extent.

### 38.9 **Balance of Fund**

If:-

- 38.9.1 all the Handback Works have been carried out to the Required Standard; and
- 38.9.2 all the costs of the Handback Works have been paid for by the Contractor; and
- 38.9.3 no other termination notice given in accordance with this Contract is outstanding,

the Authority shall pay any credit balance on the Retention Fund Account to the Contractor as soon as practicable.

### 38.10 **Disputes**

Any dispute as to the nature or extent of the Handback Works or the length of the Handback Works Period shall be referred to the Disputes Resolution Procedure.

### 39. **TRANSITION TO ANOTHER CONTRACTOR**

#### 39.1 **Duty to Co-operate**

During the final three months of the Contract Period (where this expires by effluxion of time) or during the period of any notice of termination of this Contract, and in either case for a period of three months thereafter, the Contractor shall co-operate fully with the transfer of responsibility for the Services to any new contractor of services the same or similar to the Services ("**New Contractor**"), and for the purposes of this Clause 39 (***Transition to another Contractor***), the meaning of the term "co-operate" shall include:-

- 39.1.1 liaising with the Authority and/or any New Contractor, and providing reasonable assistance and advice concerning the Services and their transfer to the Authority or to such New Contractor;
- 39.1.2 allowing any such New Contractor access (at reasonable times and on reasonable notice) to the Assets but not so as to interfere with or impede the provision of the Services; and
- 39.1.3 (without prejudice to the obligations of the Contractor pursuant to Clause 29.10 (Operating Manual) providing to the Authority and/or to any New Contractor all and any information concerning the Dwellings, Sites and the Services which is reasonably required for the efficient transfer of responsibility of their performance.

#### 39.2 **Transfer of Responsibility**

The Contractor and the Authority shall use all reasonable endeavours so as to facilitate the smooth transfer of responsibility for the Services to a New Contractor or to the Authority, as the case may be, and the Contractor shall take no action at any time during or after the Contract Period the sole or main purpose of which is calculated or intended to prejudice or frustrate or make more difficult such transfer.

## PART 7

### COMPENSATION ON TERMINATION

#### 40. FORCE MAJEURE COMPENSATION

##### 40.1 Force Majeure Termination Sum

On termination of this Contract under Clause 36 (**Notification for Force Majeure**) or Clause 59.3 (**Risks Become Uninsurable**), the Authority shall pay to the Contractor in accordance with Clauses 40.2 (**Amounts less than Zero**), 47 (**Set off on Termination and Exclusivity**) and 44 (**Method of Payment**) the Force Majeure Termination Sum. Subject to Clause 40.2 (**Adjustment of Compensation Amount**), the Force Majeure Termination Sum shall be an amount equal to the aggregate of:

- 40.1.1 to the Base Senior Debt Termination Amount;
- 40.1.2 the Junior Debt, less an amount equal to the aggregate of payments of interest made by the Contractor under the Subordinated Financing Agreements;
- 40.1.3 all amounts paid to the Contractor by way of subscription for shares in the capital of the Contractor less dividends and other distributions paid to the Shareholders (save to the extent deducted under Clause 40.1.2 (**Amount above**)); and
- 40.1.4 redundancy payments for employees of the Contractor that have been or will be reasonably incurred by the Contractor as a direct result of termination of this Contractor and any Sub-Contractor Breakage Costs.

##### 40.2 Amounts less than Zero

If the amounts referred to in Clauses 40.1.2 (**Amount**) and/or 40.1.3 (**Amount**) are less than zero then, for the purposes of the calculation in Clause 40.1 (**Amount**), they shall be deemed to be zero.

##### 40.3 Adjustment of Compensation Amount

- 40.3.1 If the aggregate of the amounts referred to in Clauses 40.1.1, 40.1.2 and 40.1.3 and is less than the Revised Senior Debt Termination Amount, then the Force Majeure Termination Sum shall be increased so that it is equal to the aggregate of the Revised Senior Debt Termination Amount and the amount referred to in Clause 40.1.4 provided always that:
  - (a) the amount referred to in Clause 40.1.4 shall only be paid to the extent that the Contractor has demonstrated to the reasonable satisfaction of the Authority that the amount will not be paid in repayment (in whole or in part) of any Distribution; and
  - (b) if, at the time of termination, there are any Additional Permitted Borrowings outstanding, no Sub-Contractor Breakage Costs shall be paid in respect of any Sub-Contract in circumstances where there is an event of default under such Sub-Contract which would entitle the Contractor to terminate such Sub-Contract.
- 40.3.2 If a Distribution is made whilst any Additional Permitted Borrowing is outstanding and the Contractor has wilfully, or through gross negligence failed to comply with its obligations under Clause 10.4 of the Direct Agreement then in addition to the deduction of the Distribution made pursuant to paragraph (v) of the definition of Revised Senior Debt

Termination Amount, the Authority shall be entitled to set off the value of that Distribution a second time against the Force Majeure Termination Sum, provided that the amount of the Force Majeure Termination Sum will never be less than the Revised Senior Debt Termination Amount.

- 40.3.3 If the Contractor has wilfully or through gross negligence failed to comply with its obligations under Clause 10.4 of the Direct Agreement and there has been an overstatement of the cash balances by the Contractor as at that date which has caused the Authority to reasonably believe that it would be required to pay a lesser sum at the Termination Date than it actually is required to pay under the terms of this Clause 40.1 (**Compensation on Termination for Force Majeure**), then the Force Majeure Termination Sum shall be reduced by the amount of such overstatement (to the extent such overstatement is still applicable at the Termination Date), provided that the amount of the Force Majeure Termination Sum will never be less than the Revised Senior Debt Termination Amount.

#### 40.4 **Payment**

The Force Majeure Termination Sum payable pursuant to this Clause 40 (Compensation on Termination for Force Majeure) shall be determined and paid in accordance with Clauses 47 (**Set off on Termination and Exclusivity**) and 44 (**Method of Payment**).

#### 40.5 **[NOT USED]**

### 41. **COMPENSATION ON TERMINATION FOR CONTRACTOR DEFAULT**

#### 41.1 **Retendering Election**

- 41.1.1 On termination of this Contract under Clause 34.1, subject to Clauses 41.1.2 and 41.1.3 (**Retendering Election**), the Authority shall be entitled either to:

- (a) retender the provision of the Project in accordance with Clause 41.2 (**Retendering Procedure**); or
- (b) require an expert determination in accordance with Clause 41.3 (**No Retendering Procedure**).

- 41.1.2 The Authority shall be entitled to retender the provision of the Project in accordance with Clause 41.2 (**Retendering Procedure**) if the Authority notifies the Contractor on or before the date falling 20 Working Days after the Termination Date and there is a Liquid Market and:

- (a) the Senior Lenders have not exercised their rights to step in under Clause 5 of the Direct Agreement; or
- (b) the Contractor or the Senior Lenders have not procured the transfer of the Contractor's rights and liabilities under this Contract to a Suitable Substitute Contractor and have failed to use all reasonable efforts to do so.

but otherwise the Authority shall not be entitled to re-tender the provision of the Services and Clause 41.3 shall apply.

- 41.1.3 The Authority shall not be entitled to elect to retender the provision of the Services in accordance with Clause 41.2 (**Retendering Procedure**) if the Contractor or Senior Lenders have demonstrated to the Authority that the reason for the failure to transfer the Contractor's rights and liabilities under the Agreement is that the Suitable Substitute Contractor has not obtained all

consents from the Secretary of State as required under Section 27 of the Housing Act 1985 (as amended) for either itself or any Sub-Contractor within the earlier of:

- (a) the expiry of any Moratorium Period; and
- (b) 6 months from the date of the application to the Secretary of State accompanied by all required information necessary to obtain such consent.

#### 41.2 Retendering Procedure

If the Authority elects to retender the provision of the Project under Clause 41.1 **(Retendering Election)**, then the following provisions shall apply:-

- 41.2.1 the objective of the retendering procedure shall be to establish and pay to the Contractor the Highest Compliant Tender price, as a result of the Tender Process;
- 41.2.2 the Authority shall (subject to any legal requirements preventing it from doing so) use its reasonable endeavours to complete the Tender Process as soon as lawfully practicable;
- 41.2.3 the Authority shall notify the Contractor of the qualification criteria and the other requirements and terms of the Tender Process, including the timing of the Tender Process and shall act reasonably in setting such requirements and terms;
- 41.2.4 the Contractor authorises the release of any information by the Authority under the Tender Process which would otherwise be prevented under Clause 54 **(Freedom of Information and Information and Confidentiality)** that is reasonably required as part of the Tender Process;
- 41.2.5 the Contractor may, at its own cost, appoint a Tender Process Monitor to monitor the Tender Process for the purpose of monitoring and reporting to the Contractor and the Senior Lenders on the Authority's compliance with the Tender Process and making representations to the Authority. The Tender Process Monitor shall be entitled to advise the Contractor as to whether it considers that the Authority has acted in accordance with the Tender Process, and correctly determined the Adjusted Highest Compliant Tender Price;
- 41.2.6 the Tender Process Monitor shall enter into a confidentiality agreement with the Authority in a form acceptable to the Authority and shall be entitled to attend all meetings relating to the Tender Process, inspect copies of all the tender documentation and bids and make representations to the Authority as to compliance with the Tender Process. All representations shall be made by the Tender Process Monitor in a timely manner as the Tender Process proceeds. The Authority shall not be bound to consider or act upon such representations but acknowledges that such representations may be referred to by the Contractor in the event that the Contractor refers a dispute relating to the Adjusted Highest Compliant Tender Price to the Dispute Resolution Procedure in accordance with Clause 60 **(Dispute Resolution)**;
- 41.2.7 for all or any part of a month, falling within the period from the Termination Date to the Compensation Date, the Authority shall pay to the Contractor:-
  - (a) the Post Termination Service Amount for that month, on or before the date falling 10 Working Days after the end of that month; and

- (b) the Post Termination Service Amount for that period ending on the Compensation Date, on or before the date falling 20 Working Days after the Compensation Date;
- 41.2.8 if any Post Termination Service Amount is less than zero then it shall be carried forward and shall be set off against any future positive Post Termination Service Amounts. If any such Post Termination Service Amount has not been set off on or before the Compensation Date then it shall be taken into account in the calculation of the Adjusted Highest Compliant Tender Price;
- 41.2.9 the Authority shall require bidders to bid on the basis that they will receive the benefit of any outstanding claims under material damage insurance policies and amounts (if any) standing to the credit of the Joint Insurance Account on the date that the New Contract is entered into;
- 41.2.10 as soon as practicable after tenders have been received, the Authority shall (acting reasonably) determine the Compliant Tenders and shall notify the Contractor of the Adjusted Highest Compliant Tender Price;
- 41.2.11 if the Contractor refers a dispute relating to the Adjusted Highest Compliant Tender Price to dispute resolution in accordance with Clause 60 (**the Disputes Resolution**), the Authority shall be entitled to enter into a New Contract. The Authority shall pay to the Contractor the Adjusted Highest Compliant Tender Price on or before the date falling 20 Working Days after it has been determined in accordance with Clause 60 (**Disputes Resolution**) and the Authority shall pay interest to the Contractor at the Senior Debt Rate on any amount of Adjusted Highest Compliant Tender Price which has been withheld, from the date specified in Clause 41.2.12 below until the date specified in this Clause 41.2.11. For the avoidance of doubt where there is an agreed amount and dispute amount in respect of the Adjusted Highest Compliant Tender Price the Authority shall (where it is agreed that the Adjusted Highest Compliance Tender Price is a positive number) pay to the contractor the agreed amount no later than the date specified in Clause 41.2.12 below with the disputed amount being dealt with in accordance with this Clause 41.2.11;
- 41.2.12 subject to Clauses 41.2.11 and 41.2.15, the Authority shall pay to the Contractor an amount equal to the Adjusted Highest Compliant Tender Price no later than the date falling 20 Working Days after the date of the New Contract;
- 41.2.13 the discharge by the Authority of its payment obligation in Clause 41.2.11 and/or 41.2.12 above shall be in full and final settlement of all of each party's claims and rights against the Authority for breaches and/or termination of this Contract and the Project Documents whether under contract, tort, restitution or otherwise, save for any liability of either party to the other which arose prior to the Termination Date that has not already been taken into account in the Adjusted Highest Compliant Tender Price;
- 41.2.14 subject to Clauses 41.2.15 and 41.2.18 if the Authority has not paid an amount equal to the Adjusted Highest Compliant Tender Price to the Contractor on or before the date falling 12 months after the Termination Date then the following provisions of this Clause shall not apply to that termination and the provisions of Clause 41.1.3 (**No Retendering Procedure**) shall apply instead;
- 41.2.15 if the Adjusted Highest Compliant Tender Price is zero or a negative number then the Authority shall have no obligation to make any payment to the Contractor and with effect from the time that the Authority gives notice of that

event to the Contractor, the Authority shall be released from all liability to the Contractor for breaches and/or termination of this Contract and any other Project Document whether under contract, tort or otherwise save for any antecedent liability of the Authority which arose prior to the Termination Date (but not from the termination itself) that has not already been taken into account in determining the Adjusted Highest Compliant Tender Price;

- 41.2.16 if the Adjusted Highest Compliant Tender Price is less than zero then an amount equal to the Adjusted Highest Compliant Tender Price shall be due and payable by the Contractor to the Authority on the date of the New Contract;
- 41.2.17 the Authority may elect at any time prior to the receipt of a Compliant Tender to follow the no retendering procedure under Clause 41.3 (**No Retendering Procedure**) by notifying the Contractor that this election has been made;
- 41.2.18 if the Authority has received all bids from bidders under the Tender Process and receives a Compliant Tender but decides not to complete the Tender Process, it shall notify the Contractor of this decision and pay to the Contractor an amount equal to the Adjusted Highest Compliant Tender Price within 20 Working Days of such notification.

#### 41.3 No Retendering Procedure

If the Authority is not entitled to retender the provision of the Project under Clauses or 41.1.3 or Clause 41.2.14 (**Retendering Procedure**) applies, or the Authority elects to require an expert determination in accordance with this Clause 41.3 then the following procedure shall apply:-

##### 41.3.1

- (a) Subject to paragraph (b) below, the Contractor shall not be entitled to receive any Post Termination Service Amount.
- (b) If the Authority elects to require an expert determination in accordance with this Clause 41.3.3 (**No Retendering Procedure**) after it has elected to follow the procedure under Clause 41.2 (**Retendering Procedure**), then the Authority shall continue to pay to the Contractor each Post Termination Service Amount until the Compensation Date, in accordance with Clause 41.2 (**Retendering Procedure**).

##### 41.3.2 In agreeing or determining the Estimated Fair Value of the Contract the parties shall be obliged to follow the principles set out below:-

- (a) all forecast amounts should be calculated in nominal terms at current prices recognising the adjustment for indexation in respect of forecast inflation between the date of calculation and the forecast payment date(s) as set out in this Contract;
- (b) the total of all future payments of the full Unitary Charge (without Deductions) and Authority's Capital Contribution Sum Instalments forecast to be made over the term of the Deemed New Contract shall be calculated and discounted to the Termination Date at the Termination Date Discount Rate;
- (c) the total of all costs forecast to be incurred by the Authority as a result of termination shall be calculated and discounted to the Termination Date at the Termination Date Discount Rate and

deducted from the payment calculated pursuant to sub-Clause (b), such costs to include (without double counting):-

- (i) a reasonable risk assessment of any cost overruns that will arise, whether or not forecast in the relevant base case;
- (ii) the costs of the service forecast to be incurred by the Authority in providing the Project to the standard agreed; and
- (iii) any rectification costs agreed to deliver the Project to the standard agreed (including any costs forecast to be incurred by the Authority to complete construction or development work and additional operating costs agreed to restore service standards);

in each case such costs to be forecast at a level that will deliver the full Unitary Payment referred to in Clause (b).

- 41.3.3 If the parties cannot agree on the Adjusted Estimated Fair Value of the Contract on or before the date falling 20 Working Days after the date on which the Authority elected to require an expert determination in accordance with this Clause 41.3, then the Estimated Fair Value of the Contract shall be determined in accordance with the Disputes Resolution Procedure.
- 41.3.4 The Authority shall pay to the Contractor an amount equal to the Adjusted Estimated Fair Value of the Contract in accordance with Clause 44 (Method of Payment), including any amount of the Authority's Capital Contribution Sums expended on Eligible Costs, except that which is expended on the Works.
- 41.3.5 The discharge by the Authority of its obligation in Clause 41.3.4 is in full and final settlement of all the Contractor's claims and rights against the Authority for breaches and/or termination of this Contract whether in contract, tort, restitution or otherwise save for any liability that arose prior to the Termination Date (but not from the termination itself) that has not been taken into account in determining the Adjusted Estimated Fair Value of the Contract.
- 41.3.6 To the extent that the Adjusted Estimated Fair Value of the Contract is less than zero, then an amount equal to the Adjusted Estimated Fair Value of the Contract shall be due and payable by the Contractor to the Authority on the Compensation Date.

42A. [ NOT USED ]

## 42. COMPENSATION ON AUTHORITY DEFAULT/VOLUNTARY TERMINATION

### 42.1 Authority Default Termination Sum

On termination of this Contract pursuant to Clauses 34.3 (*Voluntary Termination*) or Clause 34.4 (*Authority Default Termination*) or in the circumstances set out in Clause 78 (*Local Government (Contracts) Act 1997*) the Authority shall pay the Contractor the Authority Default Termination Sum in accordance with Clause 44 (*Method of Payment*) on the Termination Date. Subject to Clause 42.2 the Authority Default Termination Sum shall be an amount equal to the aggregate of:

- 42.1.1 the Base Senior Debt Termination Amount;

- 42.1.2 redundancy payments for employees of the Contractor that have been or will be reasonably incurred by the Contractor as a direct result of termination of this Contract and any Sub-Contractor Breakage Costs; and
- 42.1.3 the aggregate amount for which the share capital of the Contractor and the amounts outstanding under the Subordinated Financing Agreements could have been sold on an open market basis based on Relevant Assumptions;
- 42.1.4 On payment of the amount referred to in Clause 42.1 above, the Authority shall have the option to require the Contractor to transfer its right, title and interest in and to the Assets to the Authority or as directed by the Authority.

## 42.2 **Adjustment of Compensation Amount**

- 42.2.1 If the aggregate of the amounts referred to in Clause 42.1.1, 42.1.2 and 42.1.3 is less than the Revised Senior Debt Termination Amount, then the Authority Default Compensation Amount shall be increased so that it is equal to the aggregate of the Revised Senior Debt Termination Amount and the amount referred to in Clause 42.1.2 provided always that:
  - (a) the amount referred to in Clause 42.1.2 shall only be paid to the extent that the Contractor has demonstrated to the reasonable satisfaction of the Authority that the amount will not be paid in payment (in whole or in part) of any Distribution; and
  - (b) if, at the time of termination, there are any Additional Permitted Borrowings outstanding, no Sub-Contractor Breakage Costs shall be paid in respect of any Sub-Contract in circumstances where there is an event of default under such Sub-Contract which would entitle the Contractor to terminate such Sub-Contract.
- 42.2.2 If a Distribution is made whilst any Additional Permitted Borrowing is outstanding and the Contractor has wilfully, or through gross negligence failed to comply with its obligations under Clause 10.4 of the Direct Agreement, then in addition to the deduction of the Distribution referred to in paragraph (v) of the definition of Revised Senior Debt Termination Amount, the Authority shall be entitled to set off the value of that Distribution a second time against the Authority Default Termination Sum, provided that the amount of the Authority Default Termination Sum shall never be less than the Revised Senior Debt Termination Amount.
- 42.2.3 If the Contractor has wilfully or through gross negligence failed to comply with its obligations under Clause 10.4 of the Direct Agreement and there has been an overstatement of the cash balances by the Contractor as at that date which has caused the Authority to reasonably believe that it would be required to pay a lesser sum at the Termination Date than it actually is required to pay under the terms of this Clause 42.1 (***Compensation for Termination on Authority Default***), then the Authority Default Termination Sum shall be reduced by the amount of such overstatement (to the extent that such overstatement is still applicable at the Termination Date), provided that the amount of the Authority Default Compensation Amount will never be less than the Revised Senior Debt Termination Amount.

## 43. **COMPENSATION ON CORRUPT GIFTS, FRAUD AND REFINANCING BREACHES**

- 43.1 On termination of this Contract in accordance with Clauses 34.5 (***Termination for Breach of Refinancing Provisions***) or 74.2 (Termination for Corrupt Gifts and Fraud) the Authority shall pay the Contractor an amount equal to the Revised Senior Debt Termination Amount. Such amount shall be determined and paid in accordance with Clauses 44 (***Method of Payment***).

- 43.2 If termination occurs then the Authority may require the Contractor to transfer its rights, title and interest in and to the Assets to the Authority.

**44. METHOD OF PAYMENT**

**44.1 Date of Payment**

The Authority shall pay to the Contractor the Termination Sum together with interest on any Base Senior Debt Termination Amount or Revised Senior Debt Termination Amount element of the Termination Sum at the Senior Debt Rate on or before the date falling 40 Working Days after the Notice Date provided that it may elect to pay the Adjusted Estimate Fair Value of the Contract or the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant) element of the Termination Sum in accordance with Clause 44.2 below.

**44.2 Instalments**

The Authority may other than on an Authority Default elect to pay the Adjusted Estimated Fair Value of the Contract or the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant) element of the Termination Sum:

44.2.1 in instalments as follows:

- (a) in respect of that element of the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of the Contract (as relevant) representing the Outstanding Principal (where the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of the Contract (as relevant) is greater than or equal to the Outstanding Principal) on the dates (the "Instalment Dates") and in the amounts that the Contractor would have been required to pay principal to the Senior Lenders under the terms of the Senior Financing Agreement had the Termination Date not occurred and the sum remaining after deducting the Outstanding Principal from the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of the Contract (as relevant) shall be paid in equal instalments on the Instalment Dates;
- (b) where the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of the Contract (as relevant) is less than the Outstanding Principal, on the Instalment Dates pro rata to the amounts that the Contractor would have been required to pay as principal to the Senior Lenders under the terms of the Senior Financing Agreement had the Termination Date not occurred; or

44.2.2 as the parties may otherwise agree.

**44.3 Interest**

From the Notice Date until the date of payment, interest shall accrue on any unpaid element of the Termination Sum at the Senior Debt Rate and be payable on the next occurring Instalment Date.

#### 44.4 Election to Pay in Full

If the Authority has elected to pay in accordance with Clause 44.2 (*Instalments*) above, it may (on 28 days prior written notice to the Contractor) elect to pay the Adjusted Estimated Fair Value of the Contract or the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant) element of the Termination Sum in full on any Instalment Date.

#### 44.5 Failure to Make Payment

If the Authority:-

44.5.1 fails to make a payment to the Contractor in accordance with Clauses 44.2.1 and/or 44.2.2 (*Instalments*) and/or 44.3 above; or

44.5.2 breaches Clause 63 (*Assignment and Sub-contracting*),

the Contractor may issue a notice to the Authority declaring any unpaid and outstanding element of (as applicable) the Adjusted Estimated Fair Value of the Contract, the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant) element of the Termination Sum and any accrued but unpaid interest to be immediately due and payable.

#### 45. ACCOUNTS OF THE CONTRACTOR

The accounts of the Contractor shall be maintained as foreseen in the Financial Model, in particular, and without limiting the generality of the obligation contained in this Clause 45 (*Accounts of the Contractor*), the Contractor shall ensure that it is at all times possible to determine the balances of the Debt Reserve Fund and the Life Cycle Maintenance Reserve (as defined in the Financial Model).

#### 46. GROSS UP

If any amount of compensation payable by the Authority under Clauses 40 (*Force Majeure Compensation*), 42 (*Compensation on Authority Default*) (including Clause 78.4 (*Relevant Discharge Terms*)), 43 (*Compensation on Corrupt Gifts, Fraud and Refinancing Breaches*) (and Clause 41 (*Compensation on Contractor Default*)) is subject to Tax payable to a Relevant Authority in the United Kingdom, then the Authority shall pay to the Contractor such additional amount as will put the Contractor in the same after Tax position as it would have been in had the payment not been subject to Tax taking account of any relief, allowances deduction, setting off or credit in respect of Tax (whether available by choice or not) which may be taken by the Contractor to reduce the Tax to which the payment is subject provided that in the case of Clause 41 (*Compensation on Termination for Contractor Default*) such additional amount shall be payable only in respect of such Tax which the Authority is obliged to withhold and pay to any relevant tax authority in the United Kingdom.

#### 47. SET-OFF ON TERMINATION AND EXCLUSIVITY

##### 47.1 Set-Off on Termination

Except where expressly stated otherwise, the Authority is not entitled to set off any amount against any payment of termination compensation under Clauses 41 (*Force Majeure Compensation*), 43 (*Compensation on Termination for Corrupt Gifts, Fraud and Refinancing Breaches*) and 42 (*Compensation on Termination for Authority Default/Voluntary Termination*), save to the extent that after such an amount has been set off, the termination payment made would be in an amount greater than or equal to Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount as the case may be at that time.

47.2 **Exclusivity of Remedy**

Any payment of compensation shall be in full satisfaction of any claim which can be made against the Authority by the Contractor in relation to termination of this Contract or any Project Document. The compensation payable under Clause 42 (**Compensation on Authority Default**) (including where the Contract has been terminated under Clause 34.3 (**Voluntary Termination**)), Clause 40 (**Force Majeure Compensation**) and Clause 42 (**Compensation for Termination for Corrupt Gifts and Fraud or for Breach of the Refinancing Provisions**) shall be the sole remedy of the Contractor against the Authority in respect of termination of the Contract.

47.3 **Changes to the Financing Agreements and Ancillary Documents**

No amendment, waiver or exercise of a right under any Financing Agreement or Ancillary Document shall have the effect of increasing the Authority's liabilities on early termination of this Agreement unless:

47.3.1 the Contractor has obtained the prior written consent of the Authority to such increased liability for the purposes of this Clause 47.3; or

47.3.2 it is an Additional Permitted Borrowing.

47.4 **Refinancing**

The provisions of Schedule 16 (Refinancing) shall apply in relation to any Refinancing.

48. **SOLE REMEDY**

48.1 Subject to the rights of the Authority:

48.1.1 to claim under any indemnity;

48.1.2 to step-in;

48.1.3 to terminate this Contract; and

48.1.4 under any other provision in this Contract giving the Authority an express remedy,

the sole and exclusive remedy of the Authority in respect of any failure by the Contractor to provide the Services in accordance with this Contract shall be the operation of Deductions in accordance with Schedule 6 (**Payment and Performance Mechanism**).

48.2 Nothing in this Clause 48 (**Sole Remedy**) shall prevent or restrict the right of the Authority to seek injunctive relief or a decree of specific performance or other discretionary remedies of the court.

48.3 Notwithstanding any other provision of this Contract, neither party shall be entitled to recover compensation to make any claim under this Contract in respect of any loss that it has incurred (or any failure of the other party) to the extent that it has already been compensated in respect of that loss or failure pursuant to this Contract or otherwise.

## PART 8

### GENERAL

#### 49. RELIEF EVENTS

##### 49.1 Occurrence

If and to the extent that a Relief Event:-

49.1.1 is the direct cause of a delay in achieving a Relevant Date; and/or

49.1.2 adversely affects the ability of the Contractor to perform any of its obligations under this Contract,

then the Contractor is entitled to apply for relief from any rights of the Authority arising under Clause 34.1 (**Contractor Default Termination**) and subject to Clauses 49.3 (Consequences) and 49.4 (Deductions) from performance by the Contractor of its obligations under the Contract.

##### 49.2 Relief

To obtain relief the Contractor must:-

49.2.1 as soon as is practicable, and in any event within fifteen (15) Working Days after it became aware that the Relief Event has caused or is likely to cause delay and/or adversely affect the ability of the Contractor to perform its other obligations give to the Authority a notice of its claim for relief from its obligations under the Contract, including full details of the nature of the Relief Event, the date of occurrence and its likely duration;

49.2.2 within 5 Working Days of receipt by the Authority of the notice referred to in Clause 49.2.1 (Relief) above give full details of the relief claimed; and

49.2.3 demonstrate to the reasonable satisfaction of the Authority that:-

- (a) the Contractor could not have avoided such occurrence or consequences by steps which they might reasonably be expected to have taken, without incurring material expenditure;
- (b) the Relief Event directly caused the delay to the Relevant Date or need for relief from other obligations under this Contract;
- (c) the delay caused and/or the adverse effect on the ability of the Contractor to perform any of its obligations under the Contract claimed could not reasonably be expected to be mitigated or recovered by the Contractor acting in accordance with Good Industry Practice, without incurring expenditure; and
- (d) the Contractor is using reasonable endeavours to perform its obligations under the Contract.

##### 49.3 Consequences

In the event that the Contractor has complied with its obligations under Clause 49.2 (Relief) then:-

49.3.1 the Relevant Date(s) affected by the occurrence of such Relief Event shall be postponed by such time as shall be reasonable for such a Relief Event, taking into account the likely effect of delay; and/or

49.3.2 the Authority shall not be entitled to exercise its rights to terminate the Contract under Clause 34.1 (**Contractor Default Termination**) and subject to Clause 49.4 (Deductions) shall give such other relief as has been requested by the Contractor.

#### 49.4 **Deductions**

Nothing in Clause 49.3 (**Consequences**) shall affect any entitlement to make Unavailability Deductions or any Performance Deductions during the period in which the Relief Event is subsisting provided that any Deduction shall be disregarded for the purposes of the Authority's right to terminate for a Contractor Default.

#### 49.5 **Information**

In the event that information required by Clause 49.2 (**Relief**) is provided after the dates referred to in that Clause then the Contractor shall not be entitled to any relief during the period for which the information is delayed;

#### 49.6 **Further Information**

The Contractor shall notify the Authority if at any time it receives or becomes aware of any further information relating to the Relief Event, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading.

#### 49.7 **Dispute Resolution**

If the parties cannot agree the extent of the relief required, or the Authority disagrees that a Relief Event has occurred or that the Contractor is entitled to any extension of the Relevant Date(s) and/or relief from other obligations under this Contract, the parties shall resolve the matter in accordance with Clause 60 (**Dispute Resolution**).

#### 49.8 **Withdrawal of Dwellings**

The Authority may elect to withdraw a Dwelling from the Project if an event occurs in respect of that Dwelling as contemplated by sub-paragraph (g) or (i) of the definition of Relief Event and in that event the provisions of Clause 37.7 (**Changes to Numbers of Dwellings to Tenure**) shall apply.

### 50. **CHANGE IN LAW**

#### 50.1 **Qualifying Change in Law**

If a Qualifying Change in Law occurs or is shortly to occur, then either party may write to the other to express an opinion on its likely effects, giving details of its opinion of:-

50.1.1 any necessary change in the Works and/or the Services;

50.1.2 whether any changes are required to the terms of this Contract to deal with the Qualifying Change in Law;

50.1.3 whether relief from compliance with obligations is required, including the obligation of the Contractor to achieve any Relevant Date and/or meet its obligations in relation to the Works and/or the Services during the implementation of any relevant Qualifying Change in Law;

50.1.4 any loss of revenue that will result from the relevant Qualifying Change in Law;

50.1.5 any Estimated Change in Project Costs that directly result from the Qualifying Change in Law; and

50.1.6 any Capital Expenditure that is required or no longer required as a result of a Qualifying Change in Law taking effect during the Operational Period,

in each case giving in full detail the procedure for implementing the change in the Works and/or the Services. Responsibility for the costs of implementation (and any resulting variation to the Unitary Charge) shall be dealt with in accordance with Clause 50.2 (**Parties to Discuss**) to 50.6 (**Adjustment to Unitary Charge**).

## 50.2 **Parties to Discuss**

As soon as practicable after receipt of any notice from either party under Clause 50.1 (**Qualifying Change in Law**), the parties shall discuss and agree the issues referred to in Clause 50.1 (**Qualifying Change in Law**) and any ways in which the Contractor can mitigate the effect of the Qualifying Change of Law, including:-

50.2.1 providing evidence that the Contractor has used reasonable endeavours (including where practicable the use of competitive quotes) to oblige its Sub-Contractors to minimise any increase in costs or loss in revenue and maximise any reduction in costs or increase in revenue;

50.2.2 demonstrating how any Capital Expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred or would have been incurred, foreseeable changes in law at that time having been taken into account by the Contractor;

50.2.3 giving evidence as to how the Qualifying Change in Law has affected prices charged by any similar businesses to the Project including similar businesses in which the shareholders or their Affiliates carry on business; and

50.2.4 demonstrating that any expenditure that has been avoided, which was anticipated to be incurred to replace or maintain assets that have been affected by the Qualifying Change in Law concerned, has been taken into account in the amount which in its opinion has resulted or is required and claimed under Clause 50.1 (**Qualifying Change in Law**).

## 50.3 **Change Agreed**

If the parties agree or it is determined under Clause 60 (**Dispute Resolution**) that the Contractor is required to incur additional Capital Expenditure due to a Qualifying Change in Law (excluding the Contractor's Share of any Capital Expenditure agreed or determined to be required as a result of a General Change in Law under this Clause 50 (**Change in Law**)), then the Contractor shall use its reasonable endeavours to obtain funding for such Capital Expenditure on terms reasonably satisfactory to it and the Senior Lenders.

## 50.4 **Financing**

If the Contractor has used reasonable endeavours to obtain financing for such Capital Expenditure referred to in Clause 50.3 (**Change Agreed**), but has been unable to do so within 40 Working Days of the date that the agreement or determination in Clause 50.3 (**Change Agreed**) occurred, then the Authority shall pay to the Contractor an amount equal to that Capital Expenditure on or before the date falling 10 Working Days after the Capital Expenditure has been incurred.

## 50.5 **Contractor's and Authority's Share of a General Change in Law**

Where a General Change in Law occurs and as a consequence the Contractor incurs Capital Expenditure, the Contractor shall bear the Contractor's Share and the Authority shall bear the Authority's Share, provided that in the case of a General Change in Law applying to the Heating Systems or part thereof pursuant to Clause 27.14.2 the Contractor's Share shall not exceed the unexpended amounts allowed for in the Financial Model for expenditure incurred as a result of any Change in Law in respect of the period from the Services Commencement Date until the date on which the General Change in Law occurred.

#### 50.6 **Adjustment to Unitary Charge**

Any compensation payable to the Contractor under this Clause save for that payable under Clause 50.4 (**Financing**) shall be paid by means of an adjustment to the Unitary Charge as shall be calculated in accordance with Clause 31 (Financial Adjustments).

#### 51. **PAYMENT OF IRRECOVERABLE VAT**

The Authority shall pay to the Contractor from time to time as the same is incurred by the Contractor sums equal to Irrecoverable VAT but only to the extent that it arises as a result of a Change in Law. Any such payment shall be made within 28 days of the delivery by the Contractor to the Authority of written details of the amount involved accompanied by details as to the grounds for and computation of the amount claimed. For the purposes of this Clause 51 "Irrecoverable VAT" means input VAT incurred by the Contractor on any supply which is made to it which is used or to be used exclusively in performing the Works or the Services or any of the obligations or provisions under this Contract together with input VAT incurred as par of its overhead in relation to such activities) to the extent that the Contractor is not entitled to repayment or credit from HM Customs & Excise in respect of such input VAT.

#### 52. **VARIATIONS**

##### 52.1 **Authority Changes**

52.1.1 The Authority has the right to propose changes to the Works and/or Services (other than Small Works Changes) in accordance with this Clause 52.1 (**Authority Changes**).

52.1.2 The Authority shall not propose an Authority Change which:-

- (a) would cause any existing Consent to be revoked (or a new Consent required to implement the relevant change in the Works and/or the Services to be unobtainable);
- (b) requires that the Works or Services be performed in a way that infringes any law or is inconsistent with Good Industry Practice; or
- (c) would materially and adversely affect the Contractor's ability to deliver any of the Works and/or Services; or
- (d) materially and adversely affect the health and safety of any person;
- (e) would increase the Contractor's Capital Expenditure by more than 20% in aggregate (when added to the Capital Expenditure already incurred in respect of other Authority Changes); or
- (f) require the Contractor to implement the Authority Change in an unreasonable period of time; or
- (g) would, if implemented, result in a change in the nature of the Project; or

- (h) would, if implemented, materially and adversely change the nature of the Project (including its risk profile);
  - (i) would represent a departure from Good Industry Practice; and/or
  - (j) the Authority does not have the legal powers or capacity to require the implementation of such Authority Change.
- 52.1.3 If the Authority requires an Authority Change, it must serve a notice (an "Authority Notice of Change") on the Contractor.
- 52.1.4 The Authority Notice of Change shall:-
- (a) set out the Authority Change required in sufficient detail to enable the Contractor to calculate and provide the Estimated Change in Project Costs in accordance with Clause 52.1.4 (**Authority Changes**) (the "Estimate");-
  - (b) in the event that the Authority Change will require Capital Expenditure, state whether the Authority intends to pay to the Contractor the costs involved in implementing the Authority Change or whether the Authority requires the Contractor to use its reasonable efforts to obtain funding in accordance with Clause 52.1.11 (**Authority Changes**); and
  - (c) require the Contractor to provide the Authority within 20 Working Days of receipt of the Authority Notice of Change with the Estimate.
- 52.1.5 As soon as practicable and in any event within 20 Working Days, after having received the Authority Notice of Change, the Contractor shall deliver to the Authority the Estimate. The Estimate shall include the opinion of the Contractor on:-
- (a) whether relief from compliance with obligations is required, including the obligations of the Contractor to achieve any of the Relevant Dates and meet the Output Specification during the implementation of the Authority Change;
  - (b) any impact on the provision of the Works and/or Services;
  - (c) any amendment required to this Contract and/or any Project Document as a result of the Authority Change;
  - (d) any Estimated Change in Project Costs that results from the Authority Change;
  - (e) any loss in revenue that results from the Authority Change;
  - (f) any Capital Expenditure that is required or no longer required as a result of the Authority Change;
  - (g) any regulatory approvals which are required; and
  - (h) the proposed method of certification of any construction or operational aspects of the Works or Services required by the Authority Change if not covered by the procedures specified in Clause 19 (**Notification of Availability**).

52.1.6 As soon as practicable after the Authority receives the Estimate, the parties shall discuss and agree the issues set out in the Estimate, including:

- (a) providing evidence that the Contractor has used reasonable endeavours (including (where practicable) the use of competitive quotes) to oblige its Sub-Contractors to minimise any increase in costs and maximise any reduction in costs;
- (b) demonstrating how any Capital Expenditure to be incurred or avoided is being measured in a cost effective manner including showing that when such expenditure is incurred, foreseeable Changes in Law at that time have been taken into account by the Contractor; and
- (c) demonstrating that any expenditure that has been avoided, which was anticipated to be incurred to replace or maintain assets that would have been affected by the Authority Change concerned, has been taken into account in the amount which in its opinion has resulted or is required under Clause 52.1.5(e) or 52.1.5(f) above.

In such discussions the Authority may modify the Authority Notice of Change and (if the estimated increase in Capital Expenditure in respect of the relevant change to the Works and/or the Services is expected to exceed £ (indexed) per Contract Year and it is practicable for the Contractor to do so) the Authority may require the Contractor to seek and evaluate competitive tenders for the relevant capital works. In each case, the Contractor shall, as soon as practicable, and in any event not more than 10 Working Days, or such longer period as is appropriate taking into account the nature of the requested Authority Change, after receipt of such modification, notify the Authority of any consequential changes to the Estimate.

52.1.7 If the Contractor does not intend to use its own resources to implement any change in Service it shall comply with Good Industry Practice with the objective of ensuring that it obtains best value for money (taking into account all relevant circumstances including, in particular, the requirement that the Contractor should not be worse off as a result of the implementation of the change in Service) when procuring any work, services, supplies, materials or equipment required in relation to the change in Service.

52.1.8 If the parties cannot agree on the contents of the Estimate then the dispute will be determined in accordance with the Disputes Resolution Procedure.

52.1.9 As soon as practicable after the contents of the Estimate have been agreed or otherwise determined pursuant to Clause 60 (**Dispute Resolution**) the Authority shall:-

- (a) confirm in writing the Estimate (as modified); or
- (b) withdraw the Authority Notice of Change.

52.1.10 If the Authority does not confirm in writing the Estimate (as modified) within 20 Working Days of the contents of the Estimate having been agreed in accordance with Clause 52.1.6 above or determined pursuant to Clause 52.1.8, then the Authority Notice of Change shall be deemed to have been withdrawn. Where there is such a withdrawal (either pursuant to this Clause 52.1.10 or Clause 52.1.9 above) the Authority shall pay to the Contractor the reasonable additional third party costs incurred by the Contractor in preparing such Estimate provided that:

- (a) the Contractor has used all reasonable endeavours to submit a reasonably priced Estimate;
  - (b) the Contractor has made available to the Authority a cost breakdown of the Estimate including an estimate of third party costs to be incurred by the Authority if the Authority Notice of Change is withdrawn or deemed to be withdrawn;
  - (c) the Authority has:-
    - (i) approved the estimate of third party costs referred to in paragraph 52.1.10(b) above and the type of third party prior to any third party costs being incurred; and
    - (ii) agreed that, given the notice of the proposed Authority Change it is reasonable to expect the relevant third party to incur costs in preparing the Estimate on the basis of the extent of the proposed change to the Services or the Works and the work required in submitting an accurate Estimate in compliance with this Clause 52; and
  - (d) the Contractor has provided the Authority with such evidence as it may reasonably require in order to verify the additional third party costs incurred by the Contractor.
- 52.1.11 In the event that the Estimate (as modified) involves estimated Capital Expenditure then (unless the Authority has elected to fund such costs in accordance with Clause 52.1.4(b)) the Contractor shall use its reasonable endeavours to obtain funding for the whole of the estimated Capital Expenditure, on terms reasonably satisfactory to it and the Senior Lenders.
- 52.1.12 If the Contractor has used its reasonable endeavours to obtain financing for the whole of the estimated Capital Expenditure, but has been unable to obtain an offer of funding within 40 Working Days of the date that the Authority confirmed the Estimate, then the Contractor shall have no obligation to carry out the Authority Change, unless the Authority agrees within 10 Working Days of the end of such period to pay the costs for which funding is not available on the basis of Clause 52.1.15 below.
- 52.1.13 The Authority may, at any time following the date on which the Estimate is confirmed, agree to meet all or, to the extent the Contractor has obtained funding for part of the Capital Expenditure, the remaining part of the estimated Capital Expenditure.
- 52.1.14 In the event that the Estimate has been confirmed by the Authority:-
- (a) the Contract including the Output Specification shall be varied accordingly;
  - (b) any Relevant Dates shall be postponed by such time as shall be reasonable as a consequence of the Authority Change, taking into account the likely effect of delay;
- 52.1.15 Where the Authority agrees to pay the costs for which funding is not available pursuant to this Clause 52.1.15:-
- (a) the Authority and Contractor shall agree:-
    - (i) a payment schedule in respect of the payment of such sum reflecting the amount and timing of the costs to be

incurred by Contractor in carrying out the Authority Change to the extent borne by the Authority; and

- (ii) where payment for part of the Authority Change reflects the carrying out of or specific progress towards, an element within the Authority Change, an objective means of providing evidence confirming that the part of the Authority Change corresponding to each occasion when payment is due under the payment schedule appears to have been duly carried out (such payment schedule and evidence to be determined in accordance with Clause 60 **(Dispute Resolution)** in the event of the Authority and the Contractor failing to agree as to its terms);
- (b) the Authority shall make a payment to the Contractor within 15 Working Days of receipt by the Authority of invoices presented to the Authority (complete in all material respects) in accordance with the agreed payment schedule (as the case may be, varied by agreement from time to time) accompanied by the relevant evidence (where applicable) that the relevant part of the change in Service has been carried out; and
- (c) if payment is not made in accordance with Clause 52.1.15(b), the Authority shall pay interest to the Contractor on the amount unpaid from the date 15 Working Days after receipt of the relevant invoice until paid at the Default Interest Rate.

## 52.2 Contractor Changes in Service

52.2.1 If the Contractor wishes to introduce a change in the composition of the Works and/or Services ("a Contractor Change"), it must serve a Contractor Notice of Change on the Authority.

52.2.2 The Contractor Notice of Change must:-

- (a) set out the proposed Contractor Change in sufficient detail to enable the Authority to evaluate it in full;
- (b) specify the Contractor's reasons for proposing the Contractor Change;
- (c) request the Authority to consult with the Contractor with a view to deciding whether to agree to the Contractor Change and, if so, what consequential changes the Authority requires as a result;
- (d) indicate any implications of the Contractor Change;
- (e) indicate, in particular, whether a variation to the Unitary Charge is proposed (and, if so, give a detailed costs estimate of such proposed change); and
- (f) indicate if there are any dates by which a decision by the Authority is critical.

52.2.3 The Authority shall evaluate the Contractor Change in good faith, taking into account all relevant issues, including whether:-

- (a) a change in the Unitary Charge will occur;

- (b) the Contractor Change affects the quality of the Works and/or Services or the likelihood of successful delivery of the Services;
  - (c) the Contractor Change will interfere with the relationship of the Authority with third parties;
  - (d) the financial strength of the Contractor is sufficient to perform the Contractor Change;
  - (e) the residual value of the Assets is reduced; or
  - (f) the Contractor Change materially affects the risks or costs to which the Authority is exposed.
- 52.2.4 As soon as practicable after receiving the Contractor Notice of Change, the parties shall meet and discuss the matter referred to in it. During their discussions the Authority may propose modifications or accept or reject the Contractor Notice of Change.
- 52.2.5 If the Authority accepts the Contractor Notice of Change (with or without modification), the relevant Contractor Change in the Works and/or Services shall be implemented. Within this period, the parties shall consult and agree the remaining details as soon as practicable and shall enter into any documents to amend this Contract or any relevant Project Document which are necessary to give effect to the Contractor Change.
- 52.2.6 If the Authority rejects the Contractor Notice of Change, it shall be obliged to give its reasons for such a rejection.
- 52.2.7 Unless the Authority's acceptance specifically agrees to an increase in the Unitary Charge, there shall be no increase in the Unitary Charge as a result of a Contractor Change.
- 52.2.8 If the Contractor Change causes or will cause the Contractor's costs or those of a Sub-Contractor to decrease, there shall be a decrease in the Unitary Charge to reflect a sharing in the decrease in costs 50:50 as to the Authority and the Contractor respectively.
- 52.2.9 The Authority cannot reject a Contractor Change which is required in order to conform to a Change in Law. The costs of introducing a Contractor Change resulting from a Qualifying Change in Law (including any resulting variation in the Unitary Charge) shall be dealt with in accordance with Clause 50 (**Change in Law**) and to the extent not dealt with shall be borne by the Contractor.

### 52.3 **Small Works Changes**

- 52.3.1 No later than twenty (20) Working Days prior to the commencement of each Contract Year other than the first Contract Year, the Contractor shall propose a schedule of rates to be agreed with the Authority (the "**Small Works Rates**"), such agreed rates to be applied in respect of any request from the Authority for a Small Works Change to be completed during that Contract Year. For the first Contract Year, the Small Works Rates shall be those set out in the definition thereof. Thereafter the value of any Small Works shall be calculated on the basis that:-
- (a) the labour element shall be calculated in accordance with the Small Works Rates or, where such rates are not applicable, in accordance with rates which are fair and reasonable; and

- (b) the materials and plant element shall be charged at the cost of the materials and plant to the Contractor or to the contractor carrying out the work (net of all discounts) plus 7.5% (with no additional allowance for profit or overheads).

52.3.2 The Contractor and the Authority shall agree the timing of any Small Works, so as to minimise any inconvenience to the Authority. The Contractor shall take all reasonable steps to minimise the duration of any Small Works.

52.3.3 The Authority may at any time request a Small Works Change which shall be implemented by the Contractor as soon as reasonably practicable.

52.3.4 If no such rates shall be agreed by the parties, either party may elect to propose a change under the provisions of Clause 52 (**Variations**).

52.3.5 The Authority agrees to meet all of the expenditure incurred by the Contractor in respect of a Small Works Change and pay an amount equivalent to the cost of the Small Works Change (calculated by reference to Small Works Rates) within 20 Working Days of completion of the Small Works.

52.3.6 Any dispute between the parties relating to Small Works shall be determined in accordance with the Dispute Resolution Procedure.

#### 52.4 **Consultation**

The Authority shall undertake any consultation required under Section 105 Housing Act 1985 as a consequence of an Authority Change or Contractor Change.

#### 53. **AUTHORITY STEP-IN**

##### 53.1 **Authority Step-In**

If the Authority reasonably believes that it needs to take action in connection with the Services:-

53.1.1 because a serious risk exists to the health or safety of persons or property or to the environment; or

53.1.2 to discharge a statutory duty; or

53.1.3 where a Service Recovery Plan to enable the collection of rent, service charges or other payments from Tenants has been required by the Authority of the Contractor and has not been delivered or where such a Service Recovery Plan has failed or where the Contractor is subject to the level of Performance Deductions resulting from the percentage of the gross annual rent roll collected in any Contract Year (as set out in Table 10 of Annex A to Schedule 6 (Payment and Performance Mechanism) falling to less than 90% (provided that in the event that the Authority exercises its step in rights pursuant to this Clause 53.1.3 the period of Authority step-in shall be disregarded for the purposes of determining the level of Performance Deductions (if any) in relation to rent collection incurred by the Contractor following such period of step-in);

53.1.4 when a Dwelling has not been Available for a period exceeding 62 days save where the Contractor has commenced actions sufficient to restore Availability unless, having commenced such actions, the Authority reasonably believes that the Contractor is unlikely to complete (or to have completed them) within the period of 60 days (provided always that for the

avoidance of doubt that this step-in right shall not be exercised when the Contractor is carrying out any Works at the relevant Dwelling);

then the Authority shall be entitled to take action in accordance with Clause 53.2 (**Notify Contractor**) below.

#### 53.2 **Notify Contractor**

If Clause 53.1 (**Authority Step-in**) applies and the Authority wishes to take action, the Authority shall notify the Contractor in writing of the following:-

- 53.2.1 the action it wishes to take;
- 53.2.2 the reason for such action;
- 53.2.3 the date it wishes to commence such action;
- 53.2.4 the time period which it believes will be necessary for such action; and
- 53.2.5 to the extent practicable, the effect on the Contractor and its obligation to provide the Service during the period such action is being taken.

#### 53.3 **Remedial Plan**

In relation to the relevant events described in Clauses 53.1.3 and 53.1.4 (**Authority Step-in**) the period in Clause 53.2.3 shall be no earlier than a period of 15 Working Days from the date on which the Authority notifies the Contractor in accordance with Clause 53.2.1 and 53.2.2, during which time the Contractor may prepare a remedial plan acceptable to the Authority (acting reasonably).

#### 53.4 **Authority Action**

If:-

- (a) the relevant event falls within Clause 53.1.2 (Authority Step-in) and is not remedied within 15 Working Days; or
- (b) the relevant event falls within Clauses 53.1.3 or 53.1.4 and no remedial plan is prepared within the time limit referred to in Clause 53.3 (**Remedial Plan**) or the Contractor fails to implement such a plan in full; or
- (c) if the relevant event falls within Clause 53.1.1,

then the Authority shall take such action as notified in respect of the relevant event pursuant to Clause 53.2 (Notify Contractor) and any consequential additional action as is necessary to rectify the relevant event (together, the "Required Action") and the Contractor shall give all reasonable assistance to the Authority while it is taking the Required Action.

#### 53.5 **Contractor not in Breach**

If the Contractor is not in breach of its obligations under the Contract, then for so long as and to the extent that the Required Action is taken, and this prevents the Contractor from providing any part of the Works and/ or the Services:-

- 53.5.1 the Contractor shall be relieved from its obligations to provide such part of the Works and/ or the Services;

- 53.5.2 in respect of the period in which the Authority is taking the Required Action and provided that the Contractor provides the Authority with reasonable assistance (such assistance to be at the expense of the Authority to the extent incremental costs are incurred), the Unitary Payment due from the Authority to the Contractor shall equal the amount the Contractor would receive if it were satisfying all its obligations and providing the Works and/or the Services affected by the Required Action in full over that period; and
- 53.5.3 the Authority shall indemnify the Contractor against any Losses suffered by the Contractor as a consequence of the Required Action taken by the Authority.

**53.6 Contractor in Breach**

If the Required Action is taken as a result of a breach of the obligations of the Contractor under the Contract, then for so long as and to the extent that the Required Action is taken, and this prevents the Contractor from providing any part of the Works and/or the Services:-

- 53.6.1 the Contractor shall be relieved of its obligations to provide such part of the Works and/or the Services; and
- 53.6.2 in respect of the period in which the Authority is taking Required Action, the Unitary Charge due from the Authority to the Contractor shall equal the amount the Contractor would receive if it were satisfying all its obligations and providing the Works and/or the Services affected by the Required Action in full over that period, less an amount equal to the Authority's reasonable costs in taking the Required Action; and
- 53.6.3 the Authority shall indemnify the Contractor against any Losses suffered by the Contractor as a consequence of wilful default or negligence by the Authority in connection with the Required Action taken by the Authority.

**54. FREEDOM OF INFORMATION AND CONFIDENTIALITY**

**54.1**

- 54.1.1 The parties agree that the provisions of this Contract and each Project Document shall, subject to Clause 54.1.2 below, not be treated as Confidential Information and may be disclosed without restriction.
- 54.1.2 Clause 54.1 above shall not apply to provisions of this Contract or a Project Document designated as Commercially Sensitive Information which shall, subject to sub-Clause 54.2 below, be kept confidential for the periods specified in that Part.
- 54.1.3 The parties shall keep confidential all Confidential Information received by one party from the other party relating to this Contract and Project Documents or the Project and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any such Confidential Information.

**54.2** Clauses 54.1.2 and 54.1.3, shall not apply to:

- 54.2.1 any disclosure of information that is reasonably required by any person engaged in the performance of their obligations under the Contract for the performance of those obligations;

- 54.2.2 any matter which a party can demonstrate is already or becomes generally available and in the public domain otherwise than as a result of a breach of this Clause;
- 54.2.3 any disclosure to enable a determination to be made under Clause 60 (**Dispute Resolution**) or in connection with a dispute between the Contractor and any of its subcontractors;
- 54.2.4 any disclosure which is required pursuant to any statutory, legal (including any order of a court of competent jurisdiction) or Parliamentary obligation placed upon the party making the disclosure or the rules of any stock exchange or governmental or regulatory authority having the force of law or if not having the force of law, compliance with which is in accordance with the general practice of persons subject to the stock exchange or governmental or regulatory authority concerned;
- 54.2.5 any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- 54.2.6 any provision of information to the parties' own professional advisers or insurance advisers or to the Senior Lenders or the Senior Lenders' professional advisers or insurance advisers or, where it is proposed that a person should or may provide funds (whether directly or indirectly and whether by loan, equity participation or otherwise) to the Contractor to enable it to carry out its obligations under the Contract, or may wish to acquire shares in the Contractor and/or Holdco in accordance with the provisions of this Contract to that person or their respective professional advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal;
- 54.2.7 any disclosure by the Authority of information relating to the design, construction, operation and maintenance of the Project and such other information as may be reasonably required for the purpose of conducting a due diligence exercise, to:
  - (a) any proposed new contractor, its advisers and lenders, should the Authority decide to retender the Contract; or
  - (b) any person in connection with Clause 26 (Market Testing and Benchmarking);
- 54.2.8 any registration or recording of the Consents and property registration required;
- 54.2.9 any disclosure of information by the Authority to any other department, office or agency of the Government or their respective advisers or to any person engaged in providing services to the Authority for any purpose related to or ancillary to the Contract; or
- 54.2.10 any disclosure for the purpose of :
  - (a) the examination and certification of the Authority's or the Contractor's accounts;
  - (b) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;

- (c) complying with a proper request from either party's insurance adviser, or insurer on placing or renewing any insurance policies; or
- (d) (without prejudice to the generality of Clause 54.2.4 above) compliance with the FOIA and/or the Environmental Information Regulations,

provided that, for the avoidance of doubt, neither Clause 54.2.10(d) nor Clause 54.2.2 above shall permit disclosure of Confidential Information otherwise prohibited by Clause 54.1.3 above where that information is exempt from disclosure under Section 41 of the FOIA.

- 54.3 Where disclosure is permitted under Clause 54.2 other than Clauses 54.2.2, 54.2.4, 54.2.5, 54.2.8 and 54.2.10, the party providing the information shall procure that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Contract .
- 54.4 For the purposes of the National Audit Act 1983 the Comptroller and Auditor General may examine such documents as he may reasonably require which are owned, held or otherwise within the control of the Contractor and any Sub-contractor and may require the Contractor and any Sub-contractor to produce such oral or written explanations as he considers necessary. For the avoidance of doubt it is hereby declared that the carrying out of an examination under Section 6(3)(d) of the National Audit Act 1983 in relation to the Contractor is not a function exercisable under this Contract.
- 54.5 The Contractor shall not make use of the Contract or any information issued or provided by or on behalf of the Authority in connection with the Contract otherwise than for the purpose of the Contract, except with the written consent of the Authority.
- 54.6 Where the Contractor, in carrying out its obligations under the Contract, is provided with information relating to Tenants and/or Leaseholders the Contractor shall not disclose or make use of any such information otherwise than for the purpose for which it was provided, unless the Contractor has sought the prior written consent of that Tenant or Leaseholder and has obtained the prior written consent of the Authority .
- 54.7 On or before the Expiry Date, the Contractor shall ensure that all originals and copies of documents or computer records in its possession, custody or control, which contain information relating to Tenants and/or Leaseholders including any documents in the possession, custody or control of a Sub-Contractor, are delivered up to the Authority.
- 54.8 The parties acknowledge that the National Audit Office has the right to publish details of the Contract (including Commercially Sensitive Information) in its relevant reports to Parliament.
- 54.9 The provisions of this Clause 54 are without prejudice to the application of the Official Secrets Acts 1911 to 1989.

## 55. **FREEDOM OF INFORMATION**

- 55.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall facilitate the Authority's compliance with its Information disclosure requirements pursuant to the same in the manner provided for in Clauses 55.2 to 55.7 (inclusive) below.
- 55.2 Where the Authority receives a Request for Information in relation to Information that the Contractor is holding on its behalf and which the Authority does not hold itself the Authority shall refer to the Contractor such Request for Information that it receives as

soon as practicable and in any event within five Working Days of receiving a Request for Information and the Contractor shall:

- 55.2.1 provide the Authority with a copy of all such Information in the form that the Authority requires as soon as practicable and in any event within ten Working Days (or such other period as the Authority acting reasonably may specify) of the Authority's request; and
  - 55.2.2 provide all necessary assistance as reasonably requested by the Authority in connection with any such Information, to enable the Authority to respond to a Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.
- 55.3 Following notification under Clause 55.2 and up until such time as the Contractor has provided the Authority with all the Information specified in Clause 55.2.1, the Contractor may make representations to the Authority as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that the Authority shall be responsible for determining at its absolute discretion :-
- 55.3.1 whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations;
  - 55.3.2 whether Information is to be disclosed in response to a Request for Information, and
- in no event shall the Contractor respond directly, or allow its Subcontractors to respond directly, to a Request for Information unless expressly authorised to do so by the Authority.
- 55.4 The Contractor shall ensure that all Information held on behalf of the Authority is retained for disclosure for at least 6 years (from the date it is acquired) and shall permit the Authority to inspect such Information as reasonably requested from time to time.
  - 55.5 The Contractor shall transfer to the Authority any Request for Information received by the Contractor as soon as practicable and in any event within 2 Working Days of receiving it.
  - 55.6 The Contractor acknowledges that any lists provided by him listing or outlining Confidential Information, are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with the requirements of the FOIA and the Environmental Regulations.
  - 55.7 In the event of a request from the Authority pursuant to Clause 55.2 above, the Contractor shall as soon as practicable, and in any event within 5 Working Days of receipt of such request, inform the Authority of the Contractor's estimated costs of complying with the request to the extent these would be recoverable if incurred by the Authority under Section 12(1) of the FOIA and the Fees Regulations. Where such costs (either on their own or in conjunction with the Authority's own such costs in respect of such Request for Information) will exceed the appropriate limit referred to in Section 12(1) of the FOIA and as set out in the Fees Regulations (the "Appropriate Limit") the Authority shall inform the Contractor in writing whether or not it still requires the Contractor to comply with the request and where it does require the Contractor to comply with the request the 10 Working Days period for compliance shall be extended by such number of additional days for compliance as the Authority is entitled to under Section 10 of the FOIA. In such case, the Authority shall notify the Contractor of such additional days as soon as practicable after becoming aware of them and shall reimburse the Contractor for such costs as the Contractor incurs in complying with the

request to the extent it is itself entitled to reimbursement of such costs in accordance with the FOIA Policy from time to time.

- 55.8 The Contractor acknowledges that (notwithstanding the provisions of Clause 55) the Authority may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000 (the "Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose Information concerning the Contractor or the Project:-

- 55.8.1 in certain circumstances without consulting with the Contractor; or
- 55.8.2 following consultation with the Contractor and having taken its views into account,
- 55.8.3 provided always that where Clause 55.8.1 above applies the Authority shall, in accordance with the recommendations of the Code, draw this to the attention of the Contractor prior to any disclosure.

## 56. INDEMNITIES AND RESPONSIBILITY

### 56.1 Contractor's Indemnity

The Contractor shall, subject to Clause 56.2 (**Contractor not Responsible**), be responsible to the Authority for, and shall release and indemnify the Authority, its employees, agents and contractors on demand from and against, all liability for:-

- 56.1.1 death or personal injury;
- 56.1.2 loss of or damage to property (including property belonging to the Authority or for which it is responsible but excluding the Properties and the Dwellings) "**(Authority Property)**"; and
- 56.1.3 third party actions, claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis),

which may arise out of or in consequence of, the design, construction, operation or maintenance of the Properties or the performance or the non performance by the Contractor of its obligations under this Contract or the presence on the Authority's Property (including the Dwellings and Properties) of the Contractor or any Contractor Related Party.

- 56.1A The Contractor shall subject to Clause 56.2 (Contractor not Responsible) be responsible for and shall release and indemnify the Authority on demand from and against all liability for Direct Losses and Indirect Losses incurred by the Authority or any Authority Related Party for breach of statutory duty which may arise out of, or in consequence of a breach by the Contractor of its obligations under this Contract to the extent that there are no other remedies available to the Authority under this Contract.

### 56.2 Contractor Not Responsible

Notwithstanding any other provisions of this Contract, the Contractor shall not be responsible or be obliged to indemnify the Authority in respect of any matter which may arise out of or in consequence of:-

- 56.2.1 any matter arising as a direct result of the Contractor acting on the instruction of the Authority; or

- 56.2.2 any injury, loss, damage, cost and expense caused by the negligence or wilful misconduct of the Authority or an Authority Related Party or by the breach by the Authority of its obligations under this Contract; or
- 56.2.3 the Authority having failed, or failed adequately, to provide prior to the date the Contractor commences works to a Dwelling, any works and/or services to that Dwelling the same as or similar to the Works and the Services (including all services which may be necessary to ensure that all gas appliances have, without limitation, issued in respect of them valid CP12 gas safety certificates and all services necessary to ensure that all relevant health and safety requirements applicable to the Common Parts are met) but this Clause 56.2.3 shall not apply from the date which is 12 months after 29 September 2006; or
- 56.2.4 the lack or inadequacy of pre-existing sound insulation, a Channel Tunnel Works Event or subsidence or changes in the water table; or
- 56.2.5 any claim or claims under this indemnity, in excess of £ indexed in respect of any uninsured losses arising out of any one (1) occurrence or series of occurrences; or
- 56.2.6 any claim or claims under this indemnity arising out of or in consequence of the design, construction or completion of the Works in excess of £ indexed in respect of uninsured losses in any Contract Year in the aggregate; or
- 56.2.7 any claim or claims under this indemnity arising other than out of or in consequence of the design, construction or completion of the Works in excess of £ (indexed) in respect of uninsured losses in any Contract Year in the aggregate.

### 56.3 **Authority's Indemnity**

The Authority shall, subject to Clause 56.4 (**Authority not Responsible**) be responsible to the Contractor for, and shall release and indemnify the Contractor, its employees, agents and contractors on demand from and against all liability for:-

- 56.3.1 death or personal injury;
- 56.3.2 loss of or damage to property including property belonging to the Contractor or for which it is responsible; and
- 56.3.3 actions, claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis), as may arise as a result of third party claims made against the Contractor; and

which may arise out of, or in consequence of:-

- (a) the wilful default, negligence or the breach by or non-performance by the Authority of its obligations under this Contract; or
- (b) the Authority having failed, or failed adequately, to provide prior to the date the Contractor commences works to a Dwelling, any works and/or services to that Dwelling the same as or similar to the Works and the Services (including all services which may be necessary to ensure that all gas appliances have without limitation issued in respect of them valid CP12 gas safety certificates and all services necessary to ensure that all relevant health and safety requirements applicable to the Common Parts are met) but this Clause 56.3.3(b) shall not apply from the date which is 12 months after 29 September 2006.

56.3A The Authority shall subject to Clause 56.4 (**Authority not Responsible**) and without limiting the liability of the Authority under Clause 56.3.3 to the extent the same arises/at or in consequence of the events described in sub-paragraph (b) of Clause 56.3 (**Authority's Indemnity**) be responsible for and shall release and indemnify the Contractor on demand from and against all liability for Direct Losses and Indirect Losses brought against the Contractor or any Contractor Related Party for breach of statutory duty which may arise out of, or in consequence of a breach by the Authority of its obligations under this Contract to the extent that there are no other remedies available to the Contractor under this Contract.

56.3B The Authority shall, subject to Clause 56.4 (**Authority not Responsible**) be responsible to the Contractor for, and shall release and indemnify the Contractor, its employees, agents and contractors on demand from and against all liability for:-

- (c) the lack or inadequacy of pre-existing sound insulation; or
- (d) compliance with the Housing Health and Safety Rating System to the extent such compliance necessitates Additional HHSRS Requirement; or
- (e) any Tenant claim for compensation to cover the costs of carpets and/or curtains on a Decant to Suitable Alternative Accommodation in accordance with the Authority's Refund, Compensation and Remedies Policy, to the extent that the Contractor is obliged to pay such compensation under the aforementioned Authority's Policy.

#### 56.4 **Authority not Responsible**

Notwithstanding any other provision of this Contract the Authority shall not be responsible or be obliged to indemnify the Contractor:-

56.4.1 under any of Clauses 56.3.1, 56.3.2, 56.3.3 and 56.3A (**Authority's Indemnity**) arising as a direct result of the Authority acting on the express instructions of the Contractor;

56.4.2 for any injury, loss, damage, cost and expense caused by the negligence or wilful misconduct of the Contractor or any Contractor Related Party or by the breach of the Contractor of its obligations under this Contract; or

56.4.3 for any claim or claims in relation to Clauses 56.3.2, 56.3.3 and 56.3A in excess of £250,000 (indexed) in respect of uninsured losses arising out of any one (1) occurrence or series of occurrences; and

56.4.4 or any claim or claims in relation to Clauses 56.3.2, 56.3.3 and 56.3A in excess of £250,000 (indexed) in respect of uninsured losses in any Contract Year.

#### 56.5 **Responsibility for Related Parties**

The Contractor shall be responsible as against the Authority for the acts or omissions of the Contractor Related Parties in relation to the Project as if they were the acts or omissions of the Contractor and the Authority shall be responsible as against the Contractor for the acts or omissions of the Authority Related Parties as if they were the acts or omissions of the Authority.

#### 56.6 **Notification of Claims**

Where either party (the "Indemnified Party") wishes to make a claim under this Clause against the other (the "Indemnifying Party"), the Indemnified Party shall give notice of

the relevant claim to the Indemnifying Party as soon as reasonably practicable setting out full particulars of the claim.

**56.7 Conduct of Claims**

Subject to the rights of the insurers under the Required Insurances, the Indemnifying Party may at its own expense and with the assistance and co-operation of the Indemnified Party have the conduct of the third party claim including its settlement and the Indemnified Party shall not, unless the Indemnifying Party has failed to resolve such claim within a reasonable period, take any action or settle or prosecute the claim.

**56.8 Costs of Claims**

The Indemnifying Party shall, if it wishes to have conduct of any claim, give reasonable security to the Indemnified Party for any cost or liability arising out of the conduct of the claim by the Indemnifying Party.

**56.9 Other Indemnities**

An indemnity by either party under any provision of this Contract shall be without limitation to any indemnity by that party under any other provision of this Contract.

**56.10 Exclusions**

56.10.1 The indemnities under this Contract shall not apply and (without prejudice to the Authority's rights to make Deductions under Schedule 6 (Payment and Performance Mechanism)) there shall be no right to claim damages for breach of this Contract, in tort or on any other basis whatsoever to the extent that any loss claimed by either party is for Indirect Losses suffered or allegedly suffered by either party other than the extent of any such losses may be claimed from the Authority pursuant to Clauses 15 (***Extensions of Time***), 16.4 (***Authority to Provide Information***), 17.6 (***Defects***), 20 (***Call Off Services***), 27.4 (***Repair and Condition of the Accommodation***), 27.13 (***Housing Health and Safety Rating System***), 40 (***Force Majeure Compensation***), 41 (***Compensation on Contractor Default***), 42 (***Compensation on Authority Default***), 43 (***Compensation on Termination for Corrupt Gifts and Fraud or Breach of the Refinancing Provisions***), 44 (***Method of Payment***), 50 (***Change in Law***), 52 (***Variations***), 56 (***Indemnities and Responsibility***), 78 (***Local Government (Contracts) Act 1997***) and Schedule 12 (***Relevant Discharge Terms***) of this Contract. The Authority agrees that, notwithstanding the foregoing, any Losses of the Contractor arising as a result of a claim made by a Sub-Contractor under a Sub-Contract shall not be Indirect Losses for the purposes of this Contract.

56.10.2 The Authority shall not be liable in tort to the Contractor and the Contractor shall not be liable in tort to the Authority in respect of any negligent act or omission of the Authority or the Contractor (respectively) relating to or in connection with this Contract PROVIDED that the exclusions contained in this Clause 56.10.2 shall apply only to the extent permitted by law.

**57. INSURANCE**

**57A Leaseholder Insurance**

57A.1 The Authority shall take out and maintain in force or procure the taking out and maintenance of the Leasehold Insurances for the full reinstatement value of the Leasehold Dwellings with insurers of sufficient credit standing to pay all proceeds which may be validly claimed thereunder.

57A.2 In the case of the occurrence of an event insured under the Leasehold Insurances, the Authority shall ensure that it makes such claim in accordance with the terms of such Leasehold Insurances and that any proceeds recovered pursuant to such insurance are promptly paid to the Contractor.

57.1 **Requirement to Maintain**

Subject to Clause 59.1, the Contractor shall take out and maintain in force or procure the taking out and maintenance by a Sub-Contractor of the Required Insurances, and any other insurances as may be required by Legislation (provided that the cover shall be effective in each case not later than the date on which the relevant risk commences).

57.2 **Obligation on Parties**

No party to this Contract shall take or fail to take any reasonable action, or (insofar as it is reasonably within its power) permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any insurance policy in which that party is an insured, a co-insured, an additional insured person or noted on the policy.

57.3 **Nature of Insurances**

The Required Insurances shall:-

57.3.1 (subject to Clause 57.4 **(Co-Insured)** name the Authority, the Contractor and the Senior Lenders and (in respect of Contractors All Risks insurance only), the Main Sub-Contractors and (in respect of insurances relating to Leasehold Dwellings only) the relevant Leaseholder as co-insured with any other party maintaining the insurance;

57.3.2 contain a Clause waiving the insurers' subrogation rights against each co-insured, its employees and agents;

57.3.3 provide for non-vitiation protection in respect of any claim made by the each co-insured as co-insured;

57.3.4 provide for 20 Working Days prior written notice of their cancellation, non-renewal or amendment to be given to each co-insured; and

57.3.5 provide for payment of any proceeds to be made by insurers in accordance with Clause 58 **(Reinstatement)**.

57.4 **Co-Insured**

Wherever possible, the Required Insurances shall name the Authority, the Contractor, the Senior Lenders, (in respect of Contractors All Risks insurance only) the Main Sub-Contractors and (in respect of insurances affecting Leasehold Dwellings) the Leaseholders as co-insured each for their separate interest.

57.5 **Evidence of Policies**

The Contractor shall provide to the Authority:-

57.5.1 copies on request of all insurance policies (together with any other information reasonably requested by the Authority relating to such insurance policies) referred to in Clause 57.1 **(Requirement to maintain)** and the Authority shall be entitled to inspect them during ordinary business hours; and

57.5.2 evidence that the premiums payable under all insurance policies have been paid and that the Required Insurances are in full force and effect in accordance with requirements of this Clause 57 (**Insurance**) and Schedule 14 (Required Insurances).

**57.6 Renewal Certificates**

Renewal certificates in relation to Required Insurances shall be obtained as and when necessary and certified copies shall be forwarded to the Authority as soon as possible but in any event at least by the renewal date.

**57.7 Breach**

If the Contractor is in breach of Clause 57.1 (**Requirement to Maintain**), the Authority may pay any premiums required to keep such insurance in force or itself procure such insurance and may in either case recover such amounts from the Contractor on written demand.

**57.8 Notification of Claim**

The Contractor shall give the Authority (and the Authority shall give the Contractor, as the case may be) notification within 5 Working Days after any claim for personal injury and within 30 Working Days after any other claim on any of the policies for the Required Insurances referred to in this Clause in an amount in excess of £10,000 Indexed and (if required by the Authority or the Contractor, as applicable) full details of the incident giving rise to the claim.

**57.9 Limit of Liability**

Neither failure to comply nor full compliance with the insurance provisions of this Contract shall limit or relieve either party of its liabilities and obligations under this Contract.

**57.10 Insurance Review Procedure**

57.10.1 This procedure shall be used to determine whether the Authority shall bear any increase or derive any benefit from any decrease in Relevant Insurance costs.

57.10.2 The Contractor's insurance broker (the "Broker") shall prepare a report on behalf of both the Contractor and the Authority (the Joint Insurance Cost Report). The Report is to be prepared at the Contractor's expense, and should, as a minimum, contain the following information for the relevant Insurance Review Period:

- A. A full breakdown of the Actual Relevant Insurance Cost;
- B. A full breakdown of the Base Relevant Insurance Cost;
- C. A spreadsheet (the Insurance Summary Sheet) detailing separately:-
  - (a) the sum(s) insured / limit of indemnity (i.e. rateable factor) for each of the Relevant Insurances;
  - (b) the premium rate for each of the Relevant Insurances;
  - (c) the net premium paid (or to be paid) for each of the Relevant Insurances (i.e. excluding both insurance premium tax and brokers fees and commissions);

- (d) the deductible(s) for each Relevant Insurance;
  - (e) details of any claims (paid or reserved) (including incident date, type and quantum) in excess of the amount stated in Clause 57.8;
- 57.10.3 An assessment and quantification of each Project Insurance Change together with the reasons therefore;
- 57.10.4 Full details of any Portfolio Cost Saving;
- 57.10.5 Any other reasons that the Contractor believes may have caused a change (by way of increase or decrease relative to the Base Relevant Insurance Costs) in the Actual Relevant Insurance Cost;
- 57.10.6 The opinion of the Contractor's insurance broker as to the reasons why the Actual Relevant Insurance Cost has varied from the Base Relevant Insurance Cost, specifying the impact of each of the factors and quantifying the amount attributable to each factor specified above;
- 57.10.7 The calculation of the Insurance Cost Differential and any Exceptional Cost or Exceptional Saving arising from this calculation;
- 57.10.8 Evidence satisfactory to the Authority (acting reasonably) of any changes to circumstances generally prevailing in the Relevant Insurance Market that are claimed to account for the Insurance Cost Differential
- 57.10.9 Details of movements in the CBS Private Capital non marine index plus, if available from other appropriate sources, details of changes in insurance cost across the PFI market as a whole.
- 57.10.10 The Contractor shall procure that the Broker, no later than the date which is ten (10) Working Days after each Insurance Review Date, delivers to the Authority, at the same time as it delivers to the Contractor, at least two copies of the relevant Joint Insurance Cost Report. At the same time the Contractor should send a copy of the Insurance Summary Sheet to HM Treasury private finance unit or its nominee. Following receipt of the Joint Insurance Cost Report, the Authority shall notify the Contractor in writing within fifteen (15) Working Days whether or not it accepts the Joint Insurance Cost Report including full details of any disagreement. If the Authority does not provide such notification and/or details of any disagreement to the Contractor within fifteen (15) Working Days, the Authority shall be deemed to have accepted the Joint Insurance Cost Report. If the Authority disagrees with any item in the Joint Insurance Cost Report, the Parties shall use their respective reasonable endeavours acting in good faith to agree the contents of the Joint Insurance Cost Report. If the Parties fail to agree the contents of the Joint Insurance Cost Report within thirty five (35) Working Days from the date it was delivered to the Authority, the matter shall be resolved pursuant to Clause 60 (Dispute Resolution), provided always that references to an Adjudicator shall be construed as references to an independent insurance expert agreed by the Parties or, in the absence of agreement, appointed by the President for the time being of the Chartered Institute of Arbitrators.
- 57.10.11 The Authority may make the Joint Insurance Cost Report available to any of its or HM Treasury's agents or advisers or other body or bodies nominated by HM Treasury for insurance cost verification, benchmarking or similar purpose.
- 57.10A Sharing of Insurance Cost Increases**

- (a) If following the completion of the Insurance Review Procedure, it is agreed or determined that there is an Exceptional Cost, the Authority shall within 30 days of the completion of the Insurance Review Procedure make a one-off lump sum payment to the Contractor equal to 95% of the Exceptional Cost.
- (b) If, following the completion of the Insurance Review Procedure, it is agreed or determined that there is an Exceptional Saving, the Contractor shall within 30 days of completion of the Insurance Review Procedure make a one off lump-sum payment to the Authority equal to 95% of the Exceptional Saving.
- (c) If, following the completion of the Insurance Review Procedure, it is agreed or determined that there is neither an Exceptional Cost nor an Exceptional Saving, any Insurance Cost Differential shall be borne by or benefit the Contractor.

#### **57.10B Insurance Cost Index**

If at any time an Insurance Cost Index is published and intended for use in PFI contracts of a similar nature to this Contract, the Parties shall meet with a view to agreeing (a) its application to the Project, taking into account any relevant guidance issued by HM Treasury and (b) how a Portfolio Cost Saving may be accounted for when the index is in use.

#### **57.11 Authority Approval**

The Required Insurances shall be effected with insurers approved by the Authority, such approval not to be unreasonably withheld or delayed.

#### **57.12 Broker's Acknowledgement and Endorsements**

The Contractor shall procure the delivery to the Authority of the insurance broker's letter in Part 2 of Schedule 14 (Required Insurances) and shall use reasonable endeavours to procure that the endorsements in substantially the form set out in Schedule 14 are attached to the relevant insurance policies relating to the Required Insurances.

### **58. REINSTATEMENT**

#### **58.1 Application of Proceeds**

- 58.1.1 Subject to the Direct Agreement all insurance proceeds received under any policy referred to in paragraphs 1 (Construction All Risks) and 4 (Material Damage (Property)) of Part I of Schedule 14 (Required Insurances) (the "Physical Damage Policies") shall (unless there is a Voluntary Withdrawal of Properties or a Statutory Reduction of Properties in respect of which the proceeds were received) be applied to repair, reinstate, and replace each part or parts of the Properties in respect of which the proceeds were received.
- 58.1.2 Subject to the Direct Agreement, all insurance proceeds received under any policy referred to in paragraph 4 (Material Damage (Property)) of Part 1 of Schedule 14 in respect of loss of Unitary Payment shall (unless there is a Voluntary Withdrawal of Properties or a Statutory Reduction of Properties in respect of the Properties in respect of which the proceeds were received) be paid to the Contractor and the Unitary Payment shall be reduced in respect of the relevant Properties.

## 58.2 Joint Account

All insurance proceeds (excluding any insurance proceeds to be paid to the Contractor in respect of loss of Unitary Payment under Clause 58.1.2) paid under any Physical Damage Policy in respect of a single event (or a series of related events) in an amount in excess of £ (indexed) shall be paid to an account in the joint names of the Authority and the Contractor held at the Account Bank (the "**Joint Insurance Account**").

## 58.3 Obligations

Where a claim is made or proceeds of insurance are received or are receivable under any Physical Damage Policy in respect of a single event (or a series of related events) (the "**Relevant Incident**") in excess of £ (indexed).

58.3.1 the Contractor shall deliver as soon as practicable and in any event within 20 Working Days after the making of the claim a plan prepared by the Contractor for the carrying out of the works necessary (the "**Reinstatement Works**") to repair, reinstate or replace (the "**Reinstatement Plan**") the Property or Properties which are the subject of the relevant claim or claims in accordance with Clause 58.4 (**Works carried out**). The Reinstatement Plan shall set out:-

- (a) if not the Refurbishment Contractor, the identity of the person proposed to effect the Reinstatement Works, which shall be subject to the prior written approval of the Authority; and
- (b) the proposed terms and timetable upon which the Reinstatement Works are to be effected (including the date that the Project will become fully operational), the final terms of which shall be subject to prior written approval of the Authority;

58.3.2 provided that the Authority is satisfied that the Reinstatement Plan will enable the Contractor to comply with Clause 58.4 (**Works carried out**) within a reasonable timescale:-

- (a) the Reinstatement Plan will be adopted;
- (b) the Contractor shall enter into contractual arrangements to effect the Reinstatement Works with the person identified in the Reinstatement Plan approved by the Authority which approval shall not be unreasonably delayed;
- (c) at any time prior to the earlier to occur of the Termination Date or the Expiry Date, any amounts standing to the credit of the Joint Insurance Account (the "Relevant Proceeds") (together with any interest accrued) may be withdrawn by the Contractor from the Joint Insurance Account referred to in Clause 58.2 (**Joint Account**) as required to enable it to make payments in accordance with the terms of the contractual arrangements referred to in Clause 58.3.2(b) (**Obligations**), and to meet any other reasonable costs and expenses of the Contractor for the sole purposes of financing the Reinstatement Works and the parties shall operate the signalling requirements of the Joint Insurance Account in order to give effect to such paragraphs. Following the earlier to occur of the Termination Date and the Expiry Date, the Authority may withdraw amounts standing to the credit of the Joint Insurance Account for the purposes of funding any Reinstatement Works;
- (d) the Authority agrees and undertakes that, subject to compliance by the Contractor with its obligations under this Clause, and provided

that the Contractor procures that the Reinstatement Works are carried out and completed in accordance with the contractual arrangements referred to in Clause 58.3.2(b) (**Obligations**), it shall not exercise any right which it might otherwise have to terminate this Contract by virtue of the event which gave rise to the claim for the Relevant Proceeds;

- (e) the Authority undertakes to use all reasonable endeavours to assist the Contractor in the carrying out of the Reinstatement Plan;
- (f) after the Reinstatement Plan has been implemented to the reasonable satisfaction of the Authority and in accordance with Clause 58.4 (**Works Carried Out**) the Authority shall permit withdrawal by the Contractor of any Relevant Proceeds then held in the account referred to in Clause 58.2 (**Joint Account**) that have not been paid under Clause 58.3.2(b) (**Obligations**) in respect of the Relevant Incident, together with any interest accrued; and
- (g) subject to the provisions of Clause 58 the Contractor shall be solely responsible for the payment of any deficiency.

#### 58.4 **Works Carried Out**

Where insurance proceeds are to be used, in accordance with this Contract to repair, reinstate or replace any part of the Properties, the Contractor shall carry out the work in accordance with the Output Specification so that on completion of the work, the provisions of the Contract are complied with.

#### 58.5 **Withdrawal of Damaged Properties**

Where a Property has been damaged or destroyed then the Authority may by notice in writing to the Contractor elect to withdraw that Property from this Contract and the provisions of Clause 27.7 (**Changes to Number of Dwellings by Tenure**) shall apply and the benefit of the insurance proceeds shall be paid to the Authority.

### 59. **UNINSURABLE RISK**

#### 59.1 **Obligation**

Nothing in this Clause shall oblige the Contractor to take out insurance in respect of a risk which is Uninsurable.

#### 59.2 **Risks Become Uninsurable**

If either a:-

59.2.1 Specific Risk;

59.2.2 risk usually covered by construction all risks, material damage, third party liability, business interruption (but excluding loss of profits or statutory insurances; or

becomes Uninsurable then:-

59.2.3 the Contractor shall notify the Authority within 5 Working Days of the risk becoming Uninsurable; and

59.2.4 if both parties agree, or it is determined in accordance with the Disputes Resolution) Procedure that the risk is Uninsurable and that:-

- (a) the risk being Uninsurable is not caused by the actions of the Contractor or a Sub-Contractor;
- (b) in respect of Clauses 59.2.2 the Contractor has demonstrated to the Authority that the Contractor and a prudent board of directors of a company operating some or substantially similar PFI businesses in the United Kingdom to that operated by the Contractor would in similar circumstances (in the absence of the type of relief envisaged by the Clause) be acting reasonably and in the best interests of the Company if they resolved to cease to operate such businesses as a result of that risk becoming Uninsurable taking into account inter alia (and without limitation) the likelihood of the uninsurable risk occurring (if it has not already occurred), the financial consequences for such company if such uninsurable risk did occur (or has occurred) and other mitigants against such consequences which may be available to such company.

then the parties shall meet to discuss the means by which the risk should be managed (including considering the issue of self-insurance by either party).

59.3 If the requirements of Clause 59.2 (***Risks Become Uninsurable***) are satisfied, but the parties cannot agree as to how to manage the risk, then:

59.3.1 in respect of third party liability insurance only, the Authority shall (at the Authority's option) either pay to the Contractor an amount equal to the amount set out in Clause 40 (Compensation on Termination for Force Majeure) and this Agreement will terminate or elect to allow this Agreement to continue and Clause 59.3.2(b) below shall thereafter apply in respect of such risk; and

59.3.2 in respect of construction all risks, material damage, third party liability (if relevant) business interruption (but not loss of profits) or statutory insurances this Agreement shall continue and on the occurrence of the risk (but only for as long as such risk remains Uninsurable) the Authority shall (at the Authority's option) either:

- (a) pay to the Contractor an amount equal to the insurance proceeds that would have been payable had the relevant insurance continued to be available and this Agreement will continue; or
- (b) where the occurrence of the risk has had a detrimental effect on more than 25% of the Dwellings and/or Properties as a consequence of the occurrence of one risk or otherwise 66% of the Dwellings and/or Properties, pay to the Contractor an amount equal to the amount set out in Clause 40 (***Force Majeure Compensation***) plus (in relation to third party liability insurance) the amount of insurance proceeds that would have been payable to the Contractor whereupon this Agreement will terminate; or
- (c) withdraw the Dwellings from this Agreement and in which case Clause 27.8 (***Change to Number of Dwellings by Tenure***) shall apply save that the amount of compensation due to the Contractor shall be calculated by reference to Clause 40 (***Force Majeure Compensation***).

59.3.3 If the Authority elects to terminate this Agreement pursuant to Clause 59.3 (***Consequences***), the Contractor shall have the option (exercisable within 20 Working Days of the date of such election by the Authority) to pay a loss as described in Clause 59.3 (***Consequences***) at its own expense or

indemnify the Authority in respect of such loss by paying an amount equal to the insurance proceeds that would have been payable had the Insured Risk not become Uninsurable in which case this Agreement will continue. The Contractor shall serve written notice on the Authority of its intention to exercise this option. The provisions of this Clause 59.3 (**Consequences**) will then apply to any loss subsequent to the loss in respect of which the Contractor has exercised its option and the process will recommence.

**60. DISPUTE RESOLUTION**

**60.1 Disputes Arising**

Any dispute arising in relation to any aspect of the Contract shall be resolved in accordance with this Clause.

**60.2 Consultation**

If a dispute arises in relation to any aspect of this Contract, the Contractor and the Authority, (for the purposes of this Clause 60.2 excluding any Authority Related Party) shall first consult in good faith in an attempt to come to an agreement in relation to the disputed matter.

**60.3 Adjudication**

Without prejudice to Clause 60.2 above either party may give the other notice of intention to refer the dispute to adjudication and the Adjudicator shall be selected in accordance with Clause 60.4 (**Identify of Adjudicator**).

**60.4 Identify of Adjudicator**

60.4.1 The parties shall endeavour to secure the appointment of the Adjudicator within 3 days of the Notice of Adjudication and where the parties fail to agree on the identity of an Adjudicator within such period, the Adjudicator shall be appointed by the Chairman of TeCSA following application of either party and the Chairman of TeCSA shall endeavour to appoint the Adjudicator within 7 days of the Notice of Adjudication.

60.4.2 No Adjudicator shall be entitled to accept an appointment to act as an adjudicator under this Contract unless he is willing also to be appointed as the adjudicator to adjudicate a dispute between the Contractor and the Refurbishment Contractor or the Housing Management Contractor or the Responsive and Cyclical Maintenance Contractor or the Heating Services Contractor, as the case may be, which raises similar questions of fact and/or law and where the adjudication in relation to that dispute is commenced before or within seven days after the Notice of Adjudication to be given pursuant to Clause 60.3.

**60.5 Submission of Arguments**

Within 5 Working Days of appointment in relation to a particular dispute, the Adjudicator shall require the parties to submit in writing their respective arguments. The Adjudicator shall, in his absolute discretion, consider whether a hearing is necessary in order to resolve the dispute.

**60.6 Adjudicator's Decision**

In any event, the Adjudicator shall provide to both parties his written decision on the dispute, within 20 Working Days of appointment (or such other period as the parties may agree after the reference), or within 30 Working Days from the date of reference if the party which referred the dispute agrees. Unless the parties otherwise agree, the

Adjudicator shall give any reasons for his decision. In relation to all matters other than Fast Track Matters, unless and until revised, cancelled or varied by the Courts, the Adjudicator's decision shall be binding on both parties who shall forthwith give effect to the decision. In relation to Fast Track Matters the Adjudicator's decision shall be final and binding and the parties shall forthwith give effect to the decision.

**60.7 Adjudicator's Costs**

The Adjudicator's costs of any reference shall be borne as the Adjudicator shall specify or, in default, equally by the parties. Each party shall bear its own costs arising out of the reference, including legal costs and the costs and expenses of any witnesses.

**60.8 Adjudicator Status**

The Adjudicator shall be deemed not to be an arbitrator and the provisions of the Arbitration Act 1996 and the law relating to arbitration shall not apply to the Adjudicator or his determination or the procedure by which he reached his determination.

**60.9 Adjudicator's Duty and Powers**

The Adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law. The Adjudicator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Contract.

**60.10 Confidentiality**

All information, data or documentation disclosed or delivered by a party to the Adjudicator in consequence of or in connection with his appointment as Adjudicator shall be treated as confidential. The Adjudicator shall not, save as permitted by Clause 54 (***Freedom of Information and Confidentiality***), disclose to any person or company any such information, data or documentation and all such information, data or documentation shall remain the property of the party disclosing or delivering the same and all copies shall be returned to such party on completion of the Adjudicator's work.

**60.11 Liability of Adjudicator**

The Adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability.

**60.12 Reference to Litigation**

If:-

60.12.1 there is any dispute in respect of matters referred to in Clauses 26 (***Market Testing and Benchmarking***), 41 (Compensation on Termination of Force Majeure), 42 (***Compensation on Termination for Contractor Default***) 43 (***Compensation on Termination for Authority Default***) 44 (***Compensation on Corrupt Gifts, Fraud and Refinancing Breaches***), 52 (***Change in Law***) or 53 (***Authority and Contractor Changes***); or

60.12.2 either party is dissatisfied with or otherwise wishes to challenge the Adjudicator's decision made in accordance with Clause 60.6 (Adjudicator's Decision); or

60.12.3 both parties agree,

then either party may (within 20 Working Days of receipt of the Adjudicator's decision, where appropriate), notify the other party of its intention to refer the dispute to litigation and for such purpose the parties agree that the Courts of England and Wales (the "**Courts**") shall have exclusive jurisdiction in relation to all matters in respect of this Contract.

#### 60.13 **Parties' Obligations**

The parties shall continue to comply with, observe and perform all their obligations hereunder regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution under this Clause and shall give effect forthwith to every decision of the Adjudicator and the Courts delivered under this Clause.

#### 60.14 **Similar Disputes**

If any dispute arising under this Contract raises issues which relate to:

60.14.1 any dispute between the Contractor and the Refurbishment Contractor arising under the Refurbishment Contract or otherwise affects the relationship or rights of the Contractor and/or the Refurbishment Contractor under the Refurbishment Contract (the "**Refurbishment Contract Dispute**"); or

60.14.2 any dispute between the Contractor and the Housing Management Contractor arising under the Housing Management Contract or otherwise affects the relationship or rights of the Contractor and/or the Housing Management Contractor under the Housing Management Contract (the "**Housing Management Agreement Dispute**"),

60.14.3 any dispute between the Contractor and the Responsive Repairs and Cyclical Maintenance and Renewal Contractor arising under the Responsive Repairs and Cyclical Maintenance and Renewal Contract or otherwise affects the relationship or the right of the Contractor and/or Responsive and Cyclical Maintenance Contractor under the Responsive and Cyclical Maintenance Contract (the "Responsive and Cyclical Maintenance Contract Dispute");

60.14.4 any dispute between the Contractor and the Heating Services Contractor arising under the Heating Services Contract or otherwise affects the relationship or rights of the Contractor and/or the Heating Services Contractor under the Heating Services Contract (the "**Heating Services Contracts Dispute**").

then the Contractor may include as part of its submissions made to the Adjudicator submissions made by the Refurbishment Contractor, or by the Housing Management Contractor or Responsive Repairs and Cyclical Maintenance Contractor or by the Heating Services Contractor as appropriate.

#### 60.15 **Jurisdiction over Sub-Contractors**

The Adjudicator shall not have jurisdiction to determine the Refurbishment Contract Dispute or the Housing Management Contract Dispute or the Responsive and Cyclical Maintenance Contract Dispute or the Heating Services Contract Dispute but the decision of the Adjudicator shall, subject to Clause 60.12 (**Reference to Litigation**), be binding on the Contractor and the Refurbishment Contractor insofar as it determines the issues relating to the Refurbishment Contract Dispute, on the Contractor and the Housing Management Contractor insofar as it determines the issues relating to the Housing Management Contract Dispute and the Contractor and the Responsive and Cyclical Maintenance Contractor insofar as it determines the issues relating to the Responsive and Cyclical Maintenance Contract Dispute and on

the Contractor and the Heating Services Contractor insofar as it determines the losses relating to the Heating Services Contract Dispute.

**60.16 Sub-Contractors' Submissions**

Any submissions made by the Refurbishment Contractor or the Housing Management Contractor or the Responsive and Cyclical Maintenance Contractor or the Heating Services Contractor shall:

60.16.1 be made within the time limits applicable to the delivery of submissions by the Contractor; and

60.16.2 concern only those matters which relate to the dispute between the Authority and the Contractor under this Contract.

**60.17 Costs**

Where the Refurbishment Contractor or the Housing Management Contractor or the Responsive and Cyclical Maintenance Contractor or the Heating Services Contractor makes submissions in any reference before the Adjudicator, the Adjudicator's costs of such reference shall be borne as the Adjudicator shall specify, or in default, one-third by the Authority and two-thirds by the Contractor.

**60.18 Authority's Liability**

The Authority shall have no liability to the Refurbishment Contractor or the Housing Management Contractor or the Responsive and Cyclical Maintenance Contractor or the Heating Services Contractor arising out of or in connection with any decision of the Adjudicator or in respect of the costs of the Refurbishment Contractor or the Housing Management Contractor or the Responsive and Cyclical Maintenance Contractor or the Heating Services Contractor in participating in the resolution of any dispute under this Contract.

**60.19 Access to Documents**

The Contractor shall not allow the Refurbishment Contractor or the Housing Management Contractor or the Responsive and Cyclical Maintenance Contractor or the Heating Services Contractor access to any document relevant to issues in dispute or the Heating Services Contractor between the Authority and the Contractor save where:

60.19.1 the document is relevant also to the issues relating to the Refurbishment Contract Dispute or the Housing Management Contract Dispute or the Responsive and Cyclical Maintenance Contract Dispute or the Heating Services Contractor as the case may be; and

60.19.2 the Contractor has first delivered to the Authority a written undertaking from the Refurbishment Contractor and/or the Housing Management Contractor and/or the Responsive and Cyclical Maintenance Contractor and/or the Heating Services Contractor (as appropriate) addressed to the Authority that they shall not use any such document otherwise than for the purpose of the dispute resolution proceedings under this Agreement and that they shall not disclose such documents or any information contained therein to any third party other than the Adjudicator the Courts or any professional adviser engaged by the Refurbishment Contractor or the Housing Management Contractor or the Responsive and Cyclical Maintenance Contractor or the Heating Services Contractor (as appropriate) to advise in connection with the dispute.

61. **ORDERING OF GOODS AND SERVICES**

Neither party shall place or cause to be placed any orders with suppliers or otherwise incur liabilities in the name of the other party or any representative of the other party.

62. **INTELLECTUAL PROPERTY**

In this clause 62 "use" shall include the acts of copying, modifying, adapting and translating the material in question and/or incorporating them with other materials and the term "the right to use" shall be construed accordingly.

62.1 **Use of Project Data**

The Contractor shall, on request, make available to the Authority free of charge (except for reasonable photocopying and electronic media charges which shall be paid by the Authority) and hereby irrevocably and perpetually licences (with the right to grant sub-licences) the Authority (which licence shall be transferable but only (i) to any assignee or transferee of any rights or benefits under this Contract; or (ii) to any party upon or at any time following expiry or termination of this Contract) to use all Project Data that might reasonably be required by the Authority and the Contractor shall ensure that the Contractor obtains all necessary licences, permissions and consents to ensure that the Contractor can make the Project Data available to the Authority on these terms, for the purposes of:-

62.1.1 the Authority providing the Properties for social housing and ancillary purposes, its duties under this Contract and/or any statutory duties which the Authority may have; and

62.1.2 following expiry or termination of this Contract, the refurbishment of the Properties, the operation, maintenance or improvement of the Properties and/or provision of services the same as, or similar to, the Services,

(together the "Approved Purposes").

62.2 **Grant of Rights to Authority**

The Contractor:-

62.2.1 hereby, free of charge and royalty, assigns and/or shall use all reasonable endeavours to procure from third parties the assignment to the Authority, without legal hindrance, of all the Intellectual Property Rights created, brought into existence or acquired solely in connection with the performance of the Contractor's obligations under this Contract;

62.2.2 hereby grants to the Authority an irrevocable, non-exclusive, perpetual and transferable (but only (i) to any assignee or transferee of any rights or benefits under this Contract; or (ii) to any party upon or at any time following expiry or termination of this Contract) licence (carrying the rights to grant sub-licences) to use solely for the Approved Purposes all the Intellectual Property Rights used or supplied pursuant to the performance of this Contract (not being Intellectual Property Rights falling within Clause 62.2.1) which are or become vested in the Contractor (which licence shall be free of charge and royalty); and

62.2.3 shall use all reasonable endeavours to procure the grant to the Authority of an irrevocable, non-exclusive, perpetual and transferable (but only (i) to any assignee or transferee of any rights or benefits under this Contract; or (ii) to any party upon or at any time following expiry or termination of this Contract) licence (carrying the rights to grant sub-licences) to use solely for the Approved Purposes all the Intellectual Property Rights used or supplied

pursuant to the performance of this Contract (not being Intellectual Property Rights falling within Clause 62.2.1) which are owned by a third party (which licence shall be free of charge and royalty).

The provisions of this clause 62.2 shall not apply to any Intellectual Property Rights in the programme known as the 'Hyde Leaseholder Service Charge Programme', save that the Contractor shall ensure it has or has procured such rights in respect of that Hyde Leaseholder Service Charge Programme to enable the proper receipt of the Services by the Authority as envisaged in this Contract. This Clause 62.3.2 is without prejudice to Clause 62.1 of the Contractor's obligation therein to make available and licence the Project Data.

### **62.3 Moral Rights**

The Contractor shall waive and shall use all reasonable endeavours to procure the waiver (for the benefit of the Authority and its transferees and licencees) of all and any moral rights relating to the Intellectual Property Rights assigned and/or licensed in accordance with Clause 62.2.

### **62.4 Computer Data**

To the extent that any of the Project Data is generated by or maintained on a computer or similar system of the Contractor and/or its Sub-Contractors (and excluding systems owned, managed or created (unless transferred to the Contractor) by the Authority), the Contractor shall:-

62.4.1 use all reasonable endeavours to procure for the benefit of the Authority at no charge or at the lowest reasonable fee, the grant of a licence or sub-licence for any relevant software (subject to the payment by the Authority of the relevant fee, if any) to enable the Authority or its nominee to access and otherwise use the Project Data for the Approved Purposes. As an alternative and without prejudice to the Authority's rights to request copies of Project Data pursuant to clause 62.1, the Contractor may provide the Project Data in a format which may be read by software generally available in the market at the relevant time or in hard copy format; and

62.4.2 in respect of the systems of the Contractor enter into the NCC's then current multi-licence escrow deposit agreement or standard single licence escrow deposit agreement as appropriate in each case to ensure the Authority has access to the code of the applicable software noted in clause 62.5.1 in the circumstances set out in such deposit agreement.

### **62.5 Storage of Data**

The Contractor shall ensure the back-up and storage in safe custody of the Project Data in accordance with Good Industry Practice. Without prejudice to this obligation, the Contractor shall submit to the Authority's Representative for approval its proposals for the back-up and storage in safe custody of the Project Data and the Authority shall be entitled to object if the same is not in accordance with Good Industry Practice. The Contractor shall comply, and shall use reasonable endeavours to cause all Sub-Contractors to comply, with all procedures to which the Authority's Representative has given its approval. The Contractor may vary its procedures for such back-up and storage subject to submitting its proposals for change to the Authority's Representative, who shall be entitled to object on the basis set out above only.

### **62.6 Claims Against Authority**

Where a claim or proceeding is made or brought against the Authority which arises out of the infringement of any Intellectual Property Rights (in connection with the Works and/or the Project) or because the use of any materials, plant, machinery or

equipment in connection with the Works and/or the Project infringes any rights in or to any Intellectual Property Rights of a third party then, unless such infringement has arisen out of the use of any Intellectual Property Rights by or on behalf of the Authority other than in accordance with the terms of this Contract, the Contractor shall indemnify the Authority at all times from and against all Direct Losses and Indirect Losses arising as a result of such claims and proceedings and the provisions of Clause 56 (***Indemnities and Responsibility***) shall apply.

#### 62.6A **Claims Against the Contractor**

Where a claim or proceeding is made or brought against the Contractor which arises out of the infringement of any Intellectual Property Rights (in connection with the Works and/or the Project) or because the use of any materials, plant, machinery or equipment in connection with the Works and/or the Project infringes any rights in or to any Intellectual Property Rights of a third party then, if such infringement has arisen out of the use of any Intellectual Property Rights by or on behalf of the Authority otherwise than in accordance with the terms of this Contract and otherwise than as a result of a breach of this Clause 62 by the Contractor then the Authority shall indemnify the Contractor at all times from and against all Direct Losses and Indirect Losses arising as a result of such claims and proceedings and the provisions of Clause 56 (***Indemnities and Responsibility***) shall apply.

#### 62.7 **Use of the Financial Model**

Subject to Clause 54 (***Freedom of Information and Confidentiality***) the Contractor hereby grants, free of charge, to the Authority a perpetual, transferable (but only to any permitted assignee or transferee of any rights or benefits of the Authority under this Contract), non-exclusive, royalty-free licence to use and permit its agents to use the Financial Model or any revised Financial Model where agreed by the parties or permitted by the terms of this Contract or otherwise required to fulfil a statutory duty, by a court of competent jurisdiction or regulatory body.

#### 62.8 **Licence to Contractor**

The Authority hereby grants to the Contractor (including the right to grant sub-licences) a non-transferable, non-exclusive, royalty free licence to use for the duration of this Contract only and only as reasonably required by the Contractor for the purposes of fulfilling its obligations under this Contract any Intellectual Property Rights relating to the Project and/or Works which are or become vested in the Authority and/or any third party owned Intellectual Property Rights provided or made available by the Authority.

### 63. **ASSIGNMENT AND SUB-CONTRACTING**

#### 63.1 **Restriction on the Authority**

The rights and obligations of the Authority under this Contract shall not be assigned, novated or otherwise transferred (whether by virtue of any Legislation or any scheme pursuant to any Legislation or otherwise) to any person other than to any public body (being a single entity) acquiring the whole of the Contract and having the legal capacity, power and authority to become a party to and perform the obligations of the Authority under this Contract being:-

63.1.1 a Minister of the Crown pursuant to an Order under the Ministers of the Crown Act 1975;

63.1.2 any Local Authority which has sufficient financial standing or financial resources to perform the obligations of the Authority under this Contract; or

63.1.3 any other public body whose obligations under this Contract are unconditionally and irrevocably guaranteed (in a form reasonably acceptable to the Contractor) by the Authority or a Minister of the Crown having the legal capacity, power and authority to perform the obligations under the guarantee and the obligations of the Authority under this Contract,

provided that any such assignment, novation or transfer shall not be permitted if as a consequence none of the exceptions set out in Sections 72B to 72G of the Insolvency Act 1986 (as amended) would then apply to the Contractor.

#### 63.2 **Contractor's Permitted Sub-Contractors**

Subject to Clause 27.2 (**Management Agreements**), nothing in this Contract shall prohibit the Contractor from providing or procuring the provision of the Works or the Services or any part thereof from the Main Sub-Contractors of sound financial standing and good repute and whose identity has been notified to the Authority by the Contractor and in the case of any proposed change of a Main Sub-Contractor the replacement has been approved by the Authority (such approval not to be unreasonably withheld or delayed) prior to the appointment of such Main Sub-Contractor, provided that the Contractor shall remain primarily and directly liable for the Contractor's obligations under this Contract.

#### 63.3 **Restriction on the Contractor**

Subject to Clause 27.2 (**Management Agreements**) and Clause 63.2 (**Contractor's Permitted Sub-Contractors**) and to the Contractor's right to assign or charge this Contract to any Affiliate or to any person providing finance to the Contractor in relation to this Contract and/or the Project and subject always to the provisions of the Direct Agreement, the Contractor shall not:-

63.3.1 assign, underlet, charge, sell, bargain or otherwise deal in any way with the benefit of this Contract or any Ancillary Document by whole or in part; nor

63.3.2 subcontract the provision of the Works or Services in whole or in part;

except with the prior written consent of the Authority.

#### 63.4 **Sub-Contractors**

Nothing in this Contract shall prohibit or prevent any Sub-Contractor employed by the Contractor from being employed by the Authority at any establishments of the Authority.

### 64. **CORPORATE STRUCTURES**

#### 64.1 **Obligation to Inform**

The Contractor shall inform the Authority as soon as reasonably practicable and in any event within 20 Working Days of any:

64.1.1 sale or other disposal of any legal, beneficial or equitable interest in any or all of the equity share capital;

64.1.2 change in the control over the exercise of voting rights conferred on that equity share capital; and/or

64.1.3 change in the right to remove or appoint directors,

in respect of the Contractor.

64.2 **Contractor Warranty**

The Contractor warrants and represents to the Authority that, subject to shares that are held by the Senior Lenders, the legal and beneficial ownership of the Contractor (or any company of which the Contractor is a subsidiary) at the date of this Contract is as set out in Part 3 of Schedule 11 (**Warranted Data**).

64.3 **Restricted Share Transfer**

64.3.1 The Contractor agrees that it shall not permit the transfer or disposal of any interest in or over or right attaching to any of the shares held in the Contractor (or the company of which the Contractor is a subsidiary) during the Lock In Period.

64.3.2 Subject to the provisions of this Clause 64.3 including, without limitation, Clause 64.3.1, the Contractor may transfer shares in the Contractor or its holding company to a Suitable Third Party and shall provide the Authority with prior written notice of all such transfers of shares in the Contractor and any holding company.

64.3.3 For the purposes of Clause 64.1 (**Obligation to Inform**) and Clauses 64.3.1 and 64.3.2:

- (a) any change in beneficial or legal ownership of any shares that are listed on a stock exchange; and
- (b) any transfer of shares or of any interest in shares by a person to its Affiliates; and
- (c) any transfer of shares to the Senior Lenders, or by the Senior Lenders exercising their rights under a charge over the shares of the Contractor in accordance with the provisions of the Debenture or the Floating Charge and Mortgage over Shares (both as defined in the Senior Financing Agreement) and the Direct Agreement,

shall be disregarded.

65. **AGENCY AND PARTNERSHIP**

65.1 **No Partnership**

Nothing in this Contract shall be construed as creating a partnership or as a contract of employment between the Authority and the Contractor.

65.2 **No Agency**

Save as expressly provided otherwise in this Contract, the Contractor shall not be, or be deemed to be, an agent of the Authority and the Contractor shall not hold itself out as having authority or power to bind the Authority in any way.

66. **ENTIRE AGREEMENT**

66.1 **Supersedes Communications**

This Contract constitutes the entire agreement between the parties in connection with its subject matter and excludes any terms which would be implied by law and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Contract.

## 66.2 **No Reliance**

Each of the parties acknowledge that:-

66.2.1 it does not enter into this Contract on the basis of and does not rely, and has not relied upon any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral, written, express or implied) made or agreed to by any person (whether a party to this Contract or not) except those expressly repeated or referred to in this Contract and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be any remedy available under this Contract; and

66.2.2 this sub-Clause shall not apply to any statement, representation or warranty made fraudulently, or to any provisions of this Contract which was induced by fraud, for which the remedies available shall be all those available under the law governing this Contract.

## 67. **NOTICES**

### 67.1 **Parties**

All notices under this Contract shall be in writing and all certificates, notices or written instructions to be given under the terms of this Contract shall be served by sending the same by first class post, facsimile, electronic mail or by hand, leaving the same at:-

If to the Contractor

4-6 Colebrook Place, Islington, London N1  
FAO Managing Director Islington 2 and  
copied to the Company Secretary at United  
House Limited, United House, Goldsel,  
Swanley, Kent BR8 8EX

Fax No: 0207 527 4198

Email: susan.french@partnersislington.net

If to the Authority

Sean McLaughlin  
Director of Needs and Strategy  
Islington Council  
Housing Aid Centre  
38 Devonian Road  
London  
N1 8UY

Fax No: 0207 527 6377

Tel No: 0207 527 6331

Email: sean.mclaughlin@islington.gov.uk

### 67.2 **Representatives**

Where any information or documentation is to be provided or submitted to the Authority's Representative or the Contractor's Representative it shall be provided or submitted by sending the same by first class post, facsimile, electronic mail or by hand, leaving the same at:-

If to the Contractor's Representative

4-6 Colebrook Place, Islington, London N1  
FAO Managing Director Islington 2 and copied  
to the Company Secretary at United House  
Limited, United House, Goldsel, Swanley,  
Kent BR8 8EX

Fax No: 0207 527 4198

Email: susan.french@partnersislington.net

If to the Authority's Representative

Anthony Jonas  
Performance Manager  
Homes for Islington  
Highbury House  
5 Highbury Crescent  
London  
N5 1RN

Fax No: 020 7527 5149

Tel No: 020 7527 4277

Email: [Anthony.Jonas@homesforislington.org.uk](mailto:Anthony.Jonas@homesforislington.org.uk)

(copied in each case to the Authority and the Contractor).

**67.3 Change of Address**

Either party to this Contract may change its nominated address, facsimile number, electronic mail address or that of the Authority's Representative (in the case of the Authority) or that of the Contractor's Representative (in the case of the Contractor) by prior notice to the other party.

**67.4 Notices Effective**

Notices given by post shall be effective upon the earlier of (i) actual receipt, and (ii) 5 Working Days after mailing. Notices delivered by hand shall be effective upon delivery. Notices given by facsimile or electronic mail shall be deemed to have been received where there is confirmation of uninterrupted transmission by a transmission report or a read receipt in the case of electronic mail and where there has been no telephonic communication by the recipient to the senders (to be confirmed in writing) that the facsimile or the electronic mail has not been received in legible form:-

67.4.1 within two (2) hours after sending, if sent on a Working Day between the hours of 9am and 4pm; or

67.4.2 by 11am on the next following Working Day, if sent after 4pm, on a Working Day but before 9am on the next following Working Day.

**68. SEVERABILITY**

If any term, condition or provision contained in this Contract shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality or enforceability of the remaining parts of this Contract.

**69. WAIVER**

**69.1 Express Waiver**

No term or provision of this Contract shall be considered as waived by any party to this Contract unless a waiver is given in writing by that party.

**69.2 Specific Waiver**

No waiver under Clause 69 (**Waiver**) shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Contract unless (and then only to the extent) expressly stated in that waiver.

70. **PUBLIC RELATIONS AND PUBLICITY**

70.1 **Restriction**

The Contractor itself, its employees or agents, and shall use reasonable endeavours to procure that its Sub-Contractors, shall not communicate with representatives of the press, television, radio or other communications media on any matter concerning the Contract without the prior written approval of the Authority.

70.2 **Photographs**

No facilities to photograph or film in or upon any property used in relation to the Project shall be given or permitted by the Contractor unless the Authority has given its prior written approval.

71. **ADVERTISEMENTS**

The Contractor shall not exhibit or attach to any part of the Sites or the Properties any notice or advertisement without the prior written permission of the Authority's Representative, save where otherwise required to comply with Legislation.

72. **CONTRACTOR'S RECORDS**

72.1 **Record of Costs**

The Contractor shall at all times:-

72.1.1 maintain a full record of particulars of the costs of performing the Service, including those relating to the design, construction, maintenance, operation and financing of the Project;

72.1.2 when requested by the Authority, provide a summary of any of the costs referred to in Clause 72.1.1, including details of any funds held by the Contractor specifically to cover such costs, in such form and detail as the Authority may reasonably require to enable the Authority to monitor the performance by the Contractor of its obligations under this Contract;

72.1.3 provide such facilities as the Authority may reasonably require on reasonable notice and during normal working hours for its representatives to visit any place where the records are held and examine the records maintained under this clause; and

72.1.4 at the request of the Authority, provide to the Authority any information provided on a regular basis by it to the Senior Lenders during the term of the Contract.

72.2 **Books of Account**

Compliance with the above shall require the Contractor to keep (and where appropriate shall procure that the Sub-Contractors shall keep) books of account in accordance with best accountancy practice with respect to the Contract showing in detail:-

72.2.1 administrative overheads;

72.2.2 payments made to Sub-Contractors;

72.2.3 capital and revenue expenditure;

72.2.4 such other items as the Authority may reasonably require to conduct cost audits for verification of cost expenditure or estimated expenditure,

in each case for the purposes of Clause 15 (Extensions of Time), Clause 20 (Call Off Services), Clause 26 (Marketing Testing and Benchmarking), Clause 27.1 (Leaseholders), Clause 27.7 (CNDT), Clause 27.14 (Part L), Clauses 32.2.3 (b), 32.2.3(d), 32.3.10, 32.3.11, 32.4.12 and 32.4.13 (Best Value), Clause 38 (Surveys on Termination), Clause 52 (Variations), Clause 50 (Change in Law) and paragraph 5 of the Output Specification (Out of Sequence Works) and the Contractor shall have (and where appropriate procure that the Sub-Contractors shall have) the books of account evidencing the items listed in Clauses 72.2.1 to 72.2.4 (**Books of Account**) available for inspection by the Authority (and any expert) upon reasonable notice for the purposes set out in this Clause 72, and shall present a report of these to the Authority as and when requested.

### 72.3 **Records**

The Contractor shall maintain or procure that the following are maintained:-

72.3.1 a record of all incidents relating to health, safety and security which occur during the term of the Contract; and

72.3.2 records of all maintenance procedures carried out during the term of the Contract,

in accordance with the requirements of this Contract and the Contractor shall have the items referred to in Clauses 72.3.1 and 72.3.2 (**Records**) available for inspection by the Authority upon reasonable notice, and shall present a report of them to the Authority as and when requested.

### 72.4 **Auditor**

The Contractor shall permit records referred to in this Clause to be examined and copied by the Authority, and by the Audit Commission.

### 72.5 **Retention**

The records referred to in this Clause shall be retained for a period of at least 5 years after the Contractor's obligations under the Contract have come to an end.

### 72.6 **Termination or Expiry**

Upon termination of the Contract, and in the event that the Authority wishes to enter into another contract for the operation and management of the Project the Contractor shall (and shall use reasonable endeavours to ensure that the Sub-Contractors will) comply with all reasonable requests of the Authority to provide information relating to the Contractor's costs of operating and maintaining the Project.

### 72.7 **Confidentiality**

All information referred to in this cause is subject to the obligations set out in Clause 54 (**Freedom of Information and Confidentiality**).

## 73. **DATA PROTECTION**

### 73.1 **General**

73.1.1 In relation to all Personal Data, the Contractor shall at all times comply with the DPA as a data controller if necessary, including maintaining a valid and

up to date registration or notification under the DPA covering the data processing to be performed in connection with the Services.

73.1.2 The Contractor and any Sub-Contractor shall only undertake processing of Personal Data reasonably required in connection with the Services and shall not transfer any Personal Data to any country or territory outside the European Economic Area.

73.2 The Contractor shall not disclose Personal Data to any third parties other than:-

73.2.1 to employees and Sub-Contractors to whom such disclosure is reasonably necessary in order for the Contractor to carry out the Services; or

73.2.2 to the extent required under a court order,

provided that disclosure under Clause 73.2.1 (**Data Protection**) is made subject to written terms substantially the same as, and no less stringent than, the terms contained in this Clause 73 (**Data Protection**) and that the Contractor shall give notice in writing to the Authority of any disclosure of Personal Data if or a Sub-Contractor is required to make under Clause 73.2.2 (**Data Protection**) as soon as reasonably possible after it becomes aware of such a requirement and in any event within 1 Working Day of becoming aware of such a requirement.

73.3 The Contractor shall bring into effect and maintain all technical and organisational measures to prevent unauthorised or unlawful processing of Personal Data and accidental loss or destruction of, or damage to, Personal Data including but not limited to taking reasonable steps to ensure the reliability of staff having access to the Personal Data.

73.4 The Authority may, at reasonable intervals, request a written description of the technical and organisational methods employed by the Contractor the Sub-Contractors referred to in Clause 72.3 (**Records**). Within 20 Working Days of such a request, the Contractor shall supply written particulars of all such measures detailed to a reasonable level such that the Authority can determine whether or not, in connection with the Personal Data, it is compliant with the DPA.

73.5 The Contractor shall indemnify and keep indemnified the Authority against all losses, claims, damages, liabilities, costs and expense (including reasonable legal costs) incurred by it in respect of any breach of this Clause 73 (**Data Protection**) by the Contractor.

## 74. CORRUPT GIFTS AND PAYMENTS OF COMMISSION

### 74.1 Corrupt Gifts and Fraud

The Contractor warrants that in entering into this Contract it has not committed any Prohibited Act.

### 74.2 Termination for Corrupt Gifts and Fraud

74.2.1 If the Contractor or any Sub-Contractor (or anyone employed by or acting on behalf of any of them) or any of its or their agents or shareholders commits any Prohibited Act, then subject to the Direct Agreement the Authority shall be entitled to act in accordance with Clauses 74.2.2 to 74.2.7 (**Termination for Corrupt Gifts and Fraud**).

74.2.2 If a Prohibited Act is committed by the Contractor or by an employee not acting independently of the Contractor, then the Authority may terminate the Contract by giving notice to the Contractor.

- 74.2.3 If the Prohibited Act is committed by an employee of the Contractor acting independently of the Contractor, then the Authority may give notice to the Contractor of termination and the Contract will terminate, unless within 35 Working Days of receipt of such notice the Contractor terminates the employee's employment and procures the performance of such part of the Works and/or Services by another person.
- 74.2.4 If the Prohibited Act is committed by a Sub-Contractor or by an employee of that Sub-Contractor not acting independently of that Sub-Contractor, then the Authority may give notice to the Contractor of termination and the Contract will terminate, unless within 35 Working Days of receipt of such notice the Contractor terminates the relevant Project Document and procures the performance of such part of the Works and/or Services by another person.
- 74.2.5 If the Prohibited Act is committed by an employee of a Sub-Contractor acting independently of that Sub-Contractor, then the Authority may give notice to the Contractor of termination and the Contract will terminate, unless within 35 Working Days of receipt of such notice the Sub-Contractor terminates the employee's employment and (if necessary) procures the performance of such part of the Works and/or Services by another person.
- 74.2.6 If the Prohibited Act is committed by any other person not specified in Clauses 74.2.2 to 74.2.5; then the Authority may give notice to the Contractor of termination and the Contract will terminate unless within 35 Working Days of receipt of such notice, the Contractor procures the termination of such person's employment and of the appointment of their employer (where not employed by the Contractor or the Sub-Contractors) and (if necessary), procures the performance of such part of the Works and/or Services by another person.
- 74.2.7 Any notice of termination under this Clause 74 (***Corrupt Gifts and Payment of Commission***) shall specify:-
- (a) the nature of the Prohibited Act;
  - (b) the identity of the party whom the Authority believes has committed the Prohibited Act;
  - (c) the date on which the relevant contract will terminate, in accordance with the applicable provision of this Clause 74 (Corrupt Gifts and Payment of Commission); and
  - (d) the Authority's chosen option under Clause 74.2 (***Termination for Corrupt Gifts and Fraud***).

#### 74.3 **Compensation on Termination for Corrupt Gifts and Fraud**

On termination of the Contract in accordance with Clause 74.2 (***Termination for Corrupt Gifts and Fraud***), then the Authority shall pay the Contractor an amount equal to the Revised Senior Debt Termination Amount (Compensation on Termination for Corrupt Gifts and Fraud or Breach of the Refinancing Provisions) in accordance with Clause 44 (***Method of Payment***) and 46 (***Gross-Up***).

#### 75. **INTEREST ON LATE PAYMENT**

Save where otherwise specifically provided where any payment or sum of money due from the Contractor to the Authority or from the Authority to the Contractor under any provision of this Contract is not paid on the due date it shall bear interest thereon at the Senior Debt Rate from the due date (whether before or after any judgement) until

actual payment and it is agreed between the parties that the Senior Debt Rate and the provisions of this Contract relating to the payment of compensation on termination of this Contract following the occurrence of an Authority Default provide the Contractor with a substantial remedy pursuant to sections 8 and 9 of the Late Payment of Commercial Debts (Interest) Act 1998.

## 76. CONTINUING OBLIGATIONS

Save as otherwise expressly provided in this Contract:-

76.1 termination of this Contract shall be without prejudice to any accrued rights and obligations under this Contract as at the Termination Date; and

76.2 termination of this Contract shall not affect the continuing rights of the Authority and the Contractor under Clauses 5 (*Warranties and Indemnities*), 8 (*Nature of Land Interests*), 28 (*Employees*), 30 (*Payment Provisions*), 34 (*Termination of this Contract*), 36 (*Force Majeure*), 37 (*Consequences of Termination*), 40 (*Force Majeure Compensation*), 41 (*Compensation on Contractor Default*), 42 (*Compensation on Authority Default*), 43 (*Compensation on Termination for Corrupt Gifts and Fraud or Breach of the Refinancing Provisions*), 44 (*Method of Payment*), 46 (*Gross Up*), 47 (*Set-Off on Termination and Exclusivity*), 54 (*Information and Confidentiality*), 56 (*Indemnities and Responsibility*), 57 (*Insurance*), 60 (*Dispute Resolution*), 62 (*Intellectual Property*), 67 (*Notices*), 72 (*Contractor's Records*), 73 (*Data Protection*), 74 (*Corrupt Gifts and Payments of Commission*), 75 (*Interest on Late Payment*), 77 (*Relevant Discharge Terms*), 81 (*Governing Law and Jurisdiction*) and this Clause 76 (*Continuing Obligations*) or under any other provision of this Contract which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

## 77. CO-OPERATION

The Contractor shall co-operate fully and in a timely manner with any request from time to time of any auditor (whether internal or external) of the Authority or the local government commissioner (as defined in Part III of the Local Government Act 1974) to provide documents, or to procure the provision of documents, relating to the Project, and to provide, or to procure the provision of, any oral or written explanation relating to the same.

## 78. LOCAL GOVERNMENT (CONTRACTS) ACT 1997

### 78.1 Certification Requirements

The Certification Requirements must be satisfied by the Authority with respect to this Contract on the Execution Date and in respect of the Direct Agreement at Financial Close.

### 78.2 Contractor's Consent

The Contractor hereby consents to the issue by the Authority of certificates under Section 3 of the Local Government (Contracts) Act 1997 in respect of this Contract and the Direct Agreement.

### 78.3 Failure to Issue a Certificate

If a certificate is not issued by the Authority pursuant to Clause 78.2 (*Contractor's Consent*) within six (6) weeks of the date of this Contract then the Contractor shall be entitled by giving notice in writing to the Authority within five (5) Working Days of the Authority failing to issue such a certificate to terminate this Contract, whereupon the Authority shall pay to the Contractor an amount equal to the compensation that would

be payable in accordance with Clause 42 (**Compensation on Authority Default/Voluntary Termination**) on termination for Authority Default pursuant to Clause 34.4 (**Authority Default Termination**).

**78.4 Relevant Discharge Terms**

The relevant discharge terms within the meaning of Section 6 of the Local Government (Contracts) Act 1997 are set out in this Clause 78 (**Local Government (Contracts) Act 1997**) and Schedule 12 (**Relevant Discharge Terms**).

**79. NOT USED**

**80. COUNTERPARTS**

This Contract may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

**81. GOVERNING LAW AND JURISDICTION**

This Contract shall be governed by and construed in all respects in accordance with the laws of England and Wales. Subject to Clause 60 (**Dispute Resolution**), the English Courts shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Contract.

**82. MITIGATION**

The Contractor and the Authority shall at all times take all reasonable steps to minimise and mitigate any loss for which the other party is entitled to bring a claim pursuant to this Contract.

**83. SUB-CONTRACTOR LOSSES**

**83.1 Where:**

83.1.1 a Sub-Contractor is entitled to claim any compensation and/or relief from the Contractor under the Sub-Contracts; and

83.1.2 the Contractor subsequently makes a claim against the Authority under this Contract in relation to such compensation and/or relief,

the Authority waives any right to defend the Contractor's claim on the grounds that the Contractor is only required to pay compensation or grant relief to the Sub-Contractor under the Sub-Contracts to the extent that the same is recoverable from the Authority.

**IN WITNESS** whereof the parties have executed this Contract as a Deed on the date first before written

**EXECUTED AS A DEED** by the Parties on the date which first appears in this deed.

The Common Seal of:  
**THE MAYOR AND BURGESSES OF THE  
LONDON BOROUGH OF ISLINGTON**  
was hereunto affixed in the presence of:-

)  
)  
)  
) Mayor and Burgesses of the London Borough  
of Islington  
**Authorised Officer**

**SIGNED** as a Deed  
by **PARTNERS FOR IMPROVEMENT IN**  
**ISLINGTON 2 LIMITED**  
acting by its duly authorised officers:-

)  
)  
)  
) Partners for Improvement in Islington 2  
Limited  
**Director**

Partners for Improvement in Islington 2  
Limited  
**Director/Secretary**