

dated 4th June 2007

The Mayor and Burgesses of the London Borough of Lewisham

and

Sumitomo Mitsui Banking Corporation Europe Limited (as Facility Agent)

and

Sumitomo Mitsui Banking Corporation Europe Limited (as Security Trustee)

and

Regenter B3 Limited (as Contractor)

Brockley Housing PFI Project Direct Agreement

41

Sceptre Court
40 Tower Hill
London
EC3N 4DX
t +44 (0)20 7423 8000
f +44 (0)20 7423 8001
www.trowers.com

Direct Agreement

Dated 4th June 2007

Parties:

- (1) **The Mayor and Burgesses of the London Borough of Lewisham** of Lewisham Town Hall, London SE6 4RU (the **Authority**);
- (2) **Sumitomo Mitsui Banking Corporation Europe Limited** (Company registered number 04684034) of 99 Queen Victoria Street, London EC4V 4EH (the **Facility Agent** as facility agent for the Finance Parties);
- (3) **Sumitomo Mitsui Banking Corporation Europe Limited** (Company registered number 04684034) of 99 Queen Victoria Street, London EC4V 4EH (the **Security Trustee** as trustee for the Senior Creditors); and
- (4) **Regenter B3 Limited** (company registered number 04367615) whose registered office is at Allington House, 150 Victoria Street, London SW1E 5LB (the **Contractor**)

IT IS AGREED AS FOLLOWS:

1 Definitions and interpretation

1.1 Definitions

In this Agreement, unless the context otherwise requires the following words and expressions shall have the following meanings:

Appointed Representative a Representative that has assumed the Contractor's rights under the Project Agreement under clause 5.1.1,

Authority Collateral Warranties

any collateral warranty or direct agreement in respect of the Project entered into by a sub-contractor or consultant of the Contractor (or a sub-contractor or consultant of any of them) to which the Authority is a party, or any replacement or amendment of the same,

Credit Agreement

the credit agreement dated on or about the date of this Agreement between the Contractor, the Facility Agent, the Security Trustee and various other Finance Parties,

Event of Default

has the meaning given to it in the Credit Agreement,

Project Agreement

the project agreement dated on or about the date of this Agreement between the Authority and the Contractor relating to the provision of refurbishment, management and maintenance services for council housing in the area of Brockley in the London Borough of Lewisham,

Representative

any of:

- a the Facility Agent, the Security Trustee, any Senior Creditor and/or any of their Affiliates,

	<ul style="list-style-type: none"> b an administrative receiver, receiver or receiver and manager of the Contractor appointed under the Security Documents, c an administrator of the Contractor, d a person directly or indirectly owned or controlled by the Facility Agent, the Security Trustee and/or any Senior Creditor, or e any other person approved by the Authority (such approval not to be unreasonably withheld or delayed);
Required Period	<p>subject to the provisions of Clause 4 (<i>No Liquid Market</i>), the period starting on the date of a Termination Notice and:</p> <ul style="list-style-type: none"> a (in the case of a Termination Notice served during the Refurbishment Period) ending one hundred and twenty (120) days later; or b (in any other case) ending ninety (90) days later
Restricted Assets	all assets of the Contractor which are not necessary to enable the Authority or a successor contractor to construct, operate and maintain the Project, following termination assuming such construction, operation or maintenance is carried out on terms substantially the same as the terms of the Project Agreement,
Senior Debt Discharge Date	means the date on which all amounts which may be or become owing by the Contractor to each Senior Creditor under the Finance Documents have been irrevocably paid in full,
Senior Creditors' Direct Agreement	any collateral warranty or direct agreement in respect of the Project entered into by a sub-contractor or consultant of the Contractor (or a sub-contractor or consultant of any of them) to which the Security Trustee is a party, or any replacement or amendment of the same,
Services Contract	a contract relating to the provision of Works or Services which is the subject of an Authority Collateral Warranty,
Step-In Date	the date on which the Facility Agent or the Security Trustee takes any action under Clause 5.1.1,
Step-In Notice	has the meaning given to it in Clause 5.1.2;

Step-In Period	<p>the period from the Step-In Date up to and including the earlier of:</p> <ul style="list-style-type: none"> a the Step-Out Date, b the date of any transfer under Clause 8, c the date of any termination for breach under Clause 6, and d the date of expiry of the Project Agreement, and
Step-Out Date	the date falling twenty (20) Working Days after the date of a Step-Out Notice;
Step-Out Notice	has the meaning given to it in Clause 7.1;
Suitable Substitute Contractor	<p>a person approved by the Authority (such approval not to be unreasonably withheld or delayed) as:</p> <ul style="list-style-type: none"> a having the legal capacity, power and authority to become a party to and perform the obligations of the Contractor under the Project Agreement; 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 Project Agreement, <p>save that the Authority shall be under no obligation to give approval to any person where either the person or, as the case may be, any of the persons acting in concert (within the meaning of The City Code on Take-Overs and Mergers):</p> <ul style="list-style-type: none"> a have been convicted of any serious criminal offence; or b have been convicted under health and safety Legislation with regard to gas or electricity within the previous 3 years, <p>in relation to the business of managing tenanted residential accommodation or non-payment of taxes or social security obligations.</p>
Termination Notice	a notice given by the Authority to the Security Trustee under Clause 3.2.1; and

Termination Sum

the sums payable from the Authority to the Contractor on early termination of the Project Agreement.

1.2 Interpretation

1.2.1 Capitalised terms defined in the Project Agreement and the Credit Agreement shall have the same meaning in this Agreement.

1.2.2 The clause and paragraph headings in this Agreement are for ease of reference only and are not to be taken into account in the construction or interpretation of any provision to which they refer.

1.2.3 Unless the context otherwise requires:

- i a reference in this Agreement to any clause, sub-clause, paragraph, schedule or annex is, except where it is expressly stated to the contrary, a reference to such clause, sub-clause, paragraph, schedule or annex of this Agreement;
- ii references to this Agreement or to any other document shall include any permitted variation, amendment or supplements to such document;
- iii references to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended, replaced, consolidated or re-enacted;
- iv words preceding "include", "including" and "included" shall be construed without limitation by the words that follow those words;
- v words in this Agreement importing any one gender include both other genders and may be used interchangeably; and
- vi words in this Agreement importing the singular meaning, include the plural meaning and vice versa.

2 Consent to security

2.1 The Authority acknowledges notice of, and consents to, the security interest granted over the Contractor's rights under the Project Documents to which the Authority is a party effected by the Contractor in favour of the Security Trustee under the Security Documents.

2.2 The Authority confirms that it has not received notice of any other security interest granted over the Contractor's rights under the Project Documents to which the Authority is a party.

2.3 The Authority acknowledges notice of and consents to the security interest granted by Holdco in favour of the Security Trustee over the entire issued share capital of the Contractor.

2.4 Except as otherwise directed by the Security Trustee, the Authority agrees to pay all amounts payable to the Contractor by the Authority under the Project Documents to which the Authority is party to the Proceeds Account.

3 **No termination without notice**

3.1 Subject only to Clause 3.2 and Clause 6, the Authority may serve notice terminating the Project Agreement at any time if it is entitled to do so under the terms of the Project Agreement.

3.2 The Authority shall not terminate or give notice terminating the Project Agreement without giving to the Facility Agent:

3.2.1 at least the Required Period of prior written notice (a **Termination Notice**) stating:

- i the proposed Termination Date; and
- ii the grounds for termination in reasonable detail, and

3.2.2 not later than the date falling twenty (20) Working Days after the date of a Termination Notice or (if earlier) the date falling twenty (20) Working Days after the date on which the Facility Agent informs the Authority that an Event of Default has occurred, a notice containing details of any amount owed by the Contractor to the Authority and any other existing liabilities or unperformed obligations of the Contractor of which the Authority is aware (having made reasonable enquiry) (a **Liabilities Statement**):

- i at the time of the Termination Notice or the notification of such Event of Default; and/or
- ii which will fall due on or prior to the end of the Required Period, under the Project Agreement,

provided that any delay on the part of the Authority in issuing a Liabilities Statement shall extend the Required Period by a period equal to the period of delay.

3.3 The Authority may issue (at any point during the Step-In Period) one further notice (**Further Liabilities Statement**) of any of the matters referred to in Clause 3.2 of which the Authority becomes aware following the date of the Termination Notice and/or the notice of the Event of Default (as the case may be) and which are not detailed in the Liabilities Statement (the **Excess Amount**), provided that the Excess Amount does not exceed an amount equal to ten per cent of the aggregated liquidated amounts specified in the Liabilities Statement.

3.4 The contents of the Liabilities Statement and any Further Liabilities Statement shall be binding on the Authority. The Contractor shall not be liable to pay or discharge any amounts or liabilities owed to the Authority as at the Step-In Date not referred to in the Liabilities Statement or any Further Liabilities Statement.

3.5 A Termination Notice may be revoked in writing by the Authority at any time before taking effect. Upon such revocation, the rights and obligations of the Parties to this Agreement shall be construed as if such Termination Notice had not been given.

- 3.6 During the Required Period and at the cost of the Contractor, the Authority shall use its reasonable endeavours to make itself available to the Facility Agent (during normal business hours and where the Facility Agent has given reasonable prior written notice) to discuss such matters as:
- 3.6.1 the contents or potential contents of the Termination Notice and/or the Liabilities Statement;
- 3.6.2 arrangements for the continuing execution of the Refurbishment Works, Works and/or provision of the Services, as appropriate; and
- 3.6.3 any remedial programme proposed by the Facility Agent and submitted to the Authority in advance.
- 3.7 The Parties acknowledge that the Authority shall be under no obligation to consider or agree to any amendment to the terms of the Project Agreement following any discussion described in Clause 3.6 above.
- 4 **No liquid market**
- 4.1 During the Required Period the Facility Agent may issue a written notice (the **No Liquid Market Notice**) to the Authority setting out the grounds in reasonable detail why the Facility Agent does not believe that a Liquid Market exists.
- 4.2 On or before the day falling ten (10) Working Days after the date on which a No Liquid Market Notice is received by the Authority, the Authority shall notify the Facility Agent of its opinion as to whether or not a Liquid Market exists.
- 4.3 Where the Authority believes that a Liquid Market exists, such notice shall set out the reasons for such belief. If the Authority and the Facility Agent do not agree whether or not a Liquid Market exists then either party may refer the dispute to be determined in accordance with Clause 60 (*Dispute Resolution Procedure*) of the Project Agreement, which shall apply mutatis mutandis to this Agreement, provided that the Facility Agent shall be entitled to:
- i direct the Contractor to refer any such matter to the Dispute Resolution Procedure in accordance with this Clause 4;
 - ii make representations and submissions to the Adjudicator or Arbitrator;
 - iii be represented in any proceedings in respect of the adjudication or arbitration; and
 - iv receive any notice, request, decision or communication issued by the Adjudicator or Arbitrator or any party to the adjudication or arbitration,
- together, the **Liquid Market Dispute Procedure**.
- 4.4 Where the Facility Agent and the Authority agree, or it is determined in accordance with the Liquid Market Dispute Procedure, that no Liquid Market exists, the Project Agreement shall automatically terminate and the provisions of Clause 43.3 (*No Retendering Procedure*) of the Project Agreement shall apply.

4.5 If any dispute relating to this Clause 4 is referred to dispute resolution under the Liquid Market Dispute Procedure, the Required Period shall be extended by the period of time spent determining such dispute under the Liquid Market Dispute Procedure.

5 **Representative**

5.1 **Appointment of an Approved Representative**

5.1.1 Without prejudice to the Security Trustee's rights under the Security Documents, the Facility Agent may procure that a Representative assumes, jointly and severally with the Contractor, all of the Contractor's rights under the Project Agreement (but not, for the avoidance of doubt, the liabilities) at any time:

- i during which an Event of Default is subsisting (whether or not a Termination Notice has been served); or
- ii during the Required Period.

5.1.2 The Facility Agent shall give the Authority not less than five (5) Working Days prior notice the **Step-In Notice** of:

- i its intention to undertake any action under this Clause 5; and
- ii the identity of the proposed Appointed Representative.

5.2 **Section 27 approval**

5.3 If, following receipt of the Step-In Notice or after the Step-In Date, the Authority notifies the Facility Agent that the approval of the Secretary of State under Section 27 of the Housing Act 1985 (as amended) is required for the Appointed Representative to assume the rights of the Contractor under the Project Agreement (an **Approval**), then from the date of such notification until the Approval is either obtained or refused:

5.3.1 the Facility Agent and the Appointed Representative shall provide the Authority with all the required information it may reasonably request to enable it to seek the Approval;

5.3.2 if notification is received prior to the Step-In Date, the Required Period shall be extended by the period of time spent seeking the Approval;

5.3.3 the Authority shall not be entitled to terminate the Project Agreement or make any Deductions thereunder; and

5.3.4 if the Approval is not obtained within three (3) months of the submission of a written application to the Secretary of State then the Project Agreement shall automatically terminate and the compensation payable to the Contractor on such termination shall be the Adjusted Estimated Fair Value of the Contract, less (without double counting) any Deductions which would have been deducted during such three (3) month period save for the provisions of this Agreement.

6 Step-in period

6.1 Without prejudice to Clause 3 (*No Termination without Notice*) but subject to Clause 6.2, the Authority shall not terminate the Project Agreement during the Step-In Period on grounds:

6.1.1 that the Facility Agent has taken any action referred to in Clause 5 (*Representative*) or the Security Trustee has enforced any Security Document; or

6.1.2 arising prior to the Step-In Date of which the Authority is aware (having made reasonable enquiry and whether or not continuing at the Step-In Date); or

6.1.3 arising solely in relation to the Contractor,

unless, in the case of Clause 6.1.2 above:

i the grounds arose during the Refurbishment Period and the Refurbishment Works are not completed on or before the date falling 12 months after the date on which the Authority would have been entitled to terminate the Project Agreement for non-completion of all of the Dwellings; or

ii the grounds arose at any other time and neither the Appointed Representative nor the Contractor is using all reasonable endeavours (including implementation of any remedial programme) to remedy any breach of the Project Agreement that:

a arose prior to the Step-In Date;

b is continuing (and capable of remedy); and

c would have entitled the Authority to terminate the Project Agreement.

6.2 The Authority shall be entitled to terminate the Project Agreement by written notice to the Contractor and the Appointed Representative:

6.2.1 if any amount referred to in Clause 3.2.2i) above has not been paid to the Authority on or before the Step-In Date or, if the Step-in Date arises before the receipt from the Authority of the Liabilities Statement, on or before the date falling twenty (20) Working Days after the date of receipt by the Facility Agent of that notice; or

6.2.2 if any amount referred to in Clause 3.2.2ii) has not been paid on or before the last day of the Required Period;

6.2.3 if amounts, of which the Authority was not aware (having made reasonable enquiry) at the time of the Termination Notice or the Event of Default, subsequently become payable and are not discharged on or before the date falling twenty (20) Working Days after the date on which the liability for these amounts is notified to the Facility Agent (provided that such amounts are detailed in a Further Liabilities Statement and provided that such amounts do not exceed the Excess Amount); or

6.2.4 on grounds that arise after the Step-In Date in accordance with the terms of the Project Agreement, provided that for the purposes of termination thereunder,

Deductions, warning notices and Final Warning Notices that arose prior to the Step-In Date shall not be taken into account during the Step-In Period but, subject to Clause 7.4 below, shall be taken into account after the Step-Out Date.

- 6.3 Upon the commencement of the Step-In Period, the Appointed Representative shall assume jointly and severally with the Contractor all the rights of the Contractor under the Project Agreement and thereupon, until the end of the Step-In Period, the Authority shall deal with the Appointed Representative and not the Contractor.

7 Step-out

- 7.1 If, at any time during the Step-In Period, the Appointed Representative wishes to step-out, it shall serve written notice on the Authority, copied to the Security Trustee and the Facility Agent of such intention the **Step-Out Notice** and twenty (20) Working Days following service of such notice the Step-In Period shall end.

- 7.2 When the Step-In Period ends, the Appointed Representative shall be released from all of its obligations and liabilities to the Authority under the Project Agreement arising prior to the Step-Out Date and the rights of the Appointed Representative against the Authority shall be cancelled.

- 7.3 Subject to Clause 7.4, the Contractor shall continue to be bound by the terms of the Project Agreement notwithstanding the occurrence of the Step-Out Date and shall become immediately subject to any Deductions and/or warning notices which have accrued or have been served (as appropriate) during the Step-In Period in accordance with Clause 6.2.4.

- 7.4 If following the Step-Out Date the Authority is satisfied (acting reasonably) that the circumstances giving rise to the Facility Agent electing to exercise its rights under Clause 5 have been remedied in full, any Deductions, warning notices and Final Warning Notices that arose prior to the Step-In Date shall be immediately cancelled and no longer taken into account under the Agreement

8 Novation

- 8.1 Subject to Clause 8.2, at any time:

- 8.1.1 during which an Event of Default is subsisting; or

- 8.1.2 during the Step-In Period the Facility Agent may on not less than twenty (20) Working Days' prior written notice to the Authority and any Appointed Representative, procure the transfer of the Contractor's rights and liabilities under the Project Agreement to a Suitable Substitute Contractor.

- 8.2 The Authority shall notify the Security Trustee as to whether any person to whom the Facility Agent proposes to transfer the Contractor's rights and liabilities under the Project Agreement is a Suitable Substitute Contractor, on or before the date falling twenty (20) Working Days after the date of receipt of all information reasonably required by the Authority to decide whether the proposed transferee is a Suitable Substitute Contractor.

- 8.3 The Authority shall not unreasonably withhold or delay its decision on whether the proposed transferee is a Suitable Substitute Contractor.
- 8.4 Upon any transfer referred to in Clause 8.1 becoming effective:
- 8.4.1 provided that all unpaid sums and other financial liabilities as notified under Clause 3.2.2 have been settled in full, the Contractor shall be released from any obligations arising under or in connection with the Project Agreement from that date and such Suitable Substitute Contractor shall become liable for obligations arising on or after that date;
- 8.4.2 any accrued Deductions, warning notices and/or Final Warning Notices shall be cancelled;
- 8.4.3 any then subsisting ground for termination of the Project Agreement by the Authority shall be deemed to have no effect and any subsisting Termination Notice shall be automatically revoked; and
- 8.4.4 the Authority shall enter into a direct agreement with the agent and security trustee of the senior funders lending to such Suitable Substitute Contractor on substantially the same terms as this Agreement.

9 Insurance proceeds

Notwithstanding the other provisions of this Agreement and the terms and conditions of the Senior Financing Agreements, the Facility Agent and Security Trustee shall only permit amounts to be released from the Joint Insurance Account in accordance with the requirements of Clause 58 (*Reinstatement*) of the Project Agreement and shall not exercise any rights under the Senior Funding Agreements or take any other steps to prevent amounts being released from the Joint Insurance Account in accordance with Clauses 58 (*Reinstatement*) of the Project Agreement.

10 Miscellaneous

- 10.1 The Authority shall take whatever action the Facility Agent, an Appointed Representative, a Representative or a Suitable Substitute Contractor taking a transfer in accordance with Clause 8.1 may require, at the Contractor's expense, for perfecting any transfer or release under Clause 5 (*Representative*), Clause 7 (*Step-Out*) and/or Clause 8 (*Novation*) including the execution of any transfer or assignment, and the giving of any notice, order or direction and the making of any registration which, in each case, the Facility Agent or such Appointed Representative, Representative or Suitable Substitute Contractor reasonably requires.
- 10.2 If the Authority elects to pay the Adjusted Estimated Fair Value of the Contract or the Senior Debt element of any Termination Sum in instalments in accordance with Clause 49.2 (*Instalments*) of the Project Agreement, the Authority shall not exercise any right of set off or make any deduction from any instalment or interest relating thereto.
- 10.3 This Agreement shall remain in effect until the date on which all amounts which may be or become owing by the Authority to the Contractor under the Project Agreement

have been irrevocably paid in full whereupon the Facility Agent and Security Trustee agree on behalf of themselves and the Senior Creditors to release any security granted in their favour over the Assets which has not previously been assigned to the Authority, provided that the Senior Creditors will not, subject to the provisions of Clause 11 be required to release their security interest over the Restricted Assets until the Senior Debt Discharge Date, and provided always that the provisions of this Clause 10.3 and Clause 11 shall remain in effect until the parties no longer have any rights or obligations thereunder. For the avoidance of doubt, the Restricted Assets will include the Contractor's bank account (excluding the Joint Insurance Account), the Contractor's revenues and other contractual rights.

- 10.4 The Facility Agent in respect of Clauses 10.4.1, 10.4.2, 10.4.3 and the Contractor in respect of 10.4.4 shall promptly notify the Authority of:
- 10.4.1 any decisions to accelerate the maturity of any amounts owing by the Contractor to the Senior Creditors under the Credit Agreement and/or demand repayment;
- 10.4.2 the date referred to in Clause 10.3 above on or before the date falling twenty (20) Working Days after its occurrence;
- 10.4.3 the details and amounts of any proposed Additional Permitted Borrowing, including
- i the circumstances giving rise to it and reasons for it; and
 - ii the terms on which it will be borrowed; and
- 10.4.4 on the first Business Day of each calendar month during which any Additional Permitted Borrowing is, or may be, subsisting, the amount outstanding under the Senior Financing Agreements and, to the extent it is aware (having made reasonable and proper enquiry):
- i the amount of any Distribution made by the Contractor; and
 - ii the amount of any credit balance on any account of the Contractor.
- 10.5 The Contractor joins in this Agreement to acknowledge and consent to the arrangements set out and agrees not knowingly to do or omit to do anything that may prevent any Party from enforcing its rights under this Agreement.
- 10.6 If there is any conflict or inconsistency between the provisions of this Agreement and the Project Agreement, the provisions of this Agreement shall prevail.
- 10.7 The Authority agrees that there will not be a breach of the Project Agreement or a Contractor Default (under and as defined in the Project Agreement), if a transfer or disposal of any interest in or over or right attaching to any of the shares held in the Contractor occurs under or pursuant to the Floating Charge and Share Charge and that the enforcement by the Security Trustee of its rights under the Floating Charge and Share Charge shall, for the purposes of clause 64.1 (Obligation to Inform), 64.3.1 (Restricted Share Transfer) and 64.3.2 (Restricted Share Transfer) of the Project Agreement, be disregarded.

11 **Competing Direct Agreements**

- 11.1 Notwithstanding any other provision in any Authority Collateral Warranty to the contrary, the Authority agrees that, subject to clauses 11.2 and 11.3, it will not exercise or seek to exercise any of its step-in rights or other rights under or in respect of any of the Authority Collateral Warranties until the earlier of:
- 11.1.1 the Senior Debt Discharge Date; or
- 11.1.2 the date on which the Security Trustee has given its written consent to such exercise; or
- 11.1.3 on the date on which either:
- i the Senior Creditors have failed to exercise any corresponding right under a Senior Creditors' Direct Agreement and the time for exercising such right has ended in accordance with the terms thereof; or
 - ii the Security Trustee has confirmed in writing to the Authority (following a request from the Authority or otherwise) that it does not intend to exercise any of its rights under the relevant Security Document.
- 11.2 The Authority shall be able to exercise any of its step-in rights or other similar rights under or in respect of any of the Authority Collateral Warranties prior to the Senior Debt Discharge Date following termination of the Project Agreement where in respect of any such document:
- 11.2.1 the Security Trustee has confirmed to the Authority in writing that it has no further claim or interest in any claim against the Contractor, the relevant Sub-Contractor or the relevant counterparty to a Senior Creditors' Direct Agreement; or
- 11.2.2 the termination of the Project Agreement did not occur as a result of a breach of the Sub-Contract or Services Contract in respect of which the Authority is exercising its rights under the Authority Collateral Warranty.
- 11.3 Following the issue of a notice in accordance with clause 3.2, provided that the Senior Creditors are not seeking to preserve continuity of service or build obligation (as relevant) under the relevant Sub-Contract or Services Contract (or under any equivalent service or build obligation under the Project Agreement), where a sub-contractor has a right to terminate its Sub-Contract or Services Contract for breach by the Contractor or Sub-Contractor of the terms of the Sub-Contract or Services Contract and there is a reasonable prospect of it doing so, the Authority may pay directly, or undertake to make a payment directly to the sub-contractor concerned, amounts due and payable (and which are not being disputed) pursuant to the Sub-Contract or Services Contract and may set off any such sums payable against any payments under the Project Agreement.
- 11.4 To the extent that the Authority makes a payment under Clause 11.3 above, the Authority shall not be entitled to make double recovery by making a deduction from the Unitary Charge under the Project Agreement in respect of performance failure by

the relevant Sub-Contractor without making an equivalent deduction against the payment made direct by the Authority to the relevant Sub-Contractor.

11.5 Except in accordance with the provisions of clause 11.1 to 11.4 (inclusive) and 11.6 and the Authority shall not, prior to the Senior Debt Discharge Date:

11.5.1 claim, recover, retain or receive (or seek to claim, recover, retain or receive) any amount under the Authority Collateral Warranties in respect of a loss for which a Sub-Contractor or relevant counterparty is liable to the Senior Creditors; or

11.5.2 take any action to wind-up, appoint an administrator, seek an interim order appointee (under Schedule B1 of the Insolvency Act 1986 (as amended)), or sanction a voluntary arrangement (or similar) in relation to the Contractor any Sub-Contractor or any counterparty to a Senior Creditors' Direct Agreement; or

11.5.3 save with the prior written consent of the Security Trustee, compete on grounds (whether in whole or in part) relating to the Project (by virtue of a claim under any of the Authority Collateral Warranties, the Project Agreement or any other Project Document or otherwise) with the rights of the Senior Creditors on any formal insolvency of any Sub-Contractor, any counterparty to any Services Contract or the Contractor, nor claim to be subrogated to any rights of any of the Senior Creditors.

11.6 In the event of any payment being received by the Authority in contravention of the provisions in clause 11.5, the Authority shall:

11.6.1 promptly pay to or to the order of the Facility Agent an amount equal to the payment which shall have been so received by or on behalf of the Authority from the relevant counterparty, provided that the Authority shall only be required to make payments under this clause 11.6 up to an aggregate amount equal to all amounts owing by the Contractor to the Senior Creditors under the Senior Financing Agreements (as the same may be amended whether or not with the approval of the Authority); and

11.6.2 until such payment to the Agent, hold such sums on trust for the Facility Agent and the Senior Creditors.

12 **Assignment**

12.1 No party to this Agreement may assign or transfer any part of its rights or obligations under this Agreement save that:

12.1.1 the Facility Agent and/or the Security Trustee may assign or transfer its rights and obligations under this Agreement to a successor Facility Agent or Security Trustee in accordance with the Senior Financing Agreements without the consent of the Authority;

12.1.2 any Senior Creditor may assign or transfer its rights under the Senior Financing Agreements in accordance with the terms of the Senior Financing Agreements; and

12.1.3 the Authority may assign, novate or otherwise transfer its rights and/or obligations under this Agreement to any person that the Authority assigns, novates or otherwise transfers its rights and/or obligations under Project Agreement in accordance with Clause 63 (Assignment) of the Project Agreement.

12.2 If Clause 12.1.1 applies, then the Authority shall enter into a new direct agreement with the new facility agent and/or security trustee on substantially the same terms as this Agreement.

13 **Variations in writing**

No purported variation to this Agreement shall be effective unless agreed between the Parties in writing and executed by the Parties (and in the case of the Senior Creditors, it shall be sufficient if the same shall be executed on their behalf by the Security Trustee).

14 **No partnership**

Nothing in this Agreement or otherwise shall be held, implied or deemed to constitute a partnership, joint venture or other association or, save as expressly provided, the relationship of principal and agent between the parties.

15 **Severability**

In the event that any term, condition or provision contained herein shall be held to be invalid, unlawful or unenforceable to any extent, such term, Clause or provision shall, to that extent, be omitted from this Agreement and the rest of this Agreement shall stand.

16 **Counterparts**

This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

17 **Confidentiality**

The Facility Agent and Security Trustee shall be bound to comply with the obligations on the part of the Contractor contained in Clause 55 (*Information and Confidentiality*) of the Project Agreement in relation to all information and matters obtained from any other Party under or in connection with the Project.

18 **Notices**

18.1 All notices under this Agreement shall be in writing and all certificates, notices or written instructions to be given under the terms of this Agreement shall be served by sending the same by first class post, facsimile or by hand, leaving the same at:

18.1.1 If to the Authority **London Borough of Lewisham**
5th Floor, Laurence House
Lewisham Town Hall
Catford Road
London SE6 4RU
FAO: [REDACTED]
Fax No: 020 8314 3132/3129

- 18.1.2 If to the Facility Agent **Sumitomo Mitsui Banking Corporation Europe Limited**
99 Queen Victoria Street
London EC4V 4EH
FAO: [REDACTED]
([REDACTED]@gb.smbcgroup.com)
[REDACTED] ([REDACTED]@gb.smbcgroup.com)
cc Agency Department
Fax No: 020 7329 6915
- 18.1.3 If to the Security Trustee **Sumitomo Mitsui Banking Corporation Europe Limited**
99 Queen Victoria Street
London EC4V 4EH
FAO: [REDACTED]
([REDACTED]@gb.smbcgroup.com)
[REDACTED] ([REDACTED]@gb.smbcgroup.com)
cc Agency Department
Fax No: 020 7329 6915
- 18.1.4 If to the Contractor **Regenter B3 Limited**
5th Floor, 140 Brompton Road
London
SW3 1HY
FAO: [REDACTED]
Fax No: 020 7584 7933
- 18.2 Each Party to this Agreement may change its nominated address or facsimile number by prior notice to the other Parties.
- 18.3 Notices given by post shall be effective upon the earlier of (i) actual receipt, and (ii) five Working Days after mailing. Notices delivered by hand shall be effective upon delivery or, where such day is not a Business Day, the first Business Day thereafter. Notices given by facsimile shall be deemed to have been received where there is confirmation of uninterrupted transmission by a transmission report and where there has been no telephonic communication by the recipient to the senders (to be confirmed in writing) that the facsimile has not been received in legible form:
- 18.3.1 within two hours after sending, if sent on a Business Day between the hours of 9 am and 4 pm; or
- 18.3.2 by 11 am on the next following Business Day, if sent after 4 pm, on a Business Day but before 9am on the next following Business Day.

19 **Contracts (Rights of Third Parties) Act 1999 exclusion**

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

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

20 **Waivers**

20.1 No term or provision of this Agreement shall be considered as waived by any party to this Agreement unless a waiver is given in writing by that Party.

20.2 No waiver under Clause 19.1 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 Agreement unless (and then only to the extent) expressly stated in that waiver.

21 **The Local Government (Contracts) Act 1997 certificate**

The Parties hereby consent to the issue by the Authority of a certificate under section 3 of the Local Government (Contracts) Act 1997 which relates to this Agreement.

22 **Statutory responsibilities**

Notwithstanding anything apparently to the contrary in this Agreement together with all the deeds and documents referred to herein but subject to express rights and remedies of the Facility Agent and the Senior Creditors in respect of breach of this Agreement by the Authority, in carrying out its statutory duties (excluding in its capacity as **Authority** under the Project Documents but including as planning authority and highways authority) the discretion of the Authority shall not be fettered or otherwise unlawfully affected by the terms of the Agreement.

23 **Joint insurance account**

23.1 Notwithstanding the other provisions of this Agreement or the Finance Documents:

- i the Security Trustee shall only permit amounts to be released from the Joint Insurance Account in accordance with the requirements of Clause 58 (Reinstatement) of the Project Agreement and shall not exercise any rights under the Finance Documents or take any other steps to prevent amounts being released from the Joint Insurance Account in accordance with Clause 58 (Reinstatement); and
- ii the Senior Creditors shall have no right or benefit (whether by way of security or otherwise) in respect of the Authority's interest in the Joint Insurance Account provided that nothing in this paragraph shall in any way limit or affect the entitlement of the Contractor to assign its interest in the Joint Insurance Account pursuant to and in accordance with the Security Documents.

23.2 The Security Trustee acknowledges that, under the terms of the Project Agreement, disbursements from the Joint Insurance Account shall be made in accordance with Clause 58 (Reinstatement) of the Project Agreement.

24 **Governing law and jurisdiction**

This Agreement is governed by the laws of England and Wales. The English courts have exclusive jurisdiction to settle any dispute in connection with this Agreement.

IN WITNESS whereof the Parties hereto have executed this Agreement as a Deed the day and year hereinbefore written

THE COMMON SEAL of THE)
MAYOR AND BURGESSES OF THE)
LONDON BOROUGH OF LEWISHAM) **Common Seal**
was affixed hereto in the presence of:)
Katherine Kazantzis)

SIGNED as a DEED by VIKKI EVERETT)
for and on behalf of **REGENER B3**) **Vikki Everett**
LIMITED pursuant to a power of Attorney)
dated **17 May 2007**)

in the presence of Attorney

Witness [REDACTED]
Address [REDACTED]
Occupation [REDACTED]

SIGNED as a DEED by Kwong-Wing Law)
for and on behalf of **SUMITOMO MITSUI**)
BANKING CORPORATION EUROPE) **Kwong-Wing Law**
LIMITED pursuant to a power)
of attorney dated **15 May 2007**)

in the presence of Attorney

Witness [REDACTED]
Address [REDACTED]
[REDACTED]
[REDACTED]
Occupation: [REDACTED]