

DATED 12 MAY 2003

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

(2) PARTNERS FOR IMPROVEMENT IN ISLINGTON LIMITED

RESTATEMENT AGREEMENT FOR THE
AGREEMENT FOR HRA PFI PROJECT ISLINGTON
STREET PROPERTIES PROJECT ONE DATED
31 MARCH 2003

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THIS AGREEMENT is made on

12 MAY

May 2003

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 LIMITED** (Registered in England and Wales under Company No. 04628357) whose registered office is at United House, Goldsel Road, Swanley, Kent, BR8 8EX (the "**Contractor**").

WHEREAS:-

- (A) By a project agreement dated 31 March 2003 and entered into between (1) the Authority and (2) the Contractor, the parties agreed the procurement of the services of the Contractor to design and refurbish the properties located within the administrative area of the Authority (the "**Properties**") and to thereafter operate and maintain services to the Properties upon and subject to the terms and conditions set out therein (the "**Original Project Agreement**", which expression shall include the Original Project Agreement as from time to time amended, varied, supplemented, novated or replaced prior to the date of this Agreement including, but not limited to, at the relevant time pursuant to the Restatement Agreement (as defined below)).
- (B) By an exchange of letters between the parties dated 25 April 2003 the Original Project Agreement was amended such that the Services Commencement Date is the 12 May 2003.
- (C) By a restatement agreement dated 12 May 2003 and entered into between (1) the Authority and (2) the Contractor, certain terms of the Original Project Agreement were amended and restated (the "**Restatement Agreement**").
- (D) The parties hereto wish to amend and restate the Original Project Agreement in the manner stated herein.

IT IS AGREED as follows:-

1. INTERPRETATION

1.1 Definitions

In this Agreement:-

"**Effective Date**" means the date on which the Restated Agreement is executed by the parties;

"**Restated Agreement**" means the Original Project Agreement, as amended by this Agreement, the terms of which are set out in Schedule 1.

1.2 Incorporation of terms

Unless otherwise defined herein, capitalised terms defined in the Original Project Agreement shall have the same meaning when used in this Agreement.

1.3 Interpretation

In this Agreement, references to Clauses are to clauses or sub-clauses of this Agreement, references to a Schedule are to a schedule to this Agreement and references within a Schedule to paragraphs are to paragraphs or sub-paragraphs of that Schedule.

1.4 Schedules

The Schedules shall be treated as an integral part of this Agreement and references to this Agreement shall include the Schedules.

1.5 Headings

Headings are for reference purposes only and shall not affect the construction of anything in this Agreement.

2. RESTATEMENT AND AMENDMENT

2.1 Restatement and Amendment of the Original Project Agreement

With effect from the Effective Date, the Project Agreement shall be amended and restated so that it shall be read and construed for all purposes as set out in Schedule 1.

3. CONTINUITY AND FURTHER ASSURANCE

3.1 Continuing obligations

The provisions of the Original Project Agreement shall, save as amended in this Agreement, continue in full force and effect.

3.2 Further assurance

The Contractor shall, at the request of the Authority and on reasonable notice and at its own expense, do all such acts and things necessary or desirable to give effect to the amendments effected or to be effected pursuant to this Agreement.

4. MISCELLANEOUS

4.1 Incorporation of terms

The provisions of clause 66 (Notices) and clause 67 (Severability) of the Original Project Agreement shall be deemed incorporated into this Agreement (with such conforming amendments as the context requires) as if set out in full in this Agreement and as if references in those clauses to "this Agreement" are references to this Agreement.

4.2 Counterparts

This Agreement may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

5. GOVERNING LAW

5.1 This Agreement shall in all respects be governed by and interpreted in accordance with the laws of England and Wales.

5.2 Any question, dispute or difference arising out of or relating to this Agreement shall be determined in accordance with clause 59 of the Original Project Agreement as if such clause was set out in this Agreement.

IN WITNESS whereof the Parties have executed this Agreement as a Deed on the date first before written.

SCHEDULE 1
RESTATED AGREEMENT

DATED _____ 2003

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

and

(2) PARTNERS FOR IMPROVEMENT IN ISLINGTON LIMITED

AGREEMENT
FOR HRA PFI PROJECT
ISLINGTON STREET PROPERTIES
PROJECT ONE

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THIS CONTRACT is made on 2003

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 LIMITED** (Registered in England and Wales under Company No. 04628357) whose registered office is at United House, Goldsel Road, Swanley, Kent, BR8 8EX (the "**Contractor**").

WHEREAS:-

- (A) 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.
- (B) 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.
- (C) In accordance with the foregoing policy and the EU Services Directive (92/50/EEC) and the Public Services Contracts Regulations 1993 (SI 1993 No. 3228), 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 12 May 2000 and the various negotiated procedures thereafter.
- (D) 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.
- (E) Proposals were submitted by the Contractor for the financing, design and refurbishment, operation and maintenance of the Properties during the Contract Term.
- (F) 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.
- (G) The parties intend that this Contract will be a certified contract for the purposes of the Local Government (Contracts) Act 1997.
- (H) The Relevant Discharge Terms are set out in Schedule 12 (*Relevant Discharge Terms*) of this Contract.
- (I) 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:-

- "Abandon"** once the Works have commenced failure to carry out any Works for a period of 20 consecutive Working Days or during 60 Working Days and/or once the Services have commenced not to provide any of the Services for a period of 10 consecutive Working Days at any time during the Contract Period with the intention that the Works and/or Services are permanently abandoned except when relieved of the obligation to do so by the express provisions of this Contract;
- "Acceptance Certificate"** a certificate issued (or deemed issued) by the Employer's Agent confirming its agreement with the issue by the Contractor of a Certificate of Availability;
- "Access Failure Event"** the inability of the Contractor and/or Sub-Contractor to gain access to a Rented Dwelling or a Leasehold Dwelling, or to any property to which the Contractor and/or Sub-Contractor requires access to enable it to carry out works to any of the Properties or otherwise to comply with its obligations under this Contract:-
- (a) due to, in relation only to carrying out the Works and lifecycle works (to a Dwelling or Property to satisfy the Output Specification) and provided the Contractor or Sub-Contractor, as appropriate, has used all reasonable endeavours, given the circumstances regarding the relevant Tenant, to gain such access (as shall be evidenced in writing), the frail and/or vulnerable condition of the Tenant;
 - (b) due to the insufficiency of any right of access to the Dwelling or Property enjoyed by the Authority as owner or landlord of the Dwelling or Property, other than a right granted by a Leaseholder Lease or a Tenancy Agreement;

- (c) due to a Court of Law having determined that the Contractor and/or Sub-Contractor has no right of entry or access into a Rented Dwelling, Leasehold Dwelling or Property under a Leaseholder Lease or a Tenancy Agreement for the purposes of the carrying out the Works or Services other than where the reason for the Court of Law so determining is due to the Contractor and/or Sub-Contractor having failed to comply with the terms of the relevant Tenancy Agreement or Leaseholder Lease or is otherwise as a consequence of an act or default by the Contractor and/or Sub-Contractor;
- (d) during the period during which the Contractor and/or Sub-Contractor has commenced (by way of issue of proceedings in a Court of Law) and is using all reasonable endeavours to pursue diligently, legal action in order to gain access to a Dwelling or Property;
- (e) due to any other circumstances which may, in the discretion of the Authority, be agreed with the Contractor;

"Account Bank"

the Governor and Company of the Bank of Scotland operating from its branch at 155 Bishopsgate, London EC2M or such replacement or substitute as may be agreed in accordance with the Accounts Agreement (as defined in the Facility Agreement);

"AEI"

the average earnings index for the whole economy published from time to time by Incomes Data Services or, if such index shall cease to be published, such other average earnings index for the whole economy 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;

"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 or the Quayle Munro PFI

	Limited Partnership or any fund or partnership in which HBOS plc or any of its Affiliates has a majority interest;
"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 Part 3 of Schedule 9 (<i>Authority's Protocols</i>);
"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 (<i>Authority's Policies</i>);
"Ancillary Documents"	the Refurbishment Contract, the Housing Management Contract, the Responsive and Cyclical Maintenance Contract, the Heating Services Contract and any Performance 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 Facility Agreement;
"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;
"Approved Purposes"	has the meaning given to it in clause 61.1 (<i>Use of Project Data</i>);
"Approved Submitted Item"	any Submitted Item under paragraph 1.4.1 of Schedule 8 (<i>Review Procedure</i>) 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"

all assets owned, leased or purchased by or for the Contractor in order to provide the Services and rights to enable the Authority or a successor contractor to operate and maintain the Dwellings and/or Properties 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;

"Authority Change"

a change to:-

- (a) the Financial Assumptions;
- (b) the Works and/or Services (including as a consequence of the exercise of the Right to Manage unless the Authority elects to treat such as a Reduction of Dwellings in accordance with clause 27.10 (*Right to Manage*));
- (c) the Output Specification;
- (d) the Authority's Policies; or
- (e) the obligations of Contractor,

that is requested by the Authority and which

the Contractor is obliged to implement in accordance with 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 or Holdco by the Authority or a Relevant Authority;
- (b) any expropriation, sequestration or requisition of a material part of the assets and/or shares of any Sub-Contractor (if such would prevent the Contractor from performing a substantial proportion of its obligations under this Contract) by the Authority or a Relevant Authority;
- (c) a failure by the Authority to make payment of any amount of money exceeding £100,000 (indexed) that is due and payable by the Authority under this Contract within 15 days of service of a formal written demand by the Contractor, where the amount fell due and payable 15 days prior to the date of service of the written demand;
- (d) a failure by the Authority to make payment of any Authority Capital Contribution Sum within 15 days of service of a formal written demand by the Contractor, where the amount fell due and payable 15 days prior to the date of service of the written demand;
- (e) a breach by the Authority of any of its obligations and/or warranties under this Contract which substantially frustrates the Contractor in its ability, or renders it impossible for the Contractor, to perform its obligations under this Contract for a continuous period of six weeks;
- (f) the occurrence of a Discriminatory Change in Law or a Specific Change in Law which substantially frustrates the Contractor in its ability, or renders it impossible for the Contractor, to perform its obligations under this Contract for a continuous period in excess of three months;

	(g) a breach by the Authority of clause 62.1 (<i>Restriction on the Authority</i>);
"Authority Notice of Change"	has the meaning given to it in clause 52.1.3 (<i>Authority Changes</i>);
"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,
	but excluding in each case the Contractor and any Contractor Related Parties;
"Authority's Capital Contribution Sums"	the sums to be paid by the Authority to the Contractor pursuant to clause 30.1 (<i>Payment of Authority's Capital Contribution Sums</i>);
"Authority's Compensation Liabilities"	the liability of the Authority to pay any compensation on and/or as a result of termination of this Contract;
"Authority's Policies"	together the:-
	(a) Allocations Policy;
	(b) Anti-social Behaviour Policy;
	(c) Refund, Compensation and Remedies Policy;
	(d) Procedure for the Housing of Sex Offenders and Monitoring of Existing Tenants;
	(e) Tenancy Audits;
	(f) Tenancy Conditions;
	(g) Complaints Procedure;
	(h) Corporate Harassment Policy;
	(i) Harassment Policy re Service Users;
	(j) Housing and Social Services Protocols; and
	(k) Repairs Guarantee;

"Authority's Protocols"	together the:- <ul style="list-style-type: none"> (a) Home Ownership Protocol; (b) Disrepair Protocol; (c) Allocations and Nominations Protocol; (d) ICT Protocol; (e) Trees Protocol; and (f) Leaseholder Works Protocol;
"Authority's Representative"	the representative appointed by the Authority pursuant to clause 11 (Representatives);
"Authority's Share"	the percentage of the amount of Cumulative Capital Expenditure payable by the Authority, as shown in the table set out in Schedule 4 (Change in Law Risk Share Matrix);
"Authority Warranted Data"	the information contained in Part 1 of Schedule 11 (Authority's Warranted Data);
"Available"	in relation to any Dwelling or Property that the applicable Availability Standard is met in relation to that Dwelling or Property and "Availability" shall be construed accordingly;
"Available Rented Dwelling"	a Dwelling which on the date of the commencement of a Tenancy Agreement will be Available;
"Availability Standards"	each or all of the Availability Standards Council (Initial), Availability Standards Leasehold (Initial), Availability Standards Council (Interim), Availability Standards Council (Full) and Availability Standards Leasehold (Full);
"Availability Standards Council (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 Council (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 Council (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;
"Availability Standards Leasehold"	the full standards applicable to Leasehold Dwellings set out in paragraph 2.12 of the

(Full) "	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;
"Base Case Model"	shall have the same meaning given to the term Base Case as defined in the Facility Agreement;
"Benchmarking Exercise"	benchmarking in accordance with clause 26.1.2 (Benchmarking);
"Best Value Change in Law"	a Change in Law which comprises:- <ul style="list-style-type: none"> (a) an order made by the Secretary of State in the exercise of powers conferred upon him by Section 4 Local Government 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); (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; (c) Guidance issued by the Secretary of State or the Audit Commission or other competent Authority in respect of (a) or (b);
"BVPI 78a"	the Best Value Performance Indicator 78a as regularly published by the Audit Commission;
"BVPI 78c"	the Best Value Performance Indicator 78c as regularly published by the Audit Commission;
"CAEI"	the composite index being $(0.15 \times RPI) + (0.85 \times AEI)$;
"Capital Contribution Account"	has the meaning given to it in clause 30.1.3 (Payment of Authority's Capital Contribution Sums);

"Capital Expenditure"	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;
"Certificate of Availability"	a Certificate of Availability Council (Interim Standard) or a Certificate of Availability Council (Full Standard) or a Certificate of Availability Leasehold (Full Standard) as the case may be;
"Certificate of Availability Council (Full Standard)"	a certificate stating the satisfaction, in relation to any Rented Dwelling referred to in the certificate, of the Availability Standards Council (Full);
"Certificate of Availability Council (Interim Standard)"	a certificate stating the satisfaction, in relation to any Rented Dwelling referred to in that certificate, of the Availability Standards Council (Interim);
"Certificate of Availability Leasehold (Full Standard)"	a certificate stating the satisfaction, in relation to any Leasehold Dwelling referred to in the certificate, of the Availability Leasehold Standards (Full);
"Certification Requirements"	the requirements which must be satisfied for a contract to be a certified contract for the purposes of the Local Government (Contracts) Act 1997;
"Change in Law"	<p>the coming into effect after the date of this Contract of:-</p> <ul style="list-style-type: none"> (a) Legislation, other than any Legislation which on the date of this Contract has been published; <ul style="list-style-type: none"> (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) as a proposal in the Official Journal of the European Communities; (b) any Guidance; or (c) any applicable judgement of a relevant court of law which changes a binding precedent;
"Change of Control"	any sale or other disposal of any legal, beneficial or equitable interest in any or all of the equity share capital of a corporation

	(including the control over the exercise of voting rights conferred on that equity share capital or the control over the right to appoint or remove directors);
"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;
"Cloned Pricing Model"	the data required to calculate the RTB Compensation in accordance with clause 27.8.4(e);
"Commercially Sensitive Information"	any information which is agreed by the parties (acting reasonably) at any time as being commercially sensitive;
"Common Parts"	<p>any:-</p> <ul style="list-style-type: none"> (a) sewers, drains, channels, ducts, watercourses, cables, pipes, wires and heating systems or other services installations; (b) accesses, entrances, passages, landings, staircases, gardens, refuse areas, forecourts, roadways and pathways; and (c) roofs, walls, floors, ceilings, foundations, timbers, joists, beams, chimney stacks, gutters and rain water and soil pipes, <p>used in common by residents of one or more Dwellings;</p>
"Compensation Event"	<ul style="list-style-type: none"> (a) a breach by the Authority or an Authority Related Party of any of the Authority's obligations and/or warranties under this Contract; (b) a breach by the Authority or an Authority Related Party of any of the Authority's obligations and/or warranties contained in the Authority's Protocols (or any of them) as may be identified in any such protocol as giving rise to a compensation event; (c) the occurrence of an Excessive Void Turnover Event; (d) the occurrence of a Housing Benefit Failure Event and/or the failure by the housing benefit service within the Authority to perform in all respects to a standard which is not less than the

standard to which it performs in connection with any other Authority properties other than those covered by the Project;

- (e) a failure by the Authority to administer (and administering shall involve more than mere acknowledgement of receipt) an application for a Necessary Consent submitted by or on behalf of the Contractor, in order to comply with the Contractor's obligations under this Contract within the timescales ordinarily achieved by the Authority in administering applications for consents the same or similar to the application for the Necessary Consent, taking into account the information provided by the Contractor at the relevant point in time;
- (f) the existence of a defect in the Properties and/or Dwellings caused by works and/or services and/or improvements (the "**Authority Works**") 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 (excluding a Leaseholder) of any Dwelling after the date on which the Stock Condition Survey relating to that Property and/or Dwelling was undertaken and (in relation to a Tenant or other occupier (excluding a Leaseholder)) prior to the Services Commencement Date, which gives rise to material adverse consequences at the Property and/or Dwelling in which the defect exists (but taking into account any benefit to the part of the relevant Property and/or Dwelling in which the defect exists arising from the Authority Works undertaken to the part of the relevant Property and/or Dwelling in which the relevant defect exists);
- (g) the variation of any Leaseholder Lease or of any Tenancy Agreement without the consent of the Contractor;
- (h) save as in the foregoing any act or omission by or on the part of the Authority or an Authority Related Party affecting the performance by the Contractor of its obligations under this Contract which, for the avoidance of doubt, shall include the failure of the Authority to gain access to Dwellings in

order to undertake necessary inspections to procure a CP12 certificate but shall be limited to the increased legal costs (other than in relation to 30 relevant legal actions) to the Contractor as a result of such failure other than where such act or omission is permitted by this Contract;

- (i) to the extent that such impacts upon legal costs incurred in connection with 10 or more actions in any one Contract Year, the absence of a written Tenancy Agreement between the Authority and a Tenant;
- (j) any Tenant claim for compensation to cover the costs of carpets and/or curtains on a decant to 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;
- (k) a failure by the Authority to have carried out firestopping compartmentalisation at a Dwelling in accordance with the then applicable Law such that the Contractor is obliged to remedy such failure in accordance with the Law in force at the time of carrying out the Works to such a Dwelling;

"Condition Precedent"	the condition precedent contained in Schedule 1;
"Contamination"	means 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;
"Contract"	this contract (including its Schedules and Appendices);
"Contract Month"	the period from 31 March until 30 April 2003 (which shall be the "First Contract Month") and thereafter shall be any calendar month (or part of a month);
"Contract Period"	the period commencing on 31 March 2003 to (and including) the Expiry Date or, if earlier, the Termination Date;

"Contract Year"	<p>each of the following:-</p> <ul style="list-style-type: none"> (a) the period from 31 March 2003 until 31 March 2004 (which shall be the "First Contract Year"); (b) any period following the expiry of the period in (a) above but before the commencement of the period in (c) below commencing on 1 April in any Year and ending on 31 March in the following Year (which shall be the "Second and Subsequent Contract Year"); and (c) the period from the date being 1 April immediately preceding the Termination Date or the Expiry Date until the Termination Date or the Expiry Date as applicable (which shall be the "Final Contract Year");
"Contractor Change"	a change to the Works and/or the Services pursuant to clause 52.2 (<i>Contractor Changes in Service</i>);
"Contractor Event of Default"	any event contained in clause 34.1 (<i>Contractor Default Termination</i>);
"Contractor Notice of Change"	as described in clause 52.2.2 (<i>Contractor Changes in Service</i>);
"Contractor Related Party"	<p>any:-</p> <ul style="list-style-type: none"> (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;
"Contractor Warranted Data"	the information relating to Holdco contained in Part 2 of Schedule 11 (<i>Warranted Data</i>);
"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 (<i>Contractor's Contractual Method Statements</i>) and set out in Appendix 4, any proposed variation to which the Authority may raise objections in accordance

	with the Review Procedure;
"Contractor's Procedures "	those of the Contractor's procedures from time to time for the provision of the Works and Services to satisfy the Output Specification (excluding the Contractor's Contractual Method Statements), any proposed variation to which the Authority may raise comments in accordance with the Review Procedure;
"Contractor's Representative"	the person to be appointed by the Contractor pursuant to clause 11.1 (<i>Representatives</i>);
"Contractor's Share"	the percentage of the amount of Cumulative Capital Expenditure payable by the Contractor, as shown in the table set out in Schedule 4 (<i>Change in Law, Risk Share Matrix</i>);
"Cumulative Capital Expenditure"	(a) the aggregate of all Capital Expenditure which has been and/or will be incurred as a result of each General Change in Law which has come into effect during the Operational Period;
	(b) to the extent not included in paragraph (a) the amount of Capital Expenditure which is agreed, or determined to be required, as a result of a General Change in Law;
"Cumulative Leaseholder Recovery Sums"	the amount representing the aggregate Recoverable Leaseholder Costs in respect of all Leasehold Dwellings in a given Contract Year;
"Custodian"	NCC or any new custodian appointed by the Authority and the Contractor pursuant to this Contract from time to time;
"Custody Agreement"	the agreement to be executed at Financial Close made between the Custodian, the Authority, the Contractor and the Senior Lenders/Security Trustee in the form contained in Schedule 13 (<i>Custody Agreement</i>);
"Cut-Off Date"	the 12 May 2003 as may be extended by agreement of the Parties;
"Cyclical Maintenance and Replacement Programme"	the programme of works relating to the maintenance of and replacement of elements of the Dwellings or Properties required to satisfy the Output Specification;
"Data Room"	the data room located at Highbury House, 5 Highbury Crescent, London N5 1RN;
"Decant Void"	has the meaning given to it in clause 27.6

	(<i>Decant</i>);
"Deductions"	together the Unavailability Deductions and Performance Deductions;
"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 (other than those arising from a Relief Event as described in paragraph (g) and/or as described in paragraph (i) of that definition or from an Excusing Event as described in paragraph (k) of that definition) in any of the buildings comprising a Property, or any part of them, attributable to:-</p> <ul style="list-style-type: none"> (a) defective design; (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; (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; (d) defective preparation of the Site on which a Property is constructed; or (e) adverse ground conditions at the Sites;
"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 agreement to be made between the Authority, Contractor and the Security Trustee in the form set out in Schedule 21 (<i>Direct Agreement</i>);
"Direct Agreement (Sub-Contractor)"	a direct agreement to be made between the Authority, the Contractor and either (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 Schedule 7 (<i>Direct Agreement (Sub-Contractor)</i>) as may be

amended in accordance with this Contract and "**Direct Agreement (Sub-Contractor)**" shall be construed accordingly;

"Disclosed Data"

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;

"Discriminatory Change in Law"

a Change in Law, the terms of which apply expressly to:-

- (a) the Project and not to similar projects procured under the PFI;
- (b) the Contractor and not to other persons; or
- (c) PFI contractors and not to other persons;

"Disputes Resolution Procedure"

the procedure for the resolution of disputes set out in clause 59 (***Dispute Resolution***);

"Disrepair Action"

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;

"Disrepair Action Cut Off Date"

in relation to actions, claims, demands, costs, damages, compensation, expenses (including legal expenses), fines and penalties due in connection with Disrepair Actions, the date which is the third anniversary of the Services Commencement Date or if earlier the date upon which Dwellings and/or Properties which have reached the Availability Standards Council (Full), Availability Standards Council (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 Council (Full), Availability Standards Council (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 2 of Schedule 9 (<i>Authority's Protocols</i>);
"DPA"	the Data Protection Act 1998;
"Dwelling"	the flats or houses listed by address in Schedule 5 (<i>Dwellings</i>) (but excluding any Dwelling in respect of which the freehold interest in that Dwelling has been disposed of);
"Eligible Costs"	shall have the same meaning as that given to it in the Facility Agreement;
"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 Change in Law"	any Change in Law which applies, or requires the application of, the same terms and conditions to employees of the Contractor or any Sub-Contractor as are then applicable to employees of local authorities or public sector employees generally;
"Employer's Agent"	the asset manager of the Contractor or any 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 agent to the Project;
"Equity IRR"	the nominal, post-tax 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) (<i>Authority</i>

"Estimated Change in Project Costs"	<p>Changes);</p> <p>(in relation to a Compensation Event, Authority Change or Qualifying Change in Law (as the case may be)) the aggregate of any estimated revised construction, operating, management, repair, maintenance, staff and financing costs and any associated costs and expenses (including from loss of revenue) less the aggregate of any estimated reduced construction costs, operating costs, management costs, repair costs, maintenance costs, staff costs and financing costs (and any associated reduced costs and expenses);</p>
"Estimated Recoverable Leaseholder Costs"	<p>has the meaning given to it in clause 27.1.3(b) (Leaseholders);</p>
"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> <ul style="list-style-type: none"> (a) the Treaty on European Union; and (b) any legislative measures for the introduction of, change over to or operation of such currency, <p>being in part the implementation of the third stage of Economic and Monetary Union as contemplated in the Treaty on European Union;</p>
"Excessive Void Turnover Event"	<p>as shall be first calculated from 1 April 2006, the amount by which the Void Turnover Rate for any Contract Year exceeds 10%;</p>
"Excusing Events"	<p>to the extent that such impacts upon Availability of a Dwelling and/or the performance of the Services any of:-</p> <ul style="list-style-type: none"> (a) Compensation Events; (b) Force Majeure Events; (c) the events in paragraphs (b) (provided the Contractor is complying in all material respects with the relevant aspects of its contingency plan), (g), (h), (i), (j) and (l) in the definition of Relief Events; (d) an Authority Change, a Small Works Change or a Contractor Change;

- (e) a Change in Law;
- (f) the Authority instructing the Contractor under clause 24.1 (**Emergencies**) and/or the Authority exercising its right of step-in in accordance with clause 53 (**Authority Step-in**); and
- (g) the carrying out within a reasonable period of the Works or any other works or the provision of Services or any other services required to satisfy the Output Specification (other than works required to remedy a breach of the Contractor's obligations under this Contract);
- (h) 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;
- (i) failure to provide, or delay in the provision of, works and/or services, or any interruption to the provision of the Works and/or Services caused by any statutory undertaker, utility company, local authority (other than the Authority in its capacity as a party to this Contract) or other like body including, without limitation, any failure or shortage of power or fuel (other than an interruption under and interruptible supply agreement);
- (j) an expropriation, sequestration or requisition of a material part of the assets of a Sub-Contractor;
- (k) the lack of or inadequacy of sound insulation at the Properties and/or the Dwellings to the extent such is not caused by the Contractor or Sub-Contractor;
- (l) the absence of any written Tenancy Agreement between the Authority and a Tenant;
- (m) a breach by the Authority or an Authority Related Party of any of the Authority's obligations and/or warranties contained in the Authority's Protocols as may be identified in such protocol as giving rise to any

	Excusing Event;
	(n) any request by a Tenant during its period of tenancy or period of occupancy of a Dwelling not to repair and/or maintain any Tenant's Improvement;
	(o) any request by a Leaseholder not to repair and/or maintain any Tenants' Improvement carried out within the demise of the Leaseholder's Lease.
	(p) the Authority not agreeing to make available pursuant to clause 27.6, 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;
"Execution Date"	the date of this Contract;
"Expiry Date"	the day immediately prior to 31 March 2033;
"Facility Agreement"	the agreement entered into on or about the same date as this Contract between the Contractor and The Governor and Company of The Bank of Scotland and others and relating to providing finance to the Contractor in respect of the Project as amended, varied or supplemented from time to time;
"Fast Track Matters"	disputes arising under clauses 26.1.5 (Benchmarking), 30.6 (Response to Authority Notice) of this Contract or paragraph 1.5.1, 4.2 and 6.2 of Schedule 8 (Review Procedure) to this Contract or otherwise where a dispute is expressly reserved to be resolved as a "Fast Track Matter" in respect of which the Adjudicator's decision shall be final as specified in clause 59.6 (Adjudicator's Decision);
"Final Acceptance Certificate"	the final Acceptance Certificate to be issued pursuant to clause 19 (Notification of Availability);
"Financial Assumptions"	are the certain financial assumptions relating to the Works set out in Schedule 20 (Financial Assumptions);
"Financial Close"	shall have the same meaning as given to it in the Facility Agreement;

"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"	the Senior Financing Agreements and the Subordinated Financing Agreements;
"Force Majeure Event"	<p>the occurrence after the date of this Contract of:-</p> <ul style="list-style-type: none"> (a) war, civil war, armed conflict or terrorism; or (b) nuclear, chemical or biological contamination unless the source or cause of the contamination is as a result of the acts or omissions of the party seeking to rely on the existence of contamination as a Force Majeure Event; or (c) pressure waves caused by devices travelling at supersonic speeds, <p>which directly causes either party (the "Affected Party") to be unable to comply with all or a material part of its obligations under this Contract;</p>
"Forecast"	shall have the meaning given to it in the Facility Agreement;
"Forecast Annual Debt Service Cover Ratio"	shall have the meaning given to it in the Facility Agreement;
"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);
"Ground Physical and Geophysical Investigation"	means the investigation of all the conditions of the Sites and of any extraneous materials in, on or under the Sites (including its surface and subsoil) to enable the Works to be carried out with due regard for those conditions and the seismic activity (if any) in the region of the Sites;

"Guidance"	any applicable guidance or directions with which the Contractor is obliged to comply in accordance with Legislation;
"Handover Protocol"	the protocol relating to the parties' responsibilities in respect of the handover of works and services in the form set out in Part 3 of Schedule 9 (<i>Authority's Protocols</i>);
"Health and Safety Change in Law"	the coming into effect of the Housing Health and Safety Rating System;
"Heating Services"	the heating services required to satisfy the requirements of the Output Specification;
"Heating Services Contract"	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;
"Heating Services Contractor"	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 62.2 (<i>Contractor's Permitted Sub-Contractors</i>) appoint to provide the Heating Services;
"Hedging Banks"	as defined in the Facility Agreement;
"Helpdesk"	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;
"Historic Annual Debt Service Cover Ratio"	shall have the meaning given to it in the Facility Agreement;
"Holdco"	PFI Islington (Holdings) Limited, registered in England and Wales under Company No 04021804, whose registered office is at United House, Goldsel Road, Swanley, Kent, BR8 8EX;
"Home Ownership Protocol"	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 to be set out in Part 1 of Schedule 9 (<i>Authority's Protocols</i>);
"Housing Benefit Failure Event"	where, in any Contract Month in respect of the period of that Contract Month:- (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 25% or more; or
	(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
	(c) the overall rent collection rate within the Authority on a month by month basis falls beneath 92%;
"Housing Management Contract"	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;
"Housing Management Contractor"	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 62.2 (<i>Contractor's Permitted Sub-Contractors</i>) appoint to provide the Housing Management and Leaseholder Services;
"Housing Management Functions"	has the meaning given to it in clause 27.2 (<i>Management Agreement</i>);
"Housing Management Services"	those housing and leaseholder management services required to satisfy the Output Specification;
"ICT Protocol"	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 Schedule 9 (<i>Authority's Protocols</i>);
"Indexed Element"	that part of the Unitary Payment which is to be indexed in accordance with Paragraph 3 of Part 1 of Schedule 6 (<i>Payment and Performance Mechanism</i>);
"Initial Refurbishment Costs"	the costs calculated in accordance with clause 27.8.4(e) (<i>Reduction of Dwellings</i>) and Table A of Schedule 15 (<i>Statutory Reductions of Dwellings</i>);
"Inner London Borough"	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;
"Insurances Review Date"	31 March 2006 and each third anniversary of the last review date thereafter;
"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;
"Irrecoverable Leaseholder Costs"	<p>the sum which represents the costs which are irrecoverable from Leaseholders as a consequence of:-</p> <ul style="list-style-type: none"> (a) failure to comply with Sections 19 and/or 20 of the Landlord and Tenant Act 1985 (as amended); (b) a defective notice served under Section 125 of the Housing Act 1985 after the Services Commencement Date (other than where the defect is due to the default of the Authority) and; (c) costs in excess of the amount set down in the Local Housing Authorities Mandatory Reduction of Service Charges (England) Directions 1999;
"Joint Insurance Account"	has the meaning given to it in clause Error! Reference source not found. (<i>Joint Account</i>) ;
"Law"	Legislation and Guidance and any applicable judgement of a relevant court of law which changes a binding precedent;
"Leasehold Dwellings"	the Dwellings identified as such in Schedule 5 (<i>Dwellings</i>) and other Rented Dwellings which subsequently become Leasehold Dwellings following the exercise of the Right to Buy after Financial Close;
"Leasehold Recovery Compensation Sum"	

**"Leasehold Recovery Cumulative
Protected Amounts"**

**"Leasehold Recovery Guarantee
Sum"**

**"Leasehold Recovery Guarantee
Sum Payment Date"**

**"Leasehold Recovery Guarantee
Sum Retained Amounts"**

"Leaseholder"	a person who holds a Leasehold Dwelling under a Long Lease;
"Leaseholder's Lease"	the Long Lease under which a Leaseholder holds a Leasehold Dwelling;
"Legislation"	in relation to the United Kingdom:-

	(a) any Act of Parliament;
	(b) any subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978;
	(c) any exercise of the Royal Prerogative; and
	(d) any enforceable community right within the meaning of Section 2 of the European Communities Act 1972;
"Liaison Procedure"	the procedure contained in Schedule 22 (<i>Liaison Procedure</i>);
"Loan Life Cover Ratio"	shall have the meaning given to it in the Facility Agreement;
"Local Authority"	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;
"Long Lease"	a lease of a term in excess of 21 years at a ground rent;
"Longstop Date"	the date twelve months after the Planned Refurbishment 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 " Loss " 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 62 (<i>Assignment and Sub-Contracting</i>)
"Management Agreement"	has the meaning given to it in clause 27.2 (<i>Management Agreements</i>);
"Market Costs"	as defined in clause 26.1.4 (<i>Benchmarking</i>);
"Market Testing"	market testing in accordance with clause 26.2

	(Market Testing Procedure);
"Milestone Works"	the issue of Acceptance Certificates in respect of Certificates of Availability Council (Full Standard) or Certificates of Availability Leasehold (Full Standard) for 40% of the Dwellings in the Project;
"Milestone Works Completion Date"	30 December 2006 being the date by which the Milestone Works are to be undertaken;
"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);
"NCC"	NCC Escrow International Limited (Company Registration Number 03081952) whose registered office is situated at Manchester Technology Centre, Oxford Road, Manchester M1 7ED;
"Necessary Consents"	all approvals, permissions, consents, licences, certificates and authorisations of a Relevant Authority which are required for the performance of any of the Contractor's obligations under this Contract;
"Non-Default Interest Rate"	means the Senior Debt Rate;
"Operational Period"	the period from and including the Services Commencement Date until and including the earlier of the Expiry Date and the Termination Date;
"Output Specification"	the specification contained in Schedule 2 (Output Specification);
"Payment and Performance Report"	the report referred to in clause 30.3 (Report and Invoice);
"Performance Bonus"	as defined in paragraph 4 of Schedule 6 (Payment and Performance Mechanism)
"Performance Failure"	a failure by a Dwelling or Property or any part thereof to fulfil the applicable requirements of the Output Specification;
"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 (Payment and Performance

Mechanism);

"Performance 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;

"Performance Monitoring Report"

has the meaning given to it in paragraph 4 of Schedule 6 (***Payment and Performance Mechanism***);

"Period of Unavailability"

means, in relation to a Dwelling, the amount of time during which such Dwelling is Unavailable, measured in Days;

"Permitted Borrowing"

means any:-

- (a) advance to the Contractor under the Senior Financing Agreements;
- (b) amendment, waiver or exercise of a right under the Senior Financing Agreements

made:

(i) during the Step-in Period; or

(ii) in circumstances where, if an additional advance, amendment, waiver or exercise of a right under the Senior Financing Agreements were not made, the next Forecast to be undertaken pursuant to clause 11 of the Facility Agreement, would be likely to show (in the reasonable opinion of the Senior Lenders) that the Historic Annual Debt Service Cover Ratio and/or Forecast Annual Debt Service Cover Ratio and/or Loan Life Cover Ratio breaches the relevant default ratio in clause 20 of the Facility Agreement

and such amendment, waiver or exercise of a right does not increase the Authority's liabilities under this Contract:

(i) during the Step-In Period, by more than 10% in aggregate over the term of this Contract of the Senior Debt Amount;

(ii) in any other circumstances by more than 10% (when such increase is added

to the amount of any previous increase which has not been repaid) of the Anticipated Senior Debt Outstandings at such time,

provided that in each case the sole purpose of such amendment, waiver or exercise of a right is to remedy the relevant breach or shortage of funds and all other sources of committed funding available to the Contractor have been utilised in full;

"Persistent Breach"

a breach (other than any breach for which Deductions could have been made) which has occurred four times within 6 consecutive months after the date of service of the Final Warning Notice referred to in clause 35 (**Persistent Breach**) is served on the Contractor, but which, for the avoidance of doubt, shall not include any breach of an obligation in the Output Specification which can reasonably be regarded as de minimis and/or has no material impact on the Authority's performance of its statutory housing functions in relation to this Project;

"Personal Data"

personal data within the meaning given to the phrase personal data in the DPA which is acquired by or communicated to the Contractor in connection with the Project;

"PFI"

the UK Government's Private Finance Initiative or any similar or replacement initiative;

"Physical Damage Policies"

as defined in clause 57.1 (**Application of Proceeds**);

"Planned Refurbishment Completion Date"

the 30th September 2008 or such later date as may be allowed in accordance with the terms of this Contract;

"Prohibited Act"

means:-

- (a) offering, giving or agreement to give to an officer, agent or employee 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;


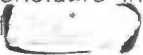
"Project Data"

- (a) all Design Data;
- (b) all drawings, reports, documents, plans, software, 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"

means this Contract, the Ancillary Documents, Financing Agreements and all other agreements to be entered into by the Contractor for the performance of the

obligations under this Contact listed in Schedule 18 (*Project Documents*);

"Project Internal Rate of Return"	
"Property"	a building comprising one or more Dwellings and any Common Parts;
"Proposed Leaseholder Works"	has the meaning given to it in clause 27.1.3(a) (<i>Leaseholders</i>);
"Qualifying Change in Law"	(a) a Discriminatory Change in Law; (b) a Specific Change in Law; (c) a Best Value Change in Law; or (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); (e) an Employee Change in Law; or (f) a Health and Safety Change in Law
"Recoverable Leaseholder Costs"	has the meaning give to it in clause 27.1.4 (<i>Leaseholders</i>) but shall exclude any amounts recoverable from Leaseholders in respect of the cost, in excess of  of insuring Leasehold Dwellings;
"Rectification Period"	has the meaning given to it in Schedule 6 (<i>Payment and Performance Mechanism</i>);
"Reduction of Dwellings"	any Statutory Reduction of Dwellings or Voluntary Withdrawal of Dwellings;
"Reduction of Dwellings Adjustment Date"	the date on which Financial Close occurs, the 30 September 2003, the 31 March 2004 and each 30 September and 31 March in each Contract Year until the earlier of the Expiry Date and the Termination Date;
"Refinancing"	has the meaning given to it in Schedule 16 (<i>Refinancing</i>);
"Refurbishment Completion Date"	the date of issue of the Final Acceptance Certificate;
"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 building contractor as the Contractor may, subject to clause 62.2 (Contractor's Permitted Sub-Contractors), appoint to carry out the Works;
"Refurbishment Works Approach"	the Contractor's proposals setting out its approach to the refurbishment of the Properties to meet the Availability Standards as set out in Part 1 of Annex 4 as may be varied or amended from time to time in accordance with the Review Procedure;
"Registered Social Landlord"	any entity appearing in the register of social landlords maintained by the Housing Corporation pursuant to Section 1 of the Housing Act 1996;
"Relevant Authority"	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 Completion Date, the Cut-Off Date, the Milestone Works Completion Date and the date(s) on which the Disrepair Transitional Period(s) expire;
"Relevant Insurances"	those of the Required Insurances taken out by the Contractor (but for the avoidance of doubt not Sub-Contractor) save for insurances of Leasehold Dwellings
"Relevant Part of the Unitary Payment"	has the meaning given in clause 27.8.4(b) (Reduction of Dwellings);
"Relevant Person"	each of the Shareholders and their Affiliates;
"Relevant Transfer"	a relevant transfer for the purposes of TUPE;
"Relief Event"	any of the following:- <ul style="list-style-type: none"> (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; (b) failure to provide, or delay in the provision of, works and/or services, or any interruption to the provision of the Works and/or Services caused by, any

statutory undertaker, utility company, local authority (other than the Authority in its capacity as a party to this Contract) or other like body including, without limitation, any failure or shortage of power or fuel (other than an interruption under an interruptible supply agreement);

- (c) any accidental loss or damage to the Sites and/or Properties or any roads servicing them;
- (d) any failure or shortage of transport;
- (e) any blockade or embargo which does not constitute a Force Majeure Event; or
- (f) any official or unofficial strike, lock out, go slow or other dispute ("industrial action") generally affecting the construction or facilities management industries in the United Kingdom or a significant sector of both or either of them, but not including industrial action specific to the Sites or industrial action which affects only the employees of the Contractor or its Sub-Contractors;
- (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 an Access Failure Event;
- (i) the occurrence of a Channel Tunnel Works Event;
- (j) pestilence or an epidemic generally affecting employees and/or secondees of the Contractor and/or any Sub-Contractor;
- (k) a breach by the Authority or an Authority Related Party of any of the Authority's obligations and/or warranties contained in the Authority's Protocols as may be identified in any such protocol as giving rise to a Relief Event;
- (l) any request by a Tenant or Leaseholder during its period of tenancy or occupancy of a Dwelling not to repair and/or

maintain any Tenant's Improvements;

- (m) the Authority not agreeing to make available pursuant to clause 27.6, 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 (e) inclusive arises 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;

"Required Action"

has the meaning given to it in clause 53.4 (**Authority Action**);

"Required Insurances"

the insurances set out in Schedule 14 (**Required Insurances**);

"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 0165 1097) of Bevis Marks House, London EC3A 7NR or such other person as the Contractor may, subject to clause 62.2 (**Contractor's Permitted Sub-Contractors**) 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;

"Restricted Share Transfer"

a transfer of shares in the Contractor or its Holdco:-

- (a) during the Works Period, to any person; and
- (b) after the expiry of the Works Period, to any person (with the exception of pension funds) whose principal business involves gaming, pornography, prostitution, illegal drugs or manufacture, sale or supply of

	arms, alcohol or tobacco;
	other than pursuant to the Direct Agreement;
"Retention Fund Account"	as defined in clause 38.1 (<i>Retention Fund</i>);
"Review Date"	1 April 2004 and 1 April in each subsequent Contract Year during the Contract Period;
"Review Procedure"	the procedure contained in Schedule 8 (<i>Review Procedure</i>);
"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;
"RTB Compensation"	shall, in respect of each Dwelling which is the subject of Reduction of Dwellings, be the annual sum calculated in accordance with clause 27.8.4 (<i>Reduction of Dwellings</i>);
"Secondment Agreement"	the agreement which may be entered into in the Agreed Form under which employees of Hyde Housing are seconded to the Contractor;
"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 (<i>Management Agreements</i>);

"Security Trustee"	The Governor and Company of The Bank of Scotland and any successor or assignee;
"Semi-Variable Costs"	for the purpose of clause 27.8.4, the Housing Management Costs and the SPV 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 shown in the column headed "% Semi Variable" Table A of Schedule 15;
"Senior Debt Amount"	has the meaning given to it in clause 40 (<i>Compensation Definitions</i>);
"Senior Debt Rate"	has the meaning given to it in clause 40 (<i>Compensation Definitions</i>);
"Senior Financing Agreements"	each agreement defined in the Facility Agreement as a "Finance Document", as at the date of Financial Close or as amended with the prior written approval of the Authority;
"Senior Lenders"	each person providing finance to the Contractor under the Senior Financing Agreements and each of the Hedging Banks 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 (<i>Payment and Performance Mechanism</i>);
"Services"	the services required to satisfy the Output Specification (save that the Contractor shall not be obliged to carry out any such services in respect of any items in relation to which Tenant's Improvements have been undertaken to any greater extent than if the relevant Tenant's Improvement had not been undertaken);
"Services Commencement Date"	12 May 2003;
"Shareholders"	means United House Solutions Limited (registered number 3680752), Uberior Infrastructure Investments Limited (registered number SC186247) and Hyde Housing Association Limited (registered number IP18195R) or any other person from time to time owning shares in the Contractor or Holdco

and a "Shareholding" is the interest which the Shareholder derives from the shares;

"Shareholders Agreement"

the agreement or agreements between the Shareholders relating to the Contractor including any agreement relating to the subscription of equity (or other shareholders funding) by the Shareholders in the Contractor or Holdco;

"Site Conditions"

means the conditions of the Sites including (but not limited to) climatic, hydrological, hydrogeological, ecological, environmental, geotechnical and archaeological conditions;

"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 Works and/or the Services requested by the Authority requiring works having an individual cost not exceeding £1,000 (indexed) per Dwelling, 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 **"Small Works"** shall be construed accordingly;

"Specific Change in Law"

any Change of Law which principally refers or relates only to:-

- (a) the provision of works or services to:-
 - (i) housing accommodation of Local Authorities; or
 - (ii) both housing accommodation of Local Authorities and of Registered Social Landlords; or
 - (iii) residential tenanted accommodation and/or commonhold accommodation; or
 - (iv) tenants or leaseholders or other contractual occupiers of residential tenanted and/or commonhold accommodation,

the same as or similar to the Works or Services

or

- (b) the holding of shares in companies (whether limited by shares or by guarantee) whose main business is providing a service to residential tenanted and/or commonhold accommodation or tenants or leaseholders or other contractual occupiers of residential tenanted and/or commonhold accommodation; or
- (c) the membership of industrial and provident societies whose main business is providing a service to residential tenanted and/or commonhold accommodation or to tenants or leaseholders or other contractual occupiers of residential tenanted and/or commonhold accommodation;

"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;

"Stage 2 of the Transitional Services"

the services contained in paragraph 1.2 of the Output Specification;

"Stage 2 Transitional Services Commencement Date"

28 April 2003

"Standard Rate for Leasehold Dwellings"

either DR(L) (In) or DR(L) (IF) as defined in paragraph 1.1 of Schedule 6 (*Payment and Performance Mechanism*) 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 (*Payment and Performance Mechanism*) 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 27.10 (*Right to Manage*) 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 in accordance with the Stock Condition Surveyor's Appointment;
"Stock Condition Survey Report"	the final report dated June 2000 on the survey carried out by Hunter and Partners in accordance with the Stock Condition Surveyor's Appointment;
"Stock Condition Surveyor's Appointment"	the appointment dated 15 December 2000 entered into between the Authority, the Contractor Circle Thirty Three Housing Trust Limited, Moat Housing Group Limited, Rotch Property Group Limited, Unitary Limited and Hunter and Partners under which Hunter and Partners carried out the surveys the results of which are contained in the Stock Condition Survey Report;
"Sub-Agreement"	has the meaning given to it in clause 27.2.2 (<i>Management Agreements</i>);
"Sub-Contracts"	the Refurbishment Contract, the Housing Management Contract, the Responsive and Cyclical Maintenance Contract and the Heating Services Contract and Sub-Contract shall mean any of them as relevant or any replacement therefor;
"Sub-Contractor"	a counter party of the Contractor to a Sub-Contract and any of their sub-contractors of any tier;
"Sub-Contractor Breakage Costs"	means Losses that have been or will be reasonably and properly incurred by the Contractor and the Sub-Contractors (but without double counting) as a direct result of the termination of this Contract, but only to the extent that:- <ul style="list-style-type: none"> (a) the Losses are incurred in connection with the Project and in respect of the provision of services or the completion of works including in respect of:- <ul style="list-style-type: none"> (i) any materials or goods ordered or subcontracts placed that cannot be cancelled without such Losses being incurred; (ii) any expenditure incurred in anticipation of the provision of services or the completion of works

	in the future;
	(iii) the cost of demobilisation including the cost of any relocation of equipment used in connection with the Project; and/or
	(iv) redundancy payments;
	(b) the Losses are incurred under arrangements and/or agreements that are consistent with terms that have been entered into on an arm's length basis and the Authority acknowledges that a maximum payment of three years 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 on an arm's length basis;
	(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;
"Subordinated Financing Agreements"	the subordinated loan notes of even date issued by the Contractor in relation to the Project;
"Tax"	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;
"TeCSA"	the Technology and Construction Solicitors Association
"Tenancy Agreement"	a tenancy agreement comprising an Authority tenancy of a Rented Dwelling;
"Tenancy and Leaseholder Enforcement Policy"	the Authority's policy for the enforcement of the terms of Tenancy Agreements and Leaseholder Leases in the Agreed Form;
"Tenant"	the person who from time to time is a tenant, licensee or other lawful occupier of a Dwelling;
"Tenant's Improvement"	any improvement carried out by a Tenant to a Rented Dwelling or by a Leaseholder to a

	Leaseholder Dwelling whether before or after the Services Commencement Date;
"Termination Date"	the date upon which this Contract terminates in accordance with its terms;
"Third Party Managed Property"	the Dwellings or Properties identified as such in Schedule 5 (<i>Housing Accommodation</i>);
"Third Party Manager"	the manager employed by the Authority to manage a Third Party Managed Property;
"Transitional Services"	the services contained in paragraph 1 of the Output Specification;
"Transitional Services Commencement Date"	31 March 2003;
"Trees Protocol"	the protocol relating to the parties' responsibilities in respect of trees in the form set out in Part 5 of Schedule 9 (<i>Authority's Protocols</i>);
"TUPE"	the Transfer of Undertakings (Protection of Employment) Regulations 1981;
"Unavailable"	in relation to any Dwellings that the applicable Availability Standard is not met in relation to that Dwelling and "Unavailability" 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 (<i>Payment and Performance Mechanism</i>);
"Unavailability Report"	has the meaning given to it in paragraph 10 of Schedule 6 (<i>Payment and Performance Mechanism</i>);
"Unconverted Properties"	the Dwellings and / or Properties identified as such in Schedule 5 (<i>Housing Accommodation</i>)
"Uninhabitable"	has the meaning given to it in paragraph 10 of Schedule 6 (<i>Payment and Performance Mechanism</i>)
"Uninsurable"	in relation to any risk referred to in any of clauses 58.2.1 to 58.2.3 (inclusive) either that:- <ul style="list-style-type: none"> (a) insurance required pursuant to clause 56 (<i>Insurance</i>) is not available to the Contractor in respect of the Project in the European Union insurance market with reputable insurers of good standing in respect of that risk; or

(b) the insurance premium payable for insuring that risk on the same terms or materially the same terms as those in Schedule 14 (**Required Insurances**) is at such a level or the terms available are so restrictive that the risk is not generally being insured against in the European Union insurance market with reputable insurers of good standing by PFI contractors in the United Kingdom providing similar works and/or services to the Works and/or Services;

"Unitary Charge"

the fee payable by the Authority under clause 30.2 (**Payment of Unitary Payment**) and calculated in accordance with Schedule 6 (**Payment and Performance Mechanism**);

"Unitary Payment Profile"

the profile for the Unitary Payment contained in Schedule 17 (**Unitary Payment Profile**) as may be adjusted at Financial Close to take into account any changes to interest rates between the Execution Date and Financial Close as indexed;

"Unitary Payment"

has the meaning given to it in paragraph 1.1 of Schedule 6 (**Payment and Performance Mechanism**);

"Variable Costs"

for the purposes of clause 27.8.4, the SPV Costs, the Initial Refurbishment Costs, the Lifecycle Costs and (in the case only of a Dwelling changing from Rental to Leasehold status) the Maintenance 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;

"Void Dwelling"

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

"Void Turnover Rate"

as first calculated on 1 April 2006, 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:-

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

Where:-

- a = the Void Turnover Rate for the relevant Contract Year, the first such relevant Contract Year being 2005/2006
- χ = 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 average 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

"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 57.5 (***Withdrawal of Damaged Properties***) or 58.3 (***Effect of Uninsurability***) following damage to that Dwelling;
- (c) the Authority electing to withdraw a Dwelling from this Contract in accordance with clause 19.9 (***Withdrawal of Dwelling or Property***) where such Dwelling has not been the subject of any works by the Planned Refurbishment Completion Date due to an Access Failure Event or the Authority deciding to exclude one or more of the Unconverted Properties from the Project in accordance with clause 27.11.2(b) (***Unconverted Properties***);
- (d) the Authority electing to withdraw a Dwelling from this Contract under clause 57.5 (***Withdrawal of Damaged Properties***);
- (e) 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;

- (f) the Authority electing to withdraw a Dwelling from this Contract under clause 27.10 (**Right to Manage**);
- (g) any Authority Change which results in a Dwelling ceasing to be subject to this Contract;
- (h) any other circumstances in this Contract which allows the Authority to withdraw a Dwelling from this Contract;

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

"Works" all of the works required for each Dwelling and Property to achieve an Acceptance Certificate (including design and works necessary for obtaining access to the Sites) to be undertaken in accordance with this Contract (save that the Contractor shall be obliged to carry out any such works in respect of any items in relation to which Tenant's Improvements have been undertaken to no greater extent than if the relevant Tenant's Improvement had not been undertaken) unless clause 27.9 (**Tenant's Improvements**) applies;

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

"Year" the 12 month period from and including a day until (but not including) the day bearing the same number in the same month of the following year (or, in the case only of a period commencing on 29 February, ending on the next following 28 February).

1.2 Interpretation

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

- 1.2.1 each gender includes all genders;
- 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 and references to paragraphs in a Schedule shall be references to a paragraph in that Schedule to this Contract;

- 1.2.4 any reference to this Contract or to any other document shall include any permitted variation, amendment or supplement to this Contract or such document;
- 1.2.5 any reference to any Legislation, order, regulation or other similar instrument shall be construed as a reference to the Legislation, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted;
- 1.2.6 a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees;
- 1.2.7 any headings in the body of this Contract and list of contents do not form part of this Contract and shall not be taken into account in its construction or interpretation;
- 1.2.8 words preceding "include", "includes", "including" and/or "included" shall be construed without limitation by the words which follow those words;
- 1.2.9 any provision in this Contract which excludes or limits the liability of any party in certain circumstances is intended to apply only to the extent that its application is permitted by law.

1.3 Schedules

The recitals, clauses, Schedules, Appendices and Annexes to this Contract form part of this Contract and shall be read as an article and their provisions construed accordingly.

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 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 duly executed amendments to this Contract, if any, in the reverse order in which they become effective;
- 1.4.2 the clauses, Schedule 2 (*Output Specification*) and Schedule 6 (*Payment and Performance Mechanism*);
- 1.4.3 the remaining Schedules;
- 1.4.4 the Appendices;
- 1.4.5 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.

1.6 Indexation

In this Contract, 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 on 31 March 2003.

1.7 Insolvency

For the purpose of this Contract the reference to £750 in Section 123(1) of the Insolvency Act 1986 shall be construed as a reference to £25,000 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 and in accordance with the Construction Contracts (England and Wales) Exclusion Order 1998 and is intended to be, and shall be, excluded from Part II of the Housing Grants, Construction and Regeneration Act 1996.

2.2 Third Party Rights

Any rights 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. COMMENCEMENT AND DURATION

Subject to clause 4.1 (**Conditionality**) of this Contract, the rights and obligations of the parties shall take effect on the Services Commencement Date and shall terminate on the earlier of:-

3.1.1 the Expiry Date; and

3.1.2 the Termination Date.

4. CONDITIONS PRECEDENT

4.1 Conditionality

This Contract (other than the provisions of clauses 1 (*Definitions and Interpretation*), 2 (*Exclusion of Legislation*), 3 (*Commencement and Duration*), 4 (*Conditions Precedent*), clause 8.1(*Licence*) (21.1 (*Provision of Transitional Services*), 27.8.4 (*Reduction of Dwellings*) 30.2.2 (*Payment of Unitary Charge*) 55.10 (*Exclusions*), 65 (*Entire Agreement*), 66 (*Notices*), 68 (*Waiver*), 70 (*Advertisements*) and 77 (*Local Government (Contracts) Act 1997*)) and 59 (*Dispute Resolution*) is conditional on the satisfaction of the Condition Precedent.

4.2 Termination

If the Condition Precedent has not been satisfied by the Cut-Off Date, this Contract shall automatically terminate on the Cut-Off Date and be without further effect.

4.3 Authority's Obligation to Satisfy

The Authority shall use its reasonable endeavours to ensure that the Condition Precedent is satisfied by the Cut-Off Date.

4.4 Contractor's Obligation to Satisfy

The Contractor shall use its reasonable endeavours to ensure that the Condition Precedent is satisfied by the Cut-Off Date.

4.5 If this Contract terminates pursuant to clause 4.2 (Termination) the Contractor shall repay the first payment of the Unitary Payment made on the date of the Contract less the amount of any payments which the Contractor has paid or is obliged to pay pursuant to arrangements into which it has entered in connection with the performance of the Transitional Services.

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) the Memorandum and Articles of Association of the Contractor;

- (b) any order or decree of any court or arbitrator; or
 - (c) 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 any event giving rise to a Contractor Default Termination under clause 34 (***Termination of this Contract***) has occurred;
- 5.1.11 each of the Ancillary 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.

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 save as provided for in the Project Documents it shall not without the consent of the Authority 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 trade credit and any loans to the Shareholders and/or to Holdco); 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 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 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 to the extent permitted by Legislation 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

The Contractor warrants and represents to the Authority that it has conducted its own analysis and review of the Disclosed Data other than the Authority Warranted Data that it has satisfied itself as to the accuracy, completeness and fitness for purpose of any Disclosed Data other than the Authority Warranted Data on which it places reliance.

6.4 Fraudulent Statements

Nothing in this clause 6 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

Other than in respect of, and to the extent not covered or contradicted by, the Authority Warranted Data, and without prejudice to any rights of the Contractor to assert the existence of a Force Majeure Event in accordance with this Contract, the Contractor shall 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, including:-
 - (a) information as to the nature and location of the Sites and their Site Conditions and of the condition of the Properties and Dwellings (except in relation to subsidence and/or changes in the water table and/or the presence or adequacy of sound insulation);
 - (b) information relating to archaeological finds, areas of archaeological, scientific or natural interest, local conditions and facilities and the quality of existing structures; and
 - (c) information relating to any environmental contamination on the Sites.

6.7 No Relief

Subject to the other provisions of this Contract, 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 (other than in relation to the Authority Warranted Data) obtained from the Authority is incorrect or insufficient and shall make its own enquiries as to the accuracy 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 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 Changes to Financing Agreements

No amendment, waiver or exercise of a right under any Financing Agreement or any substitute or replacement of any Financing Agreement shall have the effect of increasing the Authority's Compensation Liabilities on early termination of this Contract unless:-

- 7.2.1 the Contractor obtains the written consent of, or approval from, the Authority; or
- 7.2.2 it is in respect of a Permitted Borrowing; or
- 7.2.3 such amendment, waiver or exercise of a right, replacement or substitution constitutes a Qualifying Refinancing that is carried out in accordance with the provisions of Schedule 16 (**Refinancing**).

7.3 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.

7.4 Refinancing

The provisions of Schedule 16 (**Refinancing**) shall apply in relation to any Refinancing.

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 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 to be exclusive during the Works Period 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 all proven claims and demands arising from the exercise of such right in accordance with clause 55.1 (*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 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 and for the purposes of this clause 8.2.1 all Leaseholder's Leases shall have been disclosed to the Contractor save to the extent that any lease is not in the form of a Leaseholder Lease marked "A", "B", "C" or "D" in Appendix 1;

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.

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 and the Contractor's Procedures;
- 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 Council (Full) or the Availability Standard Leasehold (Full) by the Planned Refurbishment 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.

10. METHOD STATEMENTS AND REFURBISHMENT WORKS APPROACH

10.1 Changes to Contractual Method Statements

The Contractor may vary, amend or replace any:-

- 10.1.1 Contractor's Contractual Method Statement; or

10.1.2 Contractor's Procedures,

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.

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 a project director to be 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 etc.**

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 62.2 (***Contractor's Permitted Sub-Contractors***), if the Contractor engages any replacement of the Refurbishment Contractor in connection with the Works the Contractor shall procure that an agreement substantially in the form of the Direct Agreement (Sub-Contractor) is duly executed by any such replacement Refurbishment Contractor and delivered to the Authority immediately upon the replacement Refurbishment Contract being entered into.

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. **NECESSARY CONSENTS**

The Contractor shall:-

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

14.2 comply with the conditions attached to any Necessary Consents and procure that no such Necessary Consent is breached by it or any person under its control and use all reasonable endeavours to procure that no Necessary Consent is revoked and that all Necessary 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 Necessary 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 Necessary Consents shall be construed as referring to the Necessary 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 include in the Payment and Performance Report which relates to the Contract Month during which the relevant event(s) occurred 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; or

15.4.4 an Authority Change, then the provisions of clause 52.1 (*Authority Changes*) 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 Completion Date, the Milestone 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

To obtain relief and/or claim compensation under clause 15.5 (*Delays due to Compensation Events*)), the Contractor shall:-

15.6.1 if the Compensation Event has caused or is likely to cause delay, breach of an obligation (including without limitation such a breach which would lead to the application of Deductions), and/or an Estimated Change in Project Costs, and/or the requirement for Capital Expenditure, and/or the Contractor to suffer losses or lose revenue, the Contractor shall include in a Payment and Performance Report and, if reasonably practicable, the Payment and Performance Report which relates to the Contract Month in which the Compensation Event occurred 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 in the report referred to in clause 15.6.1 above, give full details of the Compensation Event and the extension of time and any Estimated Change in Project Costs claimed (including evidence, on an open book basis, of the calculation of any Estimated Change in Project Costs);

15.6.3 demonstrate that:-

(a) the Compensation Event was the cause of the Estimated Change in Project Costs and/or any delay in the achievement of the Relevant Date; and

(b) the Estimated Change in Project Costs, 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 and without incurring expenditure.

15.7 Giving of Relief

In the event of an occurrence of a Compensation Event and following notice of such Compensation Event in accordance with clause 15.6.1 (*Procedure for Relief and Compensation*) (subject to clause 15.8 (*Late Provision of Information*)), 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 extent of the delay caused by the Compensation Event;

15.7.2 in the case of an Estimated Change in Project Costs being or to be incurred by the Contractor on or before the Refurbishment Completion Date or as a result of Capital Expenditure being incurred by the Contractor at any time, the Authority shall reimburse to the Contractor the amount of the actual Estimated Change in Project Costs demonstrated in accordance with clause 15.6.2 (*Procedure for Relief and Compensation*) and the Capital Expenditure incurred or to be incurred by the Contractor, taking account of the Contractor's notice served pursuant to clause 15.6.1 (*Procedure for Relief and*

Compensation) within 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 an Estimated Change in Project Costs occurring after the Refurbishment Completion Date that does not result in Capital Expenditure being incurred by the Contractor, compensation shall be paid by way of an adjustment to the Unitary Payment calculated in accordance with clause 31 (**Financial Adjustments**);

15.7.4 the Authority shall give the Contractor such relief from its obligations as is reasonable for such a Compensation Event, taking account of the Contractor's notice served pursuant to clause 15.6.1 (**Procedure for Relief and Compensation**) (and shall notify the Contractor of the nature of such relief within 10 Working Days of receipt of the claim for relief made by the Contractor or if later as determined under the Disputes Resolution Procedure).

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 this Part of 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 Disputes Resolution Procedure.

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 and the Responsive and Cyclical Maintenance Contractor act as the client for the purposes of the Construction (Design and Management) Regulations 1994 ("**the CDM Regulations**") in respect of the Refurbishment Works and the Responsive and Cyclical Maintenance Services (respectively). Within 10 Working Days of the Services Commencement Date the Contractor shall procure that the Refurbishment Contractor and the Responsive

and Cyclical Maintenance Contractor make and serve on the Executive declarations in accordance with paragraph (4) of Regulation 4 of the CDM Regulations. The Contractor shall procure that the Refurbishment Contractor and the Responsive and Cyclical Maintenance 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.

16.4 Indemnity

The Contractor shall procure that the Refurbishment Contractor and the Responsive and Cyclical Maintenance Contractor shall indemnify the Authority and keep the Authority indemnified in full from and against all direct fines and penalties awarded against or incurred or paid by the Authority as a result of or in connection with any breach of the CDM Regulations by the Refurbishment Contractor and the Responsive and Cyclical Maintenance Contractor.

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 Subject to and without prejudice to the rights of the Contractor under this Contract (and subject in particular to clause 6.6.2) (***Contractor's Due Diligence***), Site Conditions shall be the sole responsibility of the Contractor and accordingly (without prejudice to any other obligation of the Contractor under this Contract), the Contractor shall be deemed to have:-

- (a) carried out a Ground Physical and Geophysical Investigation and to have inspected and examined the Sites and their surroundings and (where applicable) any existing structures or works on, over or under the Sites;
- (b) satisfied itself as to the nature of the Site Conditions, the ground and the subsoil, the form and nature of the Sites and/or Properties, the load bearing and other relevant properties of the Sites, the risk of injury or damage to property affecting the Sites and/or the Properties, the nature of the materials (whether natural or otherwise) to be excavated and the nature of the design, works and materials necessary for the execution of the Works;
- (c) 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);

- (d) 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
- (e) 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.

17.2.2 Subject to and without prejudice to the rights of the Contractor under this Contract, the Contractor shall:-

- (a) not, save as expressly provided in this Contract (including where such information was Authority Warranted Data), be entitled to make any claim against the Authority on the grounds that incorrect or insufficient information on any matter relating to the Sites was given to it by any person, whether or not a Contractor Related Party; and
- (b) be responsible for, and hold the Authority harmless from, cleaning up and otherwise dealing with any Contamination brought on to the Sites by the Contractor or any Contractor Related Party so that it shall at all times comply with its obligations under this Contract including (without limitation) complying with, at its own cost, any applicable Legislation and any Necessary Consents, orders, notices or directions of any regulatory body (whether made against the Authority or the Contractor).

17.3 **No Warranty**

Without prejudice to the 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.

17.4 **Third Party 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 an Acceptance Certificate 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.

17.6 **Defects**

17.6.1 To the extent that the following provisions of this sub-clause 17.6 are construed as a limitation or exclusion of the Contractor's liability, such limitation or exclusion shall only apply to the extent permitted by Law.

17.6.2 In respect of Defects, the Contractor's sole responsibility and liability to the Authority is to rectify the Defects in the relevant Property or Dwelling so that

such Property or Dwelling meets the Output Specification provided that the Contractor shall not be obliged to rectify a Defect during that period that it is unable to gain access to the relevant Property and/or Dwelling or to any other site, property or dwelling as a consequence of the occurrence of an Access Failure Event where such access is required in order to rectify the Defect in question. Where the rectification of Defects necessitates works being carried out to sites, properties or dwellings other than the Sites, Properties or Dwellings (including utilities infrastructure) the Authority shall reimburse to the Contractor the reasonable costs incurred by the Contractor in carrying out such works.

18. MONITORING AND INSPECTION

18.1 Right of Inspection

The Contractor shall procure that any representative or adviser of the Authority shall have, at all reasonable times, 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 and view the state and progress of the Works and to ascertain whether they are being executed in accordance with this Contract.

18.2 Supply of Information

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 (*Right of Inspection*) such information in respect of the Works as may reasonably be required.

19. NOTIFICATION OF AVAILABILITY

19.1 Inspection of Interim Works

The Contractor shall not issue a Certificate of Availability Council (Interim Standard) in relation to each Dwelling unless that Dwelling has reached the Availability Standards Council (Interim).

19.2 Issue of Certificate

Immediately following the issue of any Certificate of Availability Council (Interim Standard) the Contractor shall send a copy of such Certificate to the Employer's Agent.

19.3 Issue of Acceptance Certificate

19.3.1 Following receipt of the copy of the Certificate of Availability Council (Interim Standard) pursuant to clause 19.2 (*Issue of Certificate*), the Employer's Agent shall within five Working Days of receipt of such copy issue an Acceptance Certificate in respect of the Dwellings in respect of which a Certificate of Availability Council (Interim Standard) has been issued, stating the date on which the Availability Standards Council (Interim) have been met by such Dwellings. If the Employer's Agent fails to issue an Acceptance Certificate within the period of five Working Days (other than where the Employer's Agent has stated that the Dwellings have not met the Availability Standard Council (Interim)), an Acceptance Certificate shall be deemed to have been issued (stating that the Dwellings met the Availability Standards Council (Interim) on the date of issue of the Certificate of Availability Council (Interim Standard) in relation to those Dwellings).

- 19.3.2 At the end of each Contract Month, the Contractor shall provide to the Authority in the Payment and Performance Report relating to such Contract Month the dates of issue of all Certificates of Availability Council (Interim Standard) in respect of the Dwellings which have reached the Availability Standards Council (Interim) during that Contract Month and in respect of which Acceptance Certificates have been, or are deemed to have been, issued.
- 19.3.3 Following the issue of the report referred to in clause 19.3.2, the Unitary Payment for the Contract Month next after the then current Contract Month, for the Dwellings in the report referred to in clause 19.3.2, shall be increased to the Interim Standard Daily Rate for Rented Dwellings retrospectively so that the increase shall take effect from the date on which each such Dwelling actually reached the Availability Standards Council (Interim) unless as a consequence, the Unitary Payment payable for the relevant Contract Year will exceed the Unitary Payment Profile for that Contract Year, in which case, the Unitary Payment will be increased with effect from the Contract Year in which the Unitary Payment Profile is not exceeded.
- 19.3.4 Notwithstanding the issue of a Certificate of Availability Council (Interim Standard) or an Acceptance Certificate a Dwelling may (at any time thereafter) become Unavailable for the purpose of Schedule 6 (***Payment and Performance Mechanism***).

19.4 Inspection of Full Works

The Contractor shall not issue a Certificate of Availability Council (Full Standard) or a Certificate of Availability Leasehold (Full Standard) in relation to each Dwelling unless that Dwelling has reached the Availability Standards Council (Full) or the Availability Standards Leasehold (Full) (respectively).

19.5 Issue of Certificate

Immediately following the issue of any Certificate of Availability Council (Full Standard) or any Certificate of Availability Leasehold (Full Standard) the Contractor shall send a copy of such Certificate to the Employer's Agent.

19.6 Issue of Acceptance Certificate

19.6.1 Following receipt of the certified copy of the Certificate of Availability pursuant to clause 19.5 (***Issue of Certificate***) the Employer's Agent shall within five Working Days of receipt of such copy issue an Acceptance Certificate in respect of the Dwellings in respect of which a Certificate of Availability Council (Full Standard) or a Certificate of Availability Leasehold (Full Standard) (as relevant) has been issued stating the date on which the Availability Standards Council (Full) or the Availability Standards Leasehold (Full) (as relevant) have been met by such Dwellings which date shall be the Refurbishment Completion Date. If the Employer's Agent fails to issue an Acceptance Certificate within the period of five Working Days (other than where the Employer's Agent has stated that the Dwellings have not met the Availability Standards Council (Full) or the Availability Standards Leasehold (Full) (as relevant)), an Acceptance Certificate shall be deemed to have been issued (stating that the Properties or Dwellings met the Availability Standards Council (Full) or the Availability Standards Leasehold (Full) (as relevant) on the date of issue of the Certificate of Availability Council (Full Standard) or Certificate of

Availability Leasehold (Full Standard) (as relevant) in relation to those Dwellings).

19.6.2 At the end of each Contract Month the Contractor shall provide to the Authority a report showing the dates of issue of all Certificates of Availability (Full Standard) and Certificates of Availability Leasehold (Full Standard) in respect of the Dwellings which have reached the Availability Standards Council (Full) or the Availability Standards Leasehold (Full) respectively during that Contract Month and in respect of which Acceptance Certificates have been, or are deemed to have been, issued.

19.6.3 Following the issue of the report referred to in clause 19.6.2, the Unitary Payment for the Contract Month next after the then current Contract Month for the Dwellings in the report referred to in clause 19.6.2 shall be increased to, as applicable:-

(a) the Full Standard Daily Rate for Rented Dwellings; or

(b) the Full Standard Daily Rate for Leasehold Dwellings

retrospectively so that the increase shall take effect as from the date on which each such Dwelling actually reached the Availability Standards Council (Full) or the Availability Standards Leasehold (Full) (as relevant) but subject to the limitation contained in paragraph 2.5 of Schedule 6 (***Payment and Performance Mechanism***).

19.6.4 Notwithstanding the issue of a Certificate of Availability Council (Full Standard), a Certificate of Availability Leasehold (Full Standard) or an Acceptance Certificate a Dwelling may (at any time thereafter) become Unavailable for the purposes of Schedule 6 (***Payment and Performance Mechanism***).

19.7 Deemed Refurbishment Completion Date

The Refurbishment Completion Date and/or the Milestone Works Completion Date (as relevant) shall be deemed to have occurred notwithstanding that a Certificate of Availability Council (Full Standard) or a Certificate of Availability Leasehold (Full Standard) (as relevant) has not been issued (or deemed to have been issued) in relation to every one of the Dwellings (in the case of the Refurbishment Completion Date) and in relation to each of the Dwellings in respect of which Milestone Works are to be undertaken (in the case of the Milestone Works Completion Date) provided that the reason why the Dwellings in respect of which a Certificate of Availability Council (Full Standard) or a Certificate of Availability Leasehold (Full Standard) or in respect of which the Milestone Works have not been completed (if appropriate) has not been issued (or deemed to have been issued) is that:

19.7.1 a Tenant or the lawful occupier (excluding a Leaseholder) has given written notice (or the Contractor provides such other reasonable evidence) that the Works or any part of the Works should not be undertaken at his or her Dwelling;

19.7.2 the Contractor has been unable to gain access to a Property it requires access to in order to carry out works to those Dwellings as a consequence of an Access Failure Event.

19.8 Subsequent Works to Dwellings

19.8.1 The Contractor shall carry out the Works referred to in clause 19.7.1 (***Deemed Refurbishment Completion Date***) within a reasonable time after the Tenant or other lawful occupier referred to in clause 19.7.1 (***Deemed Refurbishment Completion Date***) has vacated the Dwelling.

19.8.2 If following the Refurbishment Completion Date the Authority requires those Dwellings which remain Unavailable as a consequence of the circumstance referred to in clause 19.7.2 (***Deemed Refurbishment Completion Date***) the Authority shall do so by serving an Authority Notice of Change and the process for certifying Availability for increasing the Unitary Payment as a consequence shall be as set out in clauses 19.4 to 19.6 (inclusive).

19.9 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 or the Authority decides to exclude one or more of the Unconverted Properties from the Project and serves a notice on the Contractor in accordance with clause 27.11.2(b) (***Unconverted Properties***).

20. DELAYS INDEMNITY

20.1 Indemnity

If the Works to be undertaken to any Dwelling to achieve the relevant Availability Standards are not, after such Works to such Dwelling have commenced, completed within a reasonable period, having regard to the nature of the Works required to make the Dwelling Available and to any extension of time permitted under the terms of this Contract including in relation to the occurrence of any Force Majeure Event, Relief Event, Compensation Event, Authority Change, Small Works Change or Change in Law or Contractor's Change or the Refurbishment Completion Date has not occurred by the Planned Refurbishment Completion Date, then subject to the limitations on the liability of the Contractor set out in clause 55.1 (***Contractor's Indemnity***), the Contractor shall:-

20.1.1 indemnify the Authority against Losses incurred by the Authority (in respect of the Unavailable Dwellings (except those Dwellings which are Unavailable as a result of an Access Failure Event)) as a consequence of the failure by the Contractor to procure that the Dwellings have met the Availability Standards Council (Full) or the Availability Standards Leasehold (Full) by the expiry of the reasonable period or the Planned Refurbishment Completion Date as applicable (but only to the extent that such Losses exceed the amount by which the Unitary Payment would have been increased in accordance with clause 19 (***Notification of Availability***) if the Unavailable Dwellings had been Available) provided that the amount of any such indemnity shall not exceed £50,000 in total (and not per Dwelling);

20.1.2 without prejudice to the generality of sub-clause 20.1.1 save where the satisfaction of the Output Specification does not require the provision of alternative accommodation for the duration of the Works Period (unless such is required due to a breach of the Contract by the Contractor), at the option of the Authority either:-

- (a) reimburse to the Authority the proper costs reasonably incurred by the Authority (but only to the extent that such costs exceed the sum of (i) the amount by which the Unitary Payment would have been increased in accordance with clause 19 (**Notification of Availability**) if the Unavailable Dwellings had been Available) and (ii) any Deductions made in respect of the relevant incomplete Dwellings in providing suitable equivalent alternative housing accommodation and associated arrangements to Tenants who are occupying Uninhabitable Dwellings in respect of which an Acceptance Certificate has not been issued by the Planned Refurbishment Completion Date; or
- (b) provide at the Contractor's expense (but only to the extent that the costs of such suitable equivalent housing accommodation exceeds the sum of:- (i) the amount by which the Unitary Payment would have been increased in accordance with Clause 19.6.3 (**Issue of Acceptance Certificate**) if the Unavailable Dwellings had been available; and (ii) any consequential reduction in the Unitary Payment arising from Deductions and otherwise at the Authority's expense) suitable equivalent alternative housing accommodation (which may include the Decant Voids) to Tenants who would otherwise be occupying Uninhabitable Dwellings in respect of which an Acceptance Certificate has not been issued by the Planned Refurbishment Completion Date in a location within reasonable travelling distance of such Dwellings having regard to the particular circumstances of the Tenants concerned and provide such additional or alternative ancillary services as may be required to enable the alternative housing accommodation to be used by such Tenants

PART 4

THE SERVICES

21. PRINCIPAL SERVICES OBLIGATIONS

21.1 Provision of Transitional Services

21.1.1 The Contractor shall provide or procure the provision to the Authority of the Transitional Services in accordance with paragraph 1 of the Output Specification with effect from the Transitional Services Commencement Date.

21.1.2 Clause 8 and clause 55 (**Indemnities and Responsibility**) except subparagraphs (b) in clause 55.1 shall apply (but only in connection with the Transitional Services and Stage 2 of the Transitional Services) from the Transitional Services Commencement Date.

21.2 Provision of Services

21.2.1 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.

21.2.2 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.

21.3 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 the Authority Policies.

21.4 Services Direct Agreements

21.4.1 Subject to clause 62.2 (**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.

21.4.2 On any replacement of the Housing Management Contractor, the Contractor shall, unless the Authority agrees to the contrary, procure that the relevant replacement Housing Management Contractor shall warrant and undertake to the Authority that:-

- (a) a joint bank account in the names of the Authority and the Housing Management Contractor shall be established and maintained for the purpose of retaining monies collected from Leaseholders as set out in Clause 27.1.1 of this Contract on the condition that the new Housing Management Contractor shall be entitled to all interest that accrues on any amounts that are placed in such joint bank account; and
- (b) the Housing Management Contractor shall pay (or procure the payment to the Authority of) the Leasehold Recovery Guarantee Sum from the bank account referred to in Clause 21.4.2 (a) above on each Leasehold Recovery Guarantee Sum Payment Date in discharge of the Contractor's obligations under Clause 27.1.7 of this Contract and the Authority shall be entitled to any interest that accrues on the Leaseholder Recovery Guarantee Sum if payment is not received from the Housing Management Contractor on each Leasehold Recovery Guarantee Sum Date.

21.5 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 at all times that the maintenance and operating procedures set out in the Contractor's services delivery proposals are and remain sufficient to ensure that:-

- 22.1.1 all the Dwellings and/or Properties once made Available shall continue to be made Available as required by and in accordance with this Contract;
- 22.1.2 the Dwellings and/or Properties are kept in good repair and maintained to the standard required by the Output Specification;
- 22.1.3 the Contractor can deliver the Services in accordance with this Contract; and
- 22.1.4 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 requirements of this clause 22 (*Condition of the Properties*).

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 Properties which are believed to be non-compliant to assess whether those 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 often than once every two years.
- 22.2.2 The Authority shall notify the Contractor in writing a minimum of five Working Days in advance of the date it wishes to carry out the survey referred to in clause 22.2.1 (*Surveys*). The Authority shall consider any reasonable requests by the Contractor for the survey to be carried out on a different date if

such request is made at least two Working Days prior to the notified date and the Contractor is able to demonstrate that carrying out the survey on the notified date would materially prejudice the Contractor's ability to carry out any of its obligations under this Contract.

22.2.3 When carrying out any survey, the Authority shall cause the minimum disruption reasonably practicable to the provision of the Services by the Contractor. The cost of the survey, except only where and to the extent that clause 22.2.4 (**Surveys**) applies, shall be borne by the Authority. The Contractor shall give the Authority any reasonable assistance required by the Authority from time to time 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 relevant Property should be in to comply with its obligations under clause 22.1 (**Maintenance**) and the notice shall include specific reference to which obligations the Authority considers the Contractor has breached;
- (c) specify a reasonable period within which the Contractor must carry out such rectification and/or maintenance work; and
- (d) other than in circumstances where the Authority is entitled to make Deductions in relation to the failure of the Contractor to comply with its obligations under clause 22.1 (**Maintenance**) be entitled to be reimbursed by the Contractor for the cost of the survey and any administrative costs reasonably incurred by the Authority in relation to the survey to the extent such costs were incurred for the purpose of discovering the failure(s) of the Contractor to comply with its obligations under clause 22.1 (**Maintenance**).

22.2.5 The Contractor shall at its own cost carry out such rectification or maintenance work referred to in clause 22.2.4(a)(**Surveys**) within the reasonable period so specified by the Authority.

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.

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 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.

24.1.2 The cost of any additional or alternative services required by the Authority under clause 24.1 (**Authority may Instruct**) shall be borne by the Authority and paid in accordance with clause 30 (**Payment Provisions**).

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" shall be in relation to those Services as set out in the Table below:-

Services	Market Testing Review Dates
<p>(a) Policy and management</p> <ul style="list-style-type: none"> • Housing management input into refurbishment development • Keeping registers and records of: <ul style="list-style-type: none"> • dwellings and property • tenants • repairs and works undertaken • Voids management and reduction (including inspection and letting, repairing and cleaning, security against squatting and vandalism) and short life lettings (as required) 	<p>(a) The first Market Testing Review Date shall be the date which is the seventh anniversary of the Services Commencement Date or such earlier date as shall be notified to the Authority by the Contractor such date being no earlier than the fifth anniversary of the Services Commencement Date; and</p> <p>b) each fifth anniversary of the First Market Testing Review Date</p>

<ul style="list-style-type: none"> • Receipt and transmission of requests for repairs • Management of improvements and modernisations • Management of planned/programmed maintenance • Consultation with tenants • Provision of Right to Buy information • Provision of performance information and reports • Administration of Right to Repair Scheme <p>(b) Managing tenancies</p> <ul style="list-style-type: none"> • Giving information and advice on tenancy matters • Receiving tenancy applications/assessing eligibility • Allocation/letting of dwellings, garages etc • Transfers and exchanges • Tenancy regulations and agreements • Advising tenants groups • Facilitation of tenant participation • Support to tenant organisations • Producing/distributing tenants reports • Dealing with disputes between tenants/harassment • Decanting <p>(c) Rent collection and accounting</p> <ul style="list-style-type: none"> • Rent collection • Recovery of arrears • Advising tenants on benefit entitlement to minimise risk of arrears <p>(d) Leasehold management]</p>	
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- 26.1.2 The Contractor shall undertake a benchmarking exercise (the "**Benchmarking Exercise**") at its own cost six months before any Market Testing Review Date in relation to the Services which are subject to Market Testing.
- 26.1.3 Each Benchmarking Exercise will be undertaken to ascertain the relative quality and competitiveness of the Services in question. The Benchmarking Exercise will be undertaken in good faith by the Contractor and on the basis of an objective and like for like comparison by comparing the standards and prices of the Services in question 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 an appropriate degree of skill, resources, reputation and financial standing relative to the provision of the Services in question 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 the Contractor's and the Housing Management Contractor's obligations in relation to the Leasehold Recovery Guarantee Sum).
- 26.1.4 The Contractor will make the results of any Benchmarking Exercise available to the Authority by the date occurring 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 reputable organisations of comparable size and quality to the Housing Management Contractor possessing an appropriate degree of skill, resources, reputation and financial standing relative to the provision of the Services in question as part of a stand alone organisation of comparable size and quality and providing services pursuant to contracts which are the same as or similar to the Contract differ (taking into account the Contractor's and the Housing Management Contractor's obligations in relation to the Leasehold Recovery Guarantee Sum) (in percentage terms) from the element within the Financial Model showing the costs of providing the Services set out in the table in this clause 26.1 (as such element may have been adjusted as a result of being indexed or as a result of previous adjustments made pursuant to this clause 26.1 (**Market Testing and Benchmarking**) (the "**Relevant Costs**").
- 26.1.5 Where the Market Costs are between 95-110% of the Relevant Costs, no change shall be made to the Unitary Payment. Where the Market Costs are less or more than 95-110% of the Relevant Costs a corresponding adjustment shall be made to the Unitary Payment. In the event of any dispute relating to Benchmarking (including in relation to whether a Benchmarking Exercise can be carried out or to the 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 cannot be agreed or determined under clause 26.1.5 as to:-
- (a) whether a Benchmarking Exercise can be carried out; or
 - (b) the adjustment to the Unitary Payment as a consequence of the Benchmarking Exercise,

by the date which is 8 weeks prior to the Market Testing Date, the Contractor shall undertake Market Testing in respect of those of the Housing Management Services which are undertaken by the Housing Management Contractor under the Housing Management Contract. If, following the commencement of Market Testing the matters referred to in clause 26.1.6(a)

and 26.1.6(b) (as relevant) are agreed or determined, the Contractor shall terminate the Market Testing.

26.2 Market Testing Procedure

Where this Contract requires Market Testing the following procedure shall apply:-

26.2.1 At least 8 weeks before each Marketing Testing Review Date, the parties shall endeavour:-

- (a) to consider any changes required to the relevant Services to be market tested (the "**Market Tested Services**");
- (b) to discuss and seek to agree the appropriate manner of advertising the Services to be market tested and the means of identifying prospective tenderers;
- (c) to discuss and seek to agree the tender documents to be delivered to prospective tenderers (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 relevant Market Tested Services to be market tested 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 Unless the Contractor can demonstrate to the Authority that best value for money is likely to be achieved if Market Tested Services are tendered separately or in particular groupings, or if any Market Tested Services are divided into separate parts, the grouping of any Market Tested Services shall be left to the discretion of tenderers on the basis that the tender requirements shall specify that:-

- (a) tenderers may submit tenders for all or any of the Market Tested Services; and
- (b) if a tenderer submits a tender for a group or groups of Market Tested Services, then it may be required to provide all or any of such Services in such group or groups.

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 Proposals**") taking into account clause 26.2.2 (**Market Testing Procedure**) and describing in detail the proposed tenderers and the Tender Documents for each of the Services in question, 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 Proposals the Authority may refer the matter to the Disputes Resolution Procedure for determination.
- 26.2.5 The Contractor shall manage the Market Testing tendering process in accordance with the Market Testing Proposals 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 Documentation and each response to the Tender Documentation.
- 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 such person does not (or could not reasonably be considered to) comply with any of the criteria referred to in clause 26.2.8(b).
- 26.2.10 The Authority shall have the right to veto 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 determine which compliant tender in respect of any Market Tested Services represents best value for money.
- 26.2.12 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;
- 26.2.13 If the Authority does not agree with the Contractor's determination, 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 59 (**Dispute Resolution**);
- 26.2.14 Nothing in this clause 26.2 (**Market Testing Procedure**) shall oblige the Contractor to accept the lowest tender;
- 26.2.15 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 exercise its function in relation to the discharge of the Authority's obligations under the Leaseholder Leases including the procuring of the carrying out of the Works and the Services and other works and services necessary to ensure compliance by the Authority with its covenants in the Leaseholder's Leases and the collection of service charges payable by the Leaseholders in respect of the Works and the Services and such other works and services.

27.1.2 The Contractor shall in carrying out its appointment as agent for the purpose contained in clause 27.1.1 (**Leaseholders**) 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 landlord's covenants in the Leaseholder's Leases;
- (b) compliance with all provisions in Sections 19 and 20 of the Landlord and Tenant Act 1985 (as amended by Section 151 of the Commonhold and Leasehold Reform Act 2002) in carrying out any works (including the Works), providing any services and making any service charge in relation to the Leasehold Dwellings.

27.1.3 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 Services or other works and/or services to a Leasehold Dwelling:-

- (a) notify the Authority of the nature of the Works and/or Services or other works and/or services to be undertaken to the Leasehold Dwelling to satisfy the Output Specification (the "**Proposed Leaseholder Works**");
 - (b) notify the Authority of the estimate of the proposed cost of the Proposed Leaseholder Works which will be recoverable from the Leaseholder occupying that Leasehold Dwelling whilst complying with the relevant Leaseholder Lease and the provisions contained in Sections 19 and 20 Landlord and Tenant Act 1985 (as amended) (the "**Estimated Recoverable Leaseholder Costs**"); and
- 27.1.4 The Contractor shall following completion of the Proposed Leaseholder Works in relation to each Leasehold Dwelling but before issuing an invoice therefor to the Leaseholder notify the Authority of:-
- (a) the actual cost of the Proposed Leaseholder Works; and
 - (b) the actual cost of the Proposed Leaseholder Works which will be recoverable from the Leaseholder whilst complying with the relevant Leaseholder Lease and the provisions contained in Sections 19 and 20 of the Landlord and Tenant Act 1985 (as amended) (the "**Recoverable Leaseholder Costs**").
- 27.1.5 The Contractor will issue an invoice to the Authority in respect of the Recoverable Leaseholder Costs provided that, for these purposes, Recoverable Leaseholder costs shall not exclude any amount recoverable from Leaseholders in respect of the cost, in excess of [REDACTED] of insuring Leasehold Dwellings.
- 27.1.6 The Authority shall after the receipt of the invoice referred to in clause 27.1.5 deduct from the Unitary Payment for the relevant Contract Month the Recoverable Leaseholder Costs provided that, for these purposes, Recoverable Leaseholder costs shall not exclude any amount recoverable from Leaseholders in respect of the cost, in excess of [REDACTED] of insuring Leasehold Dwellings and shall pay the Recoverable Leaseholder Costs provided that, for these purposes, Recoverable Leaseholder costs shall not exclude any amount recoverable from Leaseholders in respect of the cost, in excess of £58,000 of insuring Leasehold Dwellings separately to the Contractor by the same means and on the same date as the Unitary Payment is paid for that Contract Month.
- 27.1.7 The Contractor shall pay or procure the payment to the Authority of the Leasehold Recovery Guarantee Sum on each Leasehold Recovery Guarantee Sum Payment Date. For the avoidance of doubt, payment from the Housing Management Contractor or any other Sub-Contractor of such sum shall discharge the Contractor's obligations under this clause.
- 27.1.8 Where at the end of any Contract Year in respect of which y is greater than z (as "y" and "z" are defined in the definition of Leasehold Recovery Compensation Sum) the Contractor shall for that Contract Year:
- (a) compare the difference in the actual costs incurred in respect of refurbishment, lifecycle, management charges and day to day repairs against the costs for these expenditure items contained in the Financial Model (as adjusted for inflation);


- (b) re-run the Financial Model for the then Contract Year on the basis that the actual costs referred to in clause 27.1.8(a) and any Leasehold Recovery Compensation Sum as may otherwise be payable are substituted for the costs for the same items as contained in the Financial Model
- (c) following such re-run the Leasehold Recovery Compensation Sum shall, subject to clauses 27.1.9 to 27.1.11 inclusive, be paid to the Authority;

27.1.9 Subject to the Direct Agreement, the Leasehold Recovery Compensation Sum shall be paid or allowed to the Authority by way of an adjustment to the Unitary Payment calculated in accordance with clause 31 (**Financial Adjustments**) but only to the extent, taking into account the process set out in clause 27.1.8(a) and 27.1.8(b), that such adjustment does not cause the Annual Debt Service Cover Ratio and the Loan Life Cover Ratio and the Equity IRR in the next Forecast (as defined in the Facility Agreement) to fall below the Base Case Model.

27.1.10 Where the Leasehold Recovery Compensation Sum has been paid or allowed in accordance with clause 27.1.9 in any Contract Year and in any subsequent Contract Year z is greater than y (as "z" and "y" are defined in the definition of Leasehold Recovery Compensation Sum) and in relation to the expenditure items referred to in Clause 27.1.8(a) the Contractor has incurred actual costs greater than those contained in the Financial Model for that Contract Year (adjusted for inflation) then the amount of z-y shall be repaid to the Contractor by way of an adjustment to the Unitary Payment in the next following Unitary Payment calculated in accordance with Clause 31 (**Financial Adjustments**).

27.1.11 The maximum aggregate amount payable in respect of:

- (a) Leasehold Recovery Guarantee Sums; and
- (b) Leasehold Recovery Compensation Sums less those reimbursements under clause 27.1.10;

shall not exceed  adjusted as a consequence of inflation, for Tenant's exercising the Right to Buy pro rata and as a consequence of Leasehold Dwellings exiting the Project.

27.1.12 For the avoidance of doubt, but without prejudice to the Contractor's obligation to pay the Cash Guarantee (as defined in the definition "Leasehold Recovery Guarantee Sum"), the Contractor shall be entitled to the Leasehold Recovery Guarantee Sum Retained Amounts [which, to the extent held by the Authority, shall be paid by the Authority to the Contractor as part of the payment which is next due to be made to the Contractor pursuant to this Contract after the date on which the Authority receives such Leasehold Recovery Guarantee Sum Retained Amount.]

27.1.13 The Contractor may take steps to enforce the terms of any Leaseholder Lease.

27.2 Management Agreements

27.2.1 In accordance with an approval dated 31 March 2003 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 62 (*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 41 (*Force Majeure Compensation*) 45 (*Method of Payment*), 47 (*Gross Up*) and 48 (*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.

27.4 Enforcement of Tenancy Terms

[Not used].

27.5 Repair and condition of the accommodation

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

27.5.2 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 instigated in relation to a Dwelling or Property prior to the Disrepair Action Cut Off Date.

27.5.3 Subject to clause 17.6 (**Defects**) and save to the extent caused by the lack or inadequacy of sound insulation at the Properties and/or Dwellings subsidence, a change in the water table, an Access Failure Event to the extent the Access Failure Event arises from a matter referred to in sub-paragraphs (b), (c) and (d) (but not (a)) of the definition of Access Failure Event, or a Channel Tunnel Works Event 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.

27.5.4 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.

27.5.5 The provisions of clauses 55.5 (**Responsibility for Related Parties**), 55.6 (**Notification of Claims**), 55.7 (**Conduct of Claims**), 55.8 (**Costs of Claims**) and 55.10 (**Exclusions**) (**Other Indemnities**) shall apply to the indemnities in clauses 27.5.2 and 27.5.3.

27.6 Decant

The Authority shall on the written request of the Contractor and upon reasonable notice allow to remain vacant Rented Dwellings ("**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 provided that:-

27.6.1 the aggregate period during which Decant Voids are required to be available during the Works Period shall not exceed 1200 weeks but shall be available as and when required by the Contractor;

27.6.2 the aggregate number of Decant Voids which are required to be available in any one week shall not exceed 10 at any one time; and

27.6.3 the decanting of Tenants shall comply with the Allocations Policy and the Contractor shall be responsible for meeting any statutory expenses of Tenants under the Housing Act 1985 as a consequence of any decanting of any Tenants.

Notwithstanding the provisions of clauses 27.6.1 and 27.6.2, 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's request shall be made prior to 30 September 2003.

27.7 Right to buy etc.

27.7.1 Each of the Authority and the Contractor shall comply with their respective obligations in the Home Ownership Protocol.

27.7.2 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 or the Right to Acquire on Rent to Mortgage Terms and shall at the same time provide a copy of the Tenant's notice to that effect.

27.7.3 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 or the Right to Acquire on Rent to Mortgage Terms;
- (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/or the Right to Acquire on Rent to Mortgage Terms 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.

- 27.7.4 The Contractor shall undertake all the steps referred to in clause 27.7.2 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.
- 27.7.5 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.

27.8 Reduction of Dwellings

- 27.8.1 The Authority may, or where Legislation so requires, shall elect to withdraw a Rented Dwelling from the Project :-
- (a) where an event giving rise to a Statutory Reduction of Dwellings occurs; or
 - (b) where an event giving rise to a Voluntary Reduction of Dwellings occurs.
- 27.8.2 Sub-clause 27.8.4 shall apply in relation to the calculation of the amount of RTB Compensation payable by the Authority to the Contractor in accordance with clause 30 in respect of a Dwelling which is subject to a Reduction of Dwellings.
- 27.8.3 Where a Rented Dwelling has become a Leasehold Dwelling the applicable Standard Daily Rate for Leasehold Dwellings calculated by reference to Part 1 of Schedule 6 (***Payment and Performance Mechanism***) will apply from the date upon which the Rented Dwelling became a Leasehold Dwelling 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 date of completion of the freehold disposal.
- 27.8.4 On each Reduction of Dwellings Adjustment Date, the RTB Compensation shall be calculated in respect of a Dwelling from the date upon which the Reduction of Dwellings applies (as specified in clause 27.8.3) to the relevant Dwelling in accordance with the following sub-clauses:-
- (a) the Financial Model shall be adjusted to reflect the actual rate of inflation (measured by reference to RPI) since the last Reduction of Dwellings Adjustment Date;
 - (b) the Relevant Part of the Unitary Payment (as referred to in clause 27.8.4(c)) shall be:
 - (i) where a Rented Dwelling has become a Leasehold Dwelling, 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) Subject to clause 27.8.4 (d) the Relevant Part of the Unitary Payment shall be reduced as from the Reduction of Dwellings Adjustment Date to reflect the percentage savings in Variable Costs and Semi-Variable Costs only as shown in Table A in Schedule 15 (**Reduction of Dwellings**);
- (d) when the relevant number of Reduction of Dwellings attains the number of Total House Rental to Leasehold or Total Leasehold to Freehold as applicable in each of Columns headed Step 1, Step 2, Step 3 and Step 4 in Table B in Schedule 15 (**Reduction of Dwellings**) the reduction in the Relevant Part of the Unitary Payment 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 (**Reduction of Dwellings**);
- (e) that portion of the Variable Costs referred to in clause 27.8.4(c) identified as being Initial Refurbishment Costs in Table A of Schedule 15 shall be calculated by reference to the Cloned Pricing Model set out as an attachment to the Financial Model as agreed in the letter between the parties attached as Appendix 5 to this Contract;
- (f) for the first five Contract Years, the costs referred to in clauses 27.8.4(c) and (d) shall be actual costs and not the average costs in the Financial Model where the actual costs in the relevant Contract Year exceed the average costs in the Financial Model by 10% or more;
- (g) the amount of RTB Compensation for a Dwelling which has been the subject of a Reduction of Dwellings shall be the Relevant Part of the Unitary Payment as set out in clause 27.8.4(b) less the sums calculated in accordance with clauses 27.8.4(c) and (d);
- (h) any dispute relating to the amount of RTB Compensation payable shall be resolved without prejudice to either party's rights in clause 59 (**Dispute Resolution**) in accordance with the relevant calculations set out in the Financial Model.

27.8.5 Upon either:-

- (a) 50% of the total number of Rented Dwellings in the Project at the Services Commencement Date becoming Leasehold Dwellings; or
- (b) 50% of the total number of Dwellings at the Services Commencement Date leaving the Project;

the parties shall in good faith carry out a review of the effectiveness of clause 27.8.4 and Schedule 15, including Step 1, Step 2, Step 3, and Step 4 in Table B and the percentage savings in Variable Costs and Semi-Variable Costs. The parties agree that if they are unable to agree changes to clause 27.8.4 and Schedule 15 following such review, Schedule 15 shall continue to apply.

27.9 Tenants Improvements

27.9.1 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.

27.9.2 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 27.9.1, 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.

27.9.3 Where the Contractor is in breach of clause 27.9.2 the Authority shall be entitled to serve a notice upon the Contractor demanding that it take such steps to rectify such breach.

27.9.4 If the Contractor fails to rectify the breach of clause 27.9.2 within 10 Working Days of receipt of a notice from the Authority pursuant to clause 27.9.3 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 27.9.1.

27.10 **Right to Manage**

Where the Right to Manage is exercised the Authority shall elect as to which of clause 52 (**Variations**) or clause 27.8 (**Reduction of Dwellings**) shall apply and shall notify the Contractor of that election.

27.11 **Unconverted Properties**

27.11.1 Notwithstanding any other provision of this Contract, the Contractor shall provide the Services to the Unconverted Properties but only to the extent and no more that it would be obliged to do so if the Unconverted Properties were Dwellings within the Project.

27.11.2 The Contractor shall as soon as reasonably practicable undertake a survey of the Unconverted Properties to ascertain the Works required for each Unconverted Property to achieve the relevant Availability Standard Council (Full). Following the receipt of the results of the survey the Authority shall notify the Contractor either that: -

- (a) the Authority wishes to proceed with the Works to one or more of the Unconverted Properties and following such notice clause 52 (**Variations**) shall apply; or
- (b) the Authority wishes to exclude one or more of the Unconverted Properties from the Project and withdraw the Property or Properties in accordance with clause 19.9 (**Withdrawal of Dwelling or Property**) and RTB Compensation calculated in accordance with clause 27.8.3 and clause 27.8.4 (**Reduction of Dwellings**) shall apply.

27.12 **Third Party Managed Properties**

The Authority may vary at any time the Services to be provided to a Third Party Managed Property and the provisions of clause 52 (**Variations**) will thereafter apply.

27.13 **Miscellaneous Protocols**

The Authority and Contractor shall comply with their respective obligations under the ICT Protocol, Trees Protocol and the Handover Protocol.

28. **TUPE**

Relevant Transfers

28.1 The parties hereby agree that it is their understanding that there will be no Relevant Transfer from the Authority to the Contractor as a result of entering into this Contract.

28.2 The Authority and the Contractor agree that where the identity of a contractor (including the Authority) of any service which constitutes or which will constitute one of the Services is changed in anticipation of or changes pursuant to this Contract (save for the commencement of the Services under this Contract) (including the termination of this Contract) then the change in the identity of such contractor will constitute a Relevant Transfer. On the occasion of each Relevant Transfer after the commencement of this Contract the Contractor shall and shall procure that any Sub-Contractor and any new provider of the relevant service shall comply with all of its or their obligations under TUPE other than where any such failure occurs as a result of an act or omission of the Authority or an Authority Related Party.

28.3 **Indemnity**

28.3.1 If as a result of this Contract any contract of employment of any employee of the Authority has effect as if originally made between the Contractor or any Sub-Contractor and such person as a result of TUPE then:

- (a) either party shall, upon becoming aware of such effect, notify the other immediately or if not reasonably practicable to do so then as soon as reasonably practicable thereafter of such effect; and
- (b) within 10 Working Days of such notification the Authority may offer employment to such person. After the expiration of a further 15 Working Days thereafter (i.e. a minimum of 25 Working Days of notification pursuant to clause 28.3.1(a)) regardless of whether or not an offer is made the Contractor or Sub-Contractor may terminate the employment of such person immediately; and
- (c) subject to the Contractor or any Sub-Contractor having complied with its or their obligations under clause 28.3.1(b) above, the Authority shall, provided the dismissal is effected within 2 months of the date of notification under clause 28.3.1(a) indemnify the Contractor against all actions, proceedings, claims, costs, demands, liabilities and expenses (including legal costs and expenses) and all damages, awards, compensation, fines and other liabilities arising out of or in connection with:
 - (i) the costs of employing such person; and
 - (ii) the costs of terminating the employment of such person including without limitation, any contractual or statutory entitlements

provided that the Authority shall not be liable for such proportion or amount of any liability as is attributable to any discriminatory act or omission of the Contractor or Sub-Contractor.

28.4 Retendering

The Contractor shall as a consequence of the Authority commencing to undertake a re-tender of the Contract:

- 28.4.1 within a reasonable time of receiving a request from the Authority to provide full and accurate details regarding the Contractor's or Sub-Contractor's employees who are wholly or substantially engaged in the provision of the Services at that time including full details of all remuneration provided to the Contractor's or Sub-Contractor's employees at that time and terms and conditions and policies which are applicable to them (whether contractual or discretionary ("**the Retendering Information**")); and
- 28.4.2 provide the Retendering Information promptly and at no cost to the Authority; and
- 28.4.3 be precluded (as shall procure that any Contractor Related Party shall be precluded) from making any increase in the remuneration or other change in the terms and conditions of employment of the Contractor's or Sub-Contractor's employees who are wholly or substantially engaged in the provision of the Services at that time other than in the ordinary course of business; and
- 28.4.4 be precluded from transferring (and shall procure that no Sub-Contractor shall transfer) any of the Contractor's or Sub-Contractor's employees (as the case may be) at that time to another part of its business or moving other employees who are wholly or substantially engaged in the provision of the Services from elsewhere in its 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 not to be unreasonably withheld other than in the ordinary course of business.

28.5 Termination of Contract

- 28.5.1 Without prejudice to clause 28.2 (**Relevant Transfers**) upon expiry or termination of this Contract for whatever reason the provisions of clauses 28.5.2 and 28.5.3 (**Termination of Contract**) below shall have effect in respect of those employees wholly or mainly engaged in the provision of the Services as at the date of such expiry or termination of the Contract (the "**Returning Employees**") (such date being termed the "**Return Date**"), regardless of whether Legislation shall determine that there is a Relevant Transfer.
- 28.5.2 The Contractor shall or shall procure that all wages, salaries and other benefits of the Returning Employees (who had been engaged in the provision of the Services) and all PAYE tax deductions and national insurance contributions in respect of the employment of the Returning Employees of the Contractor or Sub-Contractor, up to the Return Date are satisfied.
- 28.5.3 Without prejudice to clause 28.5.2 (**Termination of Contract**) the Contractor shall:

- (a) remain (and procure that any Contractor Related Party shall remain) 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 Contract) and shall indemnify the Authority (for itself and for any new contractor or service provider) against all actions, proceedings, claims, costs, demands, liabilities and expenses (including legal costs and expenses) arising, awarded against or incurred by or paid by the Authority (or any new contractor or service provider) in connection with 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, other than where any such claim arises out of any act or omission of the Authority (or any new contractor or service provider);
- (b) in respect of those employees who constitute Returning Employees the Contractor shall (or procure that the relevant Sub-Contractor shall) indemnify the Authority (for itself and for any new contractor or service provider) against all actions, proceedings, claims, costs, demands, liabilities and expenses (including legal costs and expenses) arising, awarded against or incurred by or paid by the Authority (or any new contractor or service provider) in connection with any claim whatsoever by or on behalf of any of the Returning Employees arising from any act or omission of the Contractor or any Sub-Contractor occurring before the Return Date (whether any such claim, attributable to the period up to the Return Date, arises before, on or after the Return Date) including but not limited to any breach by the Contractor or any Sub-Contractor of its or their obligations under Regulation 10 of TUPE other than where such breach or other claim occurs as a result of any act or omission of the Authority (or any new contractor or service provider).

29. EMPLOYEES

29.1 Police Checks

The Authority may at its own cost carry out a police check in respect of each person notified by the Contractor to the Authority as being an employee or potential employee employed or to be employed in the Carrying Out of the Works and/or Services.

29.2 Conduct of Staff

Whilst engaged at any of the Sites the Contractor shall comply with such rules, regulations and requirements as are notified and provided to the Contractor relating to the conduct of staff (including those in respect of security arrangements) as may be made and enforced by the Authority from time to time acting reasonably and shall ensure that its employees, servants, agents and Sub-Contractors do likewise. The Contractor shall take and/or procure appropriate disciplinary action against any person employed by the Contractor and/or any Contractor Related Party who transgresses any such rules, regulations and requirements (which may include the removal from work in or about the provision of the Services of any such person).

29.3 Contractor's Employees

Other than as expressly provided in this Contract, the Contractor shall be entirely responsible for the employment and conditions of service of the Contractor's employees and shall procure that any Sub-Contractor of the Contractor is likewise responsible for its employees.

29.4 Admission to the Sites

The Contractor shall provide the Authority with a written list of the names and addresses of all employees or other persons who it expects may require admission to each Site or Property in connection with the provision of the Services specifying the capacities in which those employees or other persons are connected with the Services and giving such other particulars as the Authority may reasonably require. The Contractor shall update this information as and when any such individuals are replaced or complemented by others.

29.5 Refusal of Admission

The Authority reserves the right to refuse to admit to any premises occupied by or on behalf of the Authority any person, employed or engaged by the Contractor, or a Sub-Contractor including those identified in accordance with clause 29.4 (**Admission to the Sites**) whose admission the Authority can demonstrate would be detrimental to the carrying out of the Works or provision of the Services or on the grounds of security or would be contrary to the Authority's obligations under any Legislation or Guidance to protect the rights of vulnerable people at the premises.

29.6 Authority's Employees

The Authority shall be entirely responsible for the employment and conditions of service of its own employees.

29.7 Removal from Sites

The Contractor shall comply with and/or procure compliance with any reasonable notice issued by the Authority from time to time requiring the removal from any of the Sites of any person employed or engaged on any of them whose presence the Authority can demonstrate is detrimental in connection with the carrying out of the Works and the provision of the Services or who is not acceptable on the grounds of security or would be contrary to the Authority's obligations under any Legislation or Guidance to protect the rights of vulnerable people at the premises and that such persons shall not be employed or engaged again upon the Project without the written consent of the Authority.

29.8 Compliance with Employee Legislation

The Contractor shall (and shall procure that each Sub-Contractor shall) comply with all Laws relating to equal opportunities and health and safety in respect of employees.

PART 5

PAYMENT

30. PAYMENT PROVISIONS

30.1 Payment of Authority's Capital Contribution Sums

30.1.1 The Authority shall pay the Authority's Capital Contribution Sums, being the sums payable on the dates shown in Schedule 10 (**Authority's Capital Contribution Sums**) together with interest at the Default Interest Rate on such sums from the date upon which payment was due until the date of actual payment.

30.1.2 The Authority's obligation in clause 30.1.1 shall cease upon notice of termination of this Contract due to the occurrence of a Contractor Event of Default (if the Authority's Capital Contribution has been used for matters other than Eligible Costs) unless the relevant Contractor Event of Default is rectified or otherwise upon termination of this Contract due to the occurrence of a Contractor Event of Default.

30.1.3 The Authority's Capital Contribution Sums shall be paid into a separate Contractor bank account (the "**Capital Contribution Account**") and shall be utilised for the payment by the Contractor of Eligible Costs (except in the case of termination for Contractor default hedge breakage costs).

30.1.4 If this Contract terminates for any reason (other than for Contractor default where clause 42.2 (**Retendering Procedure**) applies) prior to the entirety of that part of the Authority's Capital Contribution Sums as shall then stand to the credit of the Capital Contribution Account being expended on Eligible Costs, there shall be repaid to the Authority within 10 Working Days of such termination the sum which represents the difference between the credit balance on the Capital Contribution Account and the sum of the Eligible Costs (except in the case of termination for Contractor default hedge breakage costs) which have yet to be met and any termination payments required to be made by the Authority to the Contractor pursuant to this Contract and the then balance on the Capital Contribution Account shall be used to meet those Eligible Costs (except in the case of termination for Contractor default hedge breakage costs) and termination payments.

30.1.5 If this Contract terminates by reason of Contractor default (and where clause 42.2 (**Retendering Procedure**) applies) prior to the entirety of that part of the Authority's Capital Contribution as shall then stand to the credit of the Capital Contribution Account being expended on Eligible Costs, the sum which stands to the credit on the Capital Contribution Account shall be paid to the New Contractor (as defined in clause 40 (**Compensation Definitions**)).

30.2 Payment of Unitary Charge

30.2.1 The Authority shall pay the Contractor the Unitary Charge 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**), except that the provisions of clause 30.2.2 shall apply to the payments in the First Contract Month.

30.2.2 The first payment of Unitary Payment shall be the Unitary Payment for the First Contract Month and shall be paid by the Authority to the Contractor on 31 March 2003.

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 12th day of the Contract Month to which the report relates, 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 Contract Month to which the report relates (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 Contract Month to which the report relates (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***));
- (e) a Performance Monitoring Report (in accordance with Schedule 6 (***Payment and Performance Mechanism***));
- (f) any undisputed amounts owed by either party to the other in accordance with clause 55 (***Indemnities and Responsibility***);
- (g) any amounts owed by the Contractor to the Authority under clause 20 (***Delays Indemnity***);
- (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 payments due in respect of works or services to Leasehold Dwellings;

- (n) any contribution to the Authority's payment of electricity costs to be made by the Contractor in respect of the electricity supply for Common Parts;
- (o) cost of providing the free telephone call service in respect of the repairs service only;
- (p) any adjustment to Availability and Performance Deductions due to the Performance Bonus calculated in accordance with Schedule 6 (**Payment and Performance Mechanism**);
- (q) where a Reduction of Dwellings Adjustment Date occurs during the relevant Contract Month to which the Payment and Performance report relates, Dwellings subject to the Reduction of Dwellings and the calculations giving rise to the amount of RTB Compensation applicable to those Dwellings;
- (r) the aggregate of the RTB Compensation payable in respect of all Reduction of Dwellings;
- (s) the percentage of any Annual Premium Charge within the relevant band allocated to the Authority in accordance with Clause 56.10.1 (**Premium**).
- (t) 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**) on the 26th day of the Contract Month to which the invoice relates, 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

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 Authority shall notify the Contractor in writing within 5 Working Days of receipt by the Authority of the relevant invoice and supporting report of that part of the amount which the Authority disputes (a "**Disputed Amount**").

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 30.5 (**Disputed Amounts**), 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 30.5 (**Disputed Amounts**) 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

Subject to clause 30.5 (**Disputed Amounts**) and clause 48 (**Set-Off on Termination and Exclusivity**) each of the Authority and the Contractor may retain or set off any amount which has fallen due and payable to it from the other under this Contract against any amount which has fallen due and payable from it to the other under this Contract.

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. For the avoidance of doubt the reference to a supply being or becoming chargeable to VAT includes those instances where the supplier has elected to waive exception in accordance with paragraph 2 of Schedule 10 of the Value Added Tax Act 1994.

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. 103/97 of 15 June 1997 of the Authority of Ministers of the European Union, the introduction of the euro shall not, 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, this Contract; or
- (b) give any of the Sub-Contractors 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 the Ancillary Document to which it is a party.

30.10.2 If, following the introduction of the euro, Sterling is substituted by the euro as the currency of the United Kingdom, then all references in this Contract to "**Sterling**" or "**£**" shall be construed as references to "**euro**" or " (as the case may be), at the official rate of exchange recognised by the Bank of England on the date of that substitution; provided that the provisions of this clause 30.10 shall not apply during any transitional period when Sterling is a sub-unit of the euro, unless the Parties otherwise agree.

30.10.3 Without prejudice to clauses 30.10.1 and 30.10.2 (**Economic and Monetary Union**), the Authority and the Contractor will negotiate in good faith in order to agree any amendments to this Contract which either party determines to be reasonably necessary as a result of the introduction of the euro (and, if relevant, so as to ensure that the terms of this Contract reflect the current market practices and conventions relating to the introduction of the euro).

30.11 Construction Industry Tax Deduction Scheme

30.11.1 In this clause 30.11 the "**Act**" means the Income and Corporation Taxes Act 1988; the "**Regulations**" means the Income Tax (Subcontractors in the Construction Industry) Regulations 1993 S.I. No 743 as amended from time to time; "**contractor**" means a person who is a contractor for the purposes of the Act and the Regulations; "**evidence**" means such evidence as is required by the Regulations to be produced to a "**contractor**" for the verification of a "**subcontractor's**" tax certificate; "**statutory adjustment**" means the adjustment referred to in s.559(4) of the Act or such other adjustment as may be in force at the relevant time; "**subcontractor**" means a person who is a subcontractor for the purposes of the Act and the Regulations; "**tax certificate**" is a certificate issuable under s.561 of the Act.

This clause 30.11 (**Construction Industry Tax Deduction Scheme**) shall apply for the Contract Period except for any period in respect of which the Authority has received confirmation from the Inland Revenue that the Authority is not a contractor (in which event only clause 30.11.4 (**Construction Industry Tax Deduction Scheme**) shall apply).

- 30.11.2 Not later than 15 Working Days before the first payment under this Contract is due to the Contractor or after this clause applies for the first time and on each occasion when this clause 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 the statutory adjustment; or
 - (b) inform the Authority in writing that it is not entitled to be paid without the statutory adjustment.
- 30.11.3 Where the Contractor has provided evidence in accordance with clause 30.11.2(a) then subject to clause 30.11.8 (**Construction Industry Tax Deduction Scheme**) payment will be made without the statutory adjustment. If the Contractor informs the Authority of non-entitlement in accordance with clause 30.11.2(b) (**Construction Industry Tax Deduction Scheme**), the Authority shall within 10 Working Days of the Contractor submitting such information notify the Contractor in writing that it intends to make the statutory adjustment from payments due under this Contract to the Contractor who is a "subcontractor" and give its reasons for that decision. The Authority shall at the same time comply with clause 30.11.8.
- 30.11.4 Where clause 30.11.2(b) applies, the Contractor shall immediately inform the Authority if he obtains a tax certificate and thereupon clause 30.11.2(a) shall apply.
- 30.11.5 If the period for which the tax certificate has been issued to the Contractor expires before the final payment is made to the Contractor under this Contract the Contractor shall not later than 20 Working Days before the date of expiry either:-
- (a) provide the Authority with evidence that the Contractor from the said date of expiry is entitled to be paid for a further period without the statutory adjustment in which case the provisions of clause 30.11.3 shall apply; or
 - (b) inform the Authority in writing that they will not be entitled to be paid without the statutory adjustment after the said date of expiry.
- 30.11.6 The Contractor shall immediately inform the Authority in writing if its current tax certificate is cancelled and give the date of such cancellation.
- 30.11.7 The Authority shall, as a "contractor" in accordance with the Regulations, send promptly to the Inland Revenue any voucher which, in compliance with the Contractor's obligations as a "subcontractor" under the Regulations, the Contractor gives to the Authority.
- 30.11.8 If at any time the Authority is required by the Act to make the statutory adjustment from any payment due to be made, the Authority shall immediately so notify the Contractor in writing and require the Contractor to state not later than 7 Working Days before each future payment becomes due (or within 10 Working Days of such notification if that is later) the amount to be included in such payment which represents the direct cost to the Contractor and any other person of materials used or to be used in carrying out the Works or Services.
- 30.11.9 Where the Contractor complies with clause 30.11.8 the Contractor shall indemnify the Authority against any direct loss or expense caused to the

Authority by any incorrect statement of the amount of direct cost referred to in clause 30.11.8.

- 30.11.10 Where the Contractor does not comply with clause 30.11.8 the Authority shall be entitled to make a fair estimate of the amount of direct cost referred to in clause 30.11.8..
- 30.11.11 Where any error or omission has occurred in calculating or making the statutory adjustment the Authority shall correct that error or omission by repayment to, or by deduction from payments to, the Contractor as the case may be.
- 30.11.12 If compliance with this clause 30.11 involves the Authority or the Contractor in not complying with any other of the terms of this Contract, then the provisions of this clause 30.11 shall prevail.
- 30.11.13 The Dispute Resolution Procedure shall apply to any dispute or difference between the Authority and the Contractor as to the operation of this clause 30.11 except where the Act or the Regulations or any other Legislation provide for some other method of resolving such dispute or difference
- 30.12 In addition to making payments of the Unitary Charge in accordance with this clause 30, the Authority shall pay the Contractor such sum ("the Composite Inflation Risk Share Sum" or "CIRSS") (if any) as shall be calculated in accordance with this clause 30.12 as an annual contribution to any increased costs due to inflation which the Contractor may incur.
- 30.13 The Contractor may submit a first invoice for the CIRSS to the Authority by 12 May 2004, calculated for the Second Contract Year. In each Subsequent Contract Year, the Contractor may submit an invoice for the CIRSS to the Authority by 12 May of that Contract Year, calculated for that Contract Year.
- 30.14 The Authority shall pay any such first invoice for the CIRSS to the Contractor on 26 May 2004 and shall pay any subsequent invoices to the Contractor on 26 May of the Contract Year in which the invoice is submitted to the Authority and to which the calculation of CIRSS relates.
- 30.15 Any CIRSS shall be calculated by the Contractor as follows:-
- 30.15.1 For any Contract Year from the Second Contract Year onwards:-
- (a) CIRSS = the spv inflation risk share sum ("**SPVIRSS**") + the housing management inflation risk share sum ("**HMIRSS**")
- such that $SPVIRSS = a \times y$
where a is the figure for spv costs as set out in Table A of Schedule 21 for that Contract Year
and $y = C - 3.15\%$
and where:-
C is the lower of the two percentage figures, the first being the CAEI for the previous Contract Year to that Contract Year and the second being 3.8%
and y is a figure greater than zero
- (b) and such that $HMIRSS = b \times z$

where b is the figure for housing management costs as set out in Table B of Schedule 21 for that Contract Year

and $z = D - 3.25\%$

where:-

D is the lower of the two percentage figures, the first being the AEI for the previous Contract Year (as published in April of the Contract Year in which the calculation is carried out) to that Contract Year and the second being 4%

and z is a figure greater than zero.

30.16 The provisions of this clause 30 shall not expire on the Expiry Date but shall continue for four calendar months following the Expiry Date

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 Payment 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 Payment 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 Payment 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 **Best Value Definitions**

For the purposes of this clause 32 (*Best Value*), the words and expressions in the left hand column below shall have the meanings appearing opposite them in the right hand column.

"Annual Service Plan"	has the meaning given in clause 32.3.4 (<i>Annual Service Report</i>)
"Annual Service Report"	has the meaning given in clause 32.3.1 (<i>Annual Service Report</i>)
"Annual Service Report Date"	the 30 th April for the Annual Service Report relating to the previous Contract Year, the first Annual Service Report Date being 30 th April 2004 unless the Annual Service Report is required as part of the Authority's Best Value Performance Plan for that financial year, in which case the 1 st February in each Contract Year
"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 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 each fifth anniversary of the Services Commencement Date thereof during the Contract Period or such other 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 (<i>Best Value Review</i>)
"Best Value Service Change Notice"	has the meaning given in clause 32.3.3 (<i>Annual Service Report</i>)
"Performance Standard Benchmarking Exercise"	the benchmarking exercise to be undertaken in relation to the Services in accordance with clause 32.5 (<i>Performance Standard Benchmarking Exercise</i>)

"Service Users" a reasonably representative sample of those users who consume or benefit from the Services

"1999 Act" the Local Government Act 1999

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 and at its own cost, 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.

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;
 - (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 Service, 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 Local Government Act 1999;
 - (vii) enable the Authority to comply with the Publication of Information Direction 2000 (England and Wales); and
 - (viii) assist in relation to any comprehensive performance assessment in respect of the Authority;

- (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 28 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 14 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 21 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 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 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**

- 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**) 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 28 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 14 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 21 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 If, the results of the Performance Standard Benchmarking Exercise 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 notice upon the Contractor stating the nature of the change to the Contractor's performance to conform to the formula in Column 3 of Table A.

32.5.6 Any performance standard in the Output Specification reflecting a Performance Indicator in relation to which the Contractor's performance has been changed shall be adjusted to reflect that change.

TABLE A

PERFORMANCE INDICATORS	SOURCE OF COMPARATOR GROUP	FORMULA
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

PERFORMANCE INDICATORS	SOURCE OF COMPARATOR GROUP	FORMULA
		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	HC database:- (a) 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
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

PERFORMANCE INDICATORS	SOURCE OF COMPARATOR GROUP	FORMULA
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

The Authority shall be entitled to terminate this Contract by notice in writing to the Contractor in accordance with clause 34.2 (*Termination by the Authority*) (subject to clause 34.5 (*Termination Notices*)) if:-

34.1.1 the Contractor has not commenced any of the Works by the date 6 months after the Services Commencement Date;

34.1.2 the Contractor Abandons the Project at any time;

34.1.3 (a) the Refurbishment Completion Date is not achieved before the Longstop Date; or

(b) an Acceptance Certificate is not issued in respect of the Milestone Works by the Milestone Date.

34.1.4 the Contractor commits a breach of:-

(a) either of clauses 62.2 (*Permitted Sub-Contractors*) or 62.3 (*Restriction on the Contractor*); or

(b) clause 63.4 (*Change of Ownership*);

34.1.5 the Contractor:-

(a) ceases to carry on the whole of its business or disposes of all of its assets (other than in accordance with the terms of this Contract);

(b) subject to clause 1.7 (Insolvency), becomes the subject of a voluntary arrangement under Section 1 of the Insolvency Act 1986;

(c) subject to clause 1.7 (Insolvency), is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986;

(d) has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertakings, assets or income;

(e) has an administration order made against it or a court makes an order that the Contractor be wound up;

(f) has passed a resolution for its winding-up;

(g) is the subject of any process or event similar or analogous to the events in clauses (a) to (f) inclusive;

- 34.1.6 a notice Confirming Termination is served in accordance with Part 4 of Schedule 6 (**Payment and Performance Mechanism**).
- 34.1.7 the Contractor commits a Persistent Breach;
- 34.1.8 the Contractor fails to take out and maintain any of the Required Insurances (except those Required Insurances which become Uninsurable); or
- 34.1.9 the Contractor commits a material breach of any of its obligations under this Contract (including a breach of any warranty or undertaking by the Contractor contained in clause 5 (**Warranties and Undertakings**)) which materially and adversely affects the performance of the Services other than as a consequence of a breach by the Authority of its obligations under this Contract provided that the Authority shall not be entitled to both retain a Deduction in relation to such breach and terminate this Contract.

34.2 Termination by the Authority

- 34.2.1 At any time where a Contractor Event of Default occurs the Authority may give written notice to terminate this Contract ("**Termination Notice**") to the Contractor provided that such notice is given within 30 Working Days of becoming aware of the Contractor Event of Default specifying:-
 - (a) the Contractor Event of Default in respect of which the notice is given and giving reasonable details of the breach; and
 - (b) that the Authority is terminating this Contract under this clause 34 (**Termination of this Contract**); and
 - (c) that this Contract will terminate on the date falling 60 days after the date the Contractor receives the Termination Notice, unless (other than in the case of clauses 34.1.2, 34.1.5 and 34.1.6 (**Contractor Default Termination**)) the Contractor delivers a rectification programme (which shall include timescales for rectification) which is acceptable to the Authority (acting reasonably) within 30 days whereupon the Termination Notice shall be suspended or agrees that it will rectify the Contractor Event of Default within 60 days of the date of receipt of the Termination Notice and does so rectify the Contractor Event of Default within 60 days of the date of receipt of the Termination Notice.
- 34.2.2 Following a breach of the rectification programme referred to in clause 34.2.1(c), the suspension of the Termination Notice will cease and no further rectification programme may be submitted.
- 34.2.3 If the Contractor rectifies the Contractor Event of Default within the period specified in the Termination Notice or implements the rectification programme as referred to in clause 34.2.1(c) (**Termination by the Authority**) in accordance with its terms the Termination Notice will be deemed to be revoked and the Contract will continue.
- 34.2.4 If the Contractor fails to rectify the Contractor Event of Default (other than those Contractor Events of Default in clauses 34.1.2, 34.1.5 and 34.1.6 (**Contractor Default Termination**) which are not capable of rectification) within the 60 day period specified in the Termination Notice or fails to implement the rectification programme as referred to in clause 34.2.1(c) (**Termination by the Authority**) in accordance with its terms the Contract

shall (subject to the terms of the Direct Agreement) terminate 60 days after the date on which the Contractor receives a Termination Notice.

- 34.2.5 In determining whether to exercise its right of termination under clause 34.1.9 above the Authority shall act in a reasonable and proportionate manner having regard to the breach which has occurred and give all due consideration, where appropriate, to action other than termination of this Agreement.

34.3 Voluntary Termination

- 34.3.1 The Authority may terminate this Contract at any time by six months' notice in writing to the Contractor.
- 34.3.2 On termination in accordance with clause 34.3.1 (**Voluntary Termination**) of this Contract, the Authority shall have the option to request the Contractor (such request to be made at the same time as the notice if given pursuant to clause 34.3.1) to transfer to the Authority all of its right, title and interest in and to the Assets at the cost of the Authority. In the event that the Contractor is willing to sell the Assets and the Authority is willing to purchase the Assets the Authority shall also pay to the Contractor the value of the Assets as determined in accordance with clause 37.3 (**Valuation of Assets**) at the same time as the transfer of the right, title and interest in the Assets.

34.4 Authority Default Termination

- 34.4.1 If:-
- (a) an Authority Default has occurred and is outstanding; and
 - (b) the Contractor has served a written notice of its intention to terminate this Contract (the "**Contractor Termination Notice**") on the Authority within 30 Working Days of becoming aware of the Authority Default; and
 - (c) the Contractor Termination Notice specifies the Authority Default in respect of which the Contractor Termination Notice is given,

this Contract will terminate on the day falling 30 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 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 request the Contractor (such request 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 at the cost of the Authority. In the event that the Contractor is willing to sell the Assets and the Authority is willing to purchase the Assets the Authority shall also pay to the Contractor the value of the Assets as determined in accordance with clause 37.3 (**Valuation of Assets**) at the same time as the transfer of the right, title and interest in the Assets.

34.5 Termination by the Authority for Breach of the Refinancing Provisions

- 34.5.1 If the Contractor wilfully breaches the provisions at paragraph 2.1 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 this clause 34.5 (**Termination by the Authority for Breach of the Refinancing Provisions**).

34.5.2 If the Authority wishes to terminate this Contract under this clause 34.5 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***); and
- (b) that the Contract will terminate on the date falling 30 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 request the Contractor (such request 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. In the event that the Contractor is willing to sell the Assets and the Authority is willing to purchase the Assets the Authority shall also pay to the Contractor the value of the Assets as determined in accordance with clause 37.3 (***Valuation of Assets***) at the same time as the transfer of the right, title and interest in the Assets.

34.5.4 The Contract will terminate on the date falling 30 days after the date of receipt of the notice referred to in paragraph 34.5.2 (***Termination by the Authority for Breach of the Refinancing Provisions***) above.

35. PERSISTENT BREACH

35.1 Warning Notice

If a breach of the Contractor's obligations under this Contract (other than a breach for which a Deduction can be made or a breach of an obligation in the Output Specification which can reasonably be regarded as de minimis and/or has no material impact on the Authority's statutory housing functions in relation to this Project) has occurred more than once then the Authority may serve a notice (a "**Warning Notice**") on the Contractor:-

- 35.1.1 specifying that the notice is a Warning Notice;
- 35.1.2 giving reasonable details of the breach; and
- 35.1.3 stating that the 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 recurred twice after the date falling 30 days after the date of service of the Warning Notice, 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 the breach continues or recurs four times within 6 consecutive months after the date of service of the Final Warning Notice, the Contract may be terminated.

35.3 **Currency of Warning Notices**

A Warning Notice may not be served in respect of any breach in respect of which a separate Warning Notice has already been served until a period of 12 months has elapsed since the date of the previous Warning Notice or Final Warning Notice in relation to that breach.

36. **FORCE MAJEURE**

36.1 **Waiver of Obligations**

No party shall be entitled to terminate the Contract or 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, except in accordance with this clause 36.

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 30 days' written notice to the other party provided that the Affected Party is still unable to comply with its obligations on the expiry of such notice period.

36.6 **Not all Properties Affected**

Where a Force Majeure Event prevents the Contractor from providing the Services at some but not all of the Properties, the Authority may after 150 days propose an Authority Change under which the affected Properties cease to be subject to this Contract.

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 41 (**Force Majeure Compensation**); and

36.7.2 the Authority may request the Contractor (such request to be made prior to the termination taking effect) to transfer its title, interest and rights in and to any Assets to the Authority at the cost of the Authority. In the event that the Contractor is willing to sell the Assets, and the Authority is willing to purchase the Assets, the Authority shall also pay to the Contractor the value of the Assets as determined in accordance with clause 37.3 (**Valuation of Assets**).

36.8 Notice to Continue

If the Contractor gives notice to the Authority under clause 36.5 (**Unable to Agree**) 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 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 30 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 30 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 42 (**Compensation on Contractor Default**) shall apply;

- 37.1.2 clause 34.3 (*Voluntary Termination*), the provisions of clause 43 (*Compensation on Authority Default*) shall apply;
- 37.1.3 clause 34.4 (*Authority Default Termination*), the provisions of clause 43 (*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 44 (*Compensation on Termination for Corrupt Gifts and Fraud or Breach of the Refinancing Provisions*) shall apply;
- 37.1.5 clause 36 (*Force Majeure*), the provisions of clause 41 (*Force Majeure Compensation Event*) shall apply;
- 37.1.6 clause 73.2 (*Termination for Corrupt Gifts and Fraud*), the provisions of clause 44 (*Compensation on Termination for Corrupt Gifts and Fraud or Breach of the Refinancing Provisions*) 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**

If termination of this Contract occurs for whatever reason the Authority may purchase such of the Assets as the Contractor is willing to sell and the Authority shall agree a price for the Assets with the Contractor separate from the provisions on compensation set out at clause 37.1 (*Compensation Provisions*). In the absence of an agreement on the price of the Assets between the Authority and the Contractor, the Contractor shall not be required to sell and the Authority shall not be required to purchase the Assets.

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 is required, then 18 months prior to the Expiry Date, the Contractor shall either, at its sole option, provide a retention bond to the Authority in an amount equal to the cost of the relevant rectification or maintenance works as quantified by that survey (the "**Retention Bond**") or 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 the Authority carries out the Handback Survey, it shall use reasonable endeavours to minimise any disruption caused to the provision of the Services by the Contractor. Where the Authority procures the carrying out of the Handback Survey, the Authority shall use its best endeavours to try to ensure that the person carrying out the survey minimises any disruption to the provision of the Services by the Contractor. The Contractor shall afford the Authority 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 works (the "**Handback Works**") which are required to bring the condition of the Property 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**"); and

38.5.2 specify a reasonable period within which the Contractor must carry out the Handback Works (the "**Handback Works Period**").

38.6 Maintenance Work

The Contractor shall carry out the Handback Works 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 then in the event that the amount remaining under the Retention Bond or in the Retention Fund Account (as applicable) on the Expiry Date is insufficient to cover the Contractor's costs which have not been reimbursed, 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 call on the Retention Bond or a withdrawal from the Retention Fund Account (as applicable) 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 arising from a breach of the Contractor's obligations under clause 22.1 (**Maintenance**) is outstanding,

then the Retention Bond shall expire and be returned by the Authority to the Contractor or the Authority shall pay any credit balance on the Retention Fund Account to the Contractor as applicable on the later of the Expiry Date and the expiry of the Handback Works Period.

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 Properties but not so as to interfere with or impede the provision of the Services; and

39.1.3 providing to the Authority and/or to any New Contractor all and any information concerning the Sites and the Services which is required for the efficient transfer of responsibility of their performance (and which it is reasonable to expect the Contractor to disclose).

39.2 Transfer of Responsibility

The Contractor 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. COMPENSATION DEFINITIONS

For the purposes of this Part of this Contract, the following terms shall have the following meanings ascribed to them:

"Adjusted Estimated Fair Value of the Contract"

the Estimated Fair Value of the Contract, less an amount equal to the aggregate of:-

- (a) the Post Termination Service Amounts (paid to the Contractor to date);
- (b) the Tender Costs; and
- (c) amounts that the Authority is entitled to set off or deduct under clause 30.8 (*Rights of Set-Off*)

plus an amount equal to the aggregate of:-

- (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 (and which the Contractor is entitled under this Contract to retain);
- (ii) any insurance proceeds and other amounts owing to the Contractor (and which the Contractor is entitled under this Contract to retain), to the extent not included in (i); and
- (iii) any Post Termination Service Amounts (if a negative number) which have not been set off in accordance with this clause

to the extent that:-

- (aa) (i), (ii) and (iii) have not been directly taken into account in calculating the Estimated Fair Value; and
- (bb) in relation to (i) and (ii) the Authority has received or is or will be entitled to receive such amounts in accordance with the Contract.

"Adjusted Highest Compliant Tender Price"

the Highest Compliant Tender Price, less the aggregate of:-

- (a) any Post Termination Service Amounts

paid to the Contractor to date;

- (b) the Tender Costs; and
- (c) amounts that the Authority is entitled to set-off or deduct under clause 30.8 (*Rights of Set-Off*)

plus an amount equal to the aggregate of:-

- (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 (and which the Contractor is entitled under this Contract to retain);
- (ii) any insurance proceeds and other amounts owing to the Contractor (and which the Contractor under this Contract is entitled to retain), to the extent not included in (i);
- (iii) the Post Termination Service Amounts (if a negative number); and

to the extent that:-

- (aa) (i), (ii) and (iii) have not been directly taken into account in that Compliant Tender; and
- (bb) in relation to (i) and (ii) the Authority has received or is or will be entitled to receive such amounts in accordance with the Contract.

"Base Case"

the Financial Model (as updated from time to time in accordance with the terms of this Contract) for the purpose of calculating the Unitary Payment.

"Compensation Date"

either:-

- (a) if clauses 42.1 (*Retendering Election*) and 42.2 (*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 42.3 (<i>No Retendering Procedure</i>) applies, the date that the Adjusted Estimated Fair Value of the Contract has been agreed or determined
"Compliant Tender"	any tender submitted by a Compliant Tenderer that meets the qualification criteria notified under clause 42.2.3 (<i>Retendering Procedure</i>)
"Compliant Tenderer"	a tenderer who is a Suitable Substitute Contractor
"Deemed New Contract"	an agreement on the same terms and conditions as this Contract, as at the Termination Date, but with the following amendments:- <ul style="list-style-type: none"> (a) if this Contract is terminated during the Works Period, then the Planned Refurbishment Completion Date shall be extended by a period to allow a New Contractor (had one been appointed) to achieve completion of the Works to the Properties in question; (b) any accrued Deductions and/or Warning Notices shall be cancelled; and (c) the term of such agreement shall be for a period as is equal to the term from the Termination Date to and including the Expiry Date
"Estimated Fair Value"	the amount determined in accordance with clause 42.3 (<i>No Retendering Procedure</i>) which a third party would pay to the Authority as the market value of the Deemed New Contract and on the assumption that a consent for any new Management Agreement or Sub-Agreement (for which a consent is required) will be given by the Secretary of State under Section 27 Housing Act 1985 (as amended);
"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
"Highest Compliant Tender Price"	the price offered by the Compliant Tenderer (if any) with the highest tender price
"Junior Debt"	all amounts outstanding at the Termination Date under the Subordinated Finance Agreements

"Liquid Market"

that 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 social housing PFI contracts or similar contracts for the provision of services similar to the Services (in each case the same as or similar to this Contract) for the price that is likely to be achieved through a tender to be a reliable indicator of Fair Value

"Market Value Availability Deduction Amount"

for any month of part of a month an amount equal to:-

(a) the aggregate of Unavailability Deductions for the month immediately preceding the Termination Date;

less:-

(b) an amount equal to any Unavailability Deductions referred to in paragraph (a) above in the month immediately preceding the Termination Date to the extent that the deduction relates to a Dwelling which was Unavailable at the Termination Date but which has subsequently become Available (as at the date of calculation of any Post Termination Service Amount) whether as a result of the Authority incurring Rectification Costs or otherwise

"Maximum Unitary Payment"

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

"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 relevant Planned Refurbishment 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 be cancelled;

(c) the term of such agreement shall be such period as is equal to the term from the Termination Date until the Expiry Date;

	<ul style="list-style-type: none"> (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.
"New Contractor"	the person who has entered or who will enter into the New Contract with the Authority.
"Notice Date"	the later of the Termination Date and (if applicable) the date that the Adjusted Estimated Fair Value of the Contract is agreed or determined pursuant to clause 42.3 (<i>No Retendering Procedure</i>)
"Permitted Instalment Termination Sum"	any Termination Sum except that payable under clause 43 (<i>Compensation on Authority Default</i>);
"Post Termination Service Amount"	<p>for the purposes of clause 42.2 (<i>Retendering Procedure</i>), 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 Payment which would have been payable in that Month under the Contract had the Contract not been terminated, less an amount equal to the aggregate of:-</p> <ul style="list-style-type: none"> (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;
"Rectification Costs"	where the Termination Date occurs during the Operational Period, an amount equal to the reasonable and proper costs incurred by the Authority (less insurance proceeds received or receivable by the Authority in relation to the damage or defect being rectified) in a particular month or part of a month in ensuring that the Dwellings and/or Properties are Available
"Senior Debt"	means subject to clause 7.2 (<i>Changes to Financing Agreements</i>):-

- (a) all amounts outstanding at the Termination Date including interest accrued as at that date to the Senior Lenders under the Senior Financing Agreements; and
- (b) all amounts including costs of early termination of interest rate hedging arrangements and other breakage costs, payable by the Contractor under the Senior Financing Agreements as a result of a prepayment or otherwise under the Senior Financing Agreements, subject to the Contractor and the Senior Lenders mitigating all such costs to the extent reasonably possible,

less:-

- (i) all credit balances on any bank accounts (but excluding the Joint Insurance Account) held by or on behalf of the Contractor on the Termination Date of the Contract that the Senior Lenders are entitled and able to apply in repayment of the amounts owing to the Senior Lenders under paragraph (a) above;
- (ii) all amounts, including costs of early termination of interest rate hedging arrangements and other breakage costs, payable to the Contractor as a result of a prepayment of amounts outstanding under the Senior Financing Agreements
- (iii) 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;

"Senior Debt Amount"

the aggregate commitments of the Senior Lenders under the Senior Financing Agreements at the date of Financial Close;

"Senior Debt Rate"	the rate of interest determined in accordance with clause 7.2 (Rate of Interest) of the Facility Agreement;
"Subordinated Lender"	a person providing finance under a Subordinated Finance Agreement;
"Suitable Substitute Contractor"	a suitable substitute contractor as defined in the Direct Agreement;
"Tender Costs"	the proper and reasonable 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 42.2 (<i>Retendering Procedure</i>);
"Tender Process Monitor"	a third party the person appointed under clause 42.2.5 (<i>Retendering Procedure</i>);
"Termination Date Discount Rate"	<p>a discount rate expressed as $(1 + \text{real base case project IRR} + \text{Gilt B} - \text{Gilt A})^i (1+i) - 1$</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 on the date of 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 date of Termination;</p>
"Termination Sum"	any compensation payable by the Authority to the Contractor on an early termination of this Contract under this Part of this Contract (excluding the Adjusted Highest Compliant

Tender Price).

41. FORCE MAJEURE COMPENSATION

41.1 Amounts

If this Contract is terminated pursuant to clause 36 (*Force Majeure*), the Authority shall pay to the Contractor in accordance with clauses 45 (*Method of Payment*), 47 (*Gross-Up*) and 48 (*Set-off on Termination and Exclusivity*) compensation of an amount equal to the aggregate of:-

- 41.1.1 an amount equal to the Senior Debt;
- 41.1.2 an amount equal to the Junior Debt less an amount equal to the aggregate of payments of interest made by the Contractor under the Subordinated Financing Agreements;
- 41.1.3 an amount equal to 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 of the Contractor (save to the extent deducted under clause 41.1.2 (*Amounts*) above); and
- 41.1.4 redundancy payments for employees of the Contractor or the Sub-Contractors that have been or will be reasonably incurred by the Contractor or the Sub-Contractors as a direct result of termination of the Contract and any Sub-Contractor Breakage Costs.

41.2 Amounts less than Zero

If the amounts referred to in clauses 41.1.2 (*Amounts*) and/or 41.1.3 (*Amounts*) are less than zero, then, for the purposes of the calculation in clause 41.1 (*Amounts*) they shall be deemed to be zero.

42. COMPENSATION ON CONTRACTOR DEFAULT

42.1 Retendering Election

42.1.1 On termination of this Contract under clause 34.1 (*Contractor Default Termination*) and subject to clause 42.1.3 the Authority shall be entitled either to:-

- (a) retender the provision of the Services for the unexpired portion of the Contract in accordance with clause 42.2 (*Retendering Procedure*); or
- (b) require an expert determination in accordance with clause 42.3 (*No Retendering Procedure*).

42.1.2 Subject to clause 42.1.3 the Authority shall notify the Contractor of its election under clause 42.1.1 above on or before the date falling 14 days after the Termination Date.

42.1.3 The Authority shall not be entitled to elect to retender the provision of the Services in accordance with clause 42.2 (*Retendering Procedure*) if:-

- (a) it has failed to notify the Contractor of its election in accordance with clause 42.1.2; or

- (b) the Senior Lenders have exercised their right of step-in under the Direct Agreement and have demonstrated to the Authority that they have used all reasonable efforts to procure the transfer of the Contractor's rights and liabilities under the Contract to a Suitable Substitute Contractor but have not done so; or
- (c) it is determined in accordance with clause 4 (**No Liquid Market**) of the Direct Agreement that No Liquid Market exists.

42.1.4 Where:-

- (a) the Contractor or Senior Lenders have demonstrated to the Authority that the Senior Lenders have used all reasonable efforts to procure the transfer of the Contractor's rights and liabilities under the Contract to a Suitable Substitute Contractor but have not done so; and
- (b) 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 Contract 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 one month of the submission of a written application to the Secretary of State accompanied by all the required information necessary to obtain such consent

the Authority shall not be entitled to retender the provision of the Services in accordance with clause 42.2 (**Retendering Procedure**) and the compensation payable on termination of this Contract shall be the higher of the Senior Debt and the Adjusted Estimated Fair Value of the Contract as determined under clause 42.3 (**No Retendering Procedure**).

42.2 **Retendering Procedure**

If the Authority elects to retender the provision of the Services under clause 42.1 (**Retendering Election**), then the following provisions shall apply:-

- 42.2.1 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;
- 42.2.2 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;
- 42.2.3 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;
- 42.2.4 the Contractor authorises the release of any information by the Authority under the Tender Process which would otherwise be prevented under clause 54 (**Information and Confidentiality**) that is reasonably required as part of the Tender Process;
- 42.2.5 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;

- 42.2.6 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, including the determination of Compliant Tenders, 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 put to the Arbitrator in accordance with clause 59 (**Dispute Resolution**) in the event of a disagreement as to the Adjusted Highest Compliant Tender Price;
- 42.2.7 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;
- 42.2.8 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;
- 42.2.9 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;
- 42.2.10 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;
- 42.2.11 if the Contractor refers a dispute relating to the Adjusted Highest Compliant Tender Price to dispute resolution in accordance with the Disputes Resolution Procedure, the Authority shall be entitled to enter into a New Contract. The Authority shall pay to the Contractor any undisputed element of the Adjusted Highest Compliant Tender Price in accordance with clause 42.2.12 and the balance (if any) on or before the date falling 20 Working Days after it has been determined in accordance with the Disputes Resolution Procedure;
- 42.2.12 subject to clauses 42.2.11 and 42.2.15, 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;

- 42.2.13 the discharge by the Authority of its payment obligation in clause 42.2.11 and/or 42.2.12 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;
- 42.2.14 subject to clauses 42.2.15 and 42.2.18 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 42.3 (**No Retendering Procedure**) shall apply instead;
- 42.2.15 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;
- 42.2.16 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;
- 42.2.17 the Authority may elect at any time prior to the receipt of a Compliant Tender to follow the no retendering procedure under clause 42.3 (**No Retendering Procedure**) by notifying the Contractor that this election has been made, but provided where the Council elects to follow the no retendering procedure in these circumstances the Tender Costs shall not be deducted from the Adjusted Estimated Fair Value of the Contract;
- 42.2.18 if the Authority 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.

42.3 No Retendering Procedure

If either clause 42.1.3 (**Retendering Election**) or clause 42.2.14 (**Retendering Procedure**) applies, or the Authority elects to require an expert determination in accordance with this clause 42.3 then the following procedure shall apply:-

- 42.3.1 for all or any part of the 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;

- 42.3.2 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 Estimated Fair Value of the Contract;
- 42.3.3 otherwise the parties shall use their reasonable endeavours to agree the Estimated Fair Value of the Contract. 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 Payment (without Deductions) 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 42.3.3(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; and
 - (ii) any costs (including rectification costs) required to deliver the Services or the Properties to the standard required by this Contract (including any costs forecast to be incurred by the Authority to complete the Works).

in each case such costs to be forecast at a level that will deliver the full Unitary Payment referred to in sub-clause 42.3.3(b).

- 42.3.4 If the parties cannot agree on the Adjusted Estimated Fair Value of the Contract on or before the date falling 30 days after the date on which the Authority elected to require an expert determination in accordance with this clause 42.3, then the Estimated Fair Value of the Contract shall be determined in accordance with the Disputes Resolution Procedure.
- 42.3.5 The Authority shall pay to the Contractor an amount equal to the Adjusted Estimated Fair Value of the Contract in accordance with clause 45 (**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.
- 42.3.6 The discharge by the Authority of its obligation in clause 42.3.5 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.

42.3.7 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.

43. COMPENSATION ON AUTHORITY DEFAULT

43.1 Amount Payable

On termination of this Contract under clauses 34.4 (*Authority Default Termination*) and clause 34.3 (*Voluntary Termination*) the Authority shall pay the Contractor in accordance with clause 45 (*Method of Payment*) an amount equal to the aggregate of:-

43.1.1 the Senior Debt;

43.1.2 redundancy payments for employees of the Contractor or the Sub-Contractors that have been or will be reasonably incurred by the Contractor or the Sub-Contractors as a direct result of termination of this Contract and any Sub-Contractor Breakage Costs including limbs (a), (b) and (c) of the definition of Sub-Contractor Breakage Costs; and

43.1.3 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.

44. COMPENSATION ON TERMINATION FOR CORRUPT GIFTS AND FRAUD OR BREACH OF THE REFINANCING PROVISIONS

44.1 Amount of Compensation

44.1.1 On termination of this Contract in accordance with clause 34.5 (*Termination by the Authority for Breach of the Refinancing Provisions*) and clause 73.2 (*Termination for Corrupt Gifts and Fraud*) the Authority shall pay the Contractor an amount equal to the Senior Debt.

44.1.2 Such amount shall be payable in accordance with clause 45 (*Method of Payment*).

45. METHOD OF PAYMENT

45.1 Date of Payment

The Authority shall pay to the Contractor the Termination Sum on or before the date falling sixty days after the Notice Date except for such part thereof that it may elect to pay in accordance with clause 45.2.1 (*Instalments*).

45.2 Instalments

The Authority may elect to pay the Adjusted Estimated Fair Value of the Contract or the Senior Debt element of any Permitted Instalment Termination Sum:-

45.2.1 in instalments, on the dates (the "*Instalment Dates*") and in the amounts that the Contractor would have been required to pay to the Senior Lenders (under the terms of the Senior Financing Agreements) had the Termination Date not occurred; or

45.2.2 as the parties may otherwise agree.

45.3 Interest

From the Termination Date until the date of payment, interest shall accrue on any unpaid element of the Termination Sum at the Non Default Interest Rate and be payable on the date falling sixty days after the Notice Date (where the Authority is required to pay compensation in accordance with clause 45.1 (**Date of Payment**)) next occurring Instalment Date (where the Authority has elected to pay compensation in accordance with clause 45.2 (**Instalments**)) and in default of payment of compensation on the due date interest shall accrue at the Default Interest Rate from the due date until the actual date of payment.

45.4 Election to Pay in Full

If the Authority has elected to pay in accordance with clause 45.2 (**Instalments**) above, it may (on 28 days prior written notice to the Contractor) elect to pay any outstanding element of the Adjusted Estimated Fair Value of the Contract or the Senior Debt in full on any Instalment Date (together in either case with all amounts certified by the Senior Lenders as necessary to compensate the Senior Lenders for costs incurred as a result of the early termination of any swap, deposit or other fixed rate funding arrangements as shall remain in place or be entered into by the Senior Lenders as a consequence of the instalment payment election pursuant to clause 45.2 (**Instalments**) which would have remained in place).

45.5 Failure to Make Payment

If the Authority:-

45.5.1 fails to make a payment to the Contractor in accordance with clauses 45.2.1 and/or 45.2.2 (**Instalments**) above; or

45.5.2 breaches clause 62 (**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 or the Senior Debt (together in either case with all amounts comprising the costs incurred by Senior Lenders(s) of early termination of interest rate hedging arrangements if any as shall remain in place or be put in place as a consequence of instalment payments and other breakage costs) and any interest remaining to be paid to be immediately due and payable and such sum shall immediately become due and payable to the Contractor by the Authority. Interest shall accrue on such sum at the Default Interest Rate from the date of demand to the date of actual payment.

46. 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 46 (**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).

47. GROSS UP

If any amount of compensation payable by the Authority under clauses 41 (**Force Majeure Compensation**), 43 (**Compensation on Authority Default**) (including clause 77.3 (**Relevant Discharge Terms**)), 44 (**Compensation on Termination for Corrupt**

Gifts and Fraud or for Breach of the Refinancing Provisions) (and clause 42 (*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 42 (*Compensation on 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.

48. **SET-OFF ON TERMINATION AND EXCLUSIVITY**

48.1 **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 clause 41 (*Force Majeure Compensation*) and clause 43 (*Compensation on Authority Default*) (including where the Contract has been terminated under clause 34.3 (*Voluntary Termination*) and clause 77.3 (*Relevant Discharge Terms*)) or clause 34.4 (*Authority Default Termination*)).

48.2 **Exclusivity of Remedy**

The compensation payable under clause 43 (*Compensation on Authority Default*) (including where the Contract has been terminated under clause 34.3 (*Voluntary Termination*)), clause 41 (*Force Majeure Compensation*) and clause 44 (*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 and the Authority against the Contractor on termination of the Contract save for any liability that arose prior to the Termination Date that has not been taken into account in determining the amount of the termination payment .

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**).

49.2 Relief

To obtain relief from any rights of the Authority arising under clause 34.1 (**Contractor Default Termination**), the Contractor must:-

49.2.1 include in a Payment and Performance Report and, if reasonably practicable, in the Payment and Performance Report which relates to the Contract Month in which the relevant event(s) occurred 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 and full details of the relief claimed; and

49.2.2 demonstrate 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 in the achievement of the Relevant Date or otherwise adversely affected the ability of the Contractor to perform any of its 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**).

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.

49.5 **Information**

In the event that the Authority is prejudiced by reason of any failure by the Contractor to supply the information required by clause 49.2 (**Relief**) or to supply such information by the dates referred to in that clause then the Contractor shall not be entitled to any relief in respect of the period for which the information is not supplied or is delayed to the extent that the Authority is so prejudiced;

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 postponement of any Relevant Date(s) or the relief required by the Contractor, or the Authority disagrees that a Relief Event has occurred or that the Contractor is entitled to the postponement of any Relevant Date(s) or to relief under this clause, the parties shall resolve the matter in accordance with the Disputes Resolution Procedure.

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.

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 (including, in the case of the Contractor, by incorporating the relevant details in a Payment and Performance Report) 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 Payment) shall be dealt with in accordance with clause 50.2 (*Parties to Discuss*).

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, it was taken into account by the Contractor acting in accordance with Good Industry Practice in anticipating foreseeable Changes of Law at that time;
- 50.2.3 giving evidence as to how Qualifying Change in Law has affected prices charged by any similar businesses undertaking works and/or services the same as or similar to the Works and/or Services (or any parts thereof) including similar businesses in which the shareholders or the Contractor's Affiliates and/or the Sub-Contractor's Affiliates carry on business to the extent available to the Contractor; 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**

- 50.3.1 If the parties agree or it is determined under clause 59 (*Dispute Resolution*) that the Contractor is required to incur additional Capital Expenditure due to a change in the Works and/or the Services because of a Qualifying Change in Law and if the change in the Works and/or the Services requires the Contractor to incur additional Capital Expenditure (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.

50.3.2 If the parties agree or it is determined under clause 59 (*Dispute Resolution*) that the Contractor will incur an Estimated Change in Project Costs due to a change in the Works and/or the Services because of a Qualifying Change in Law, the Authority shall pay to the Contractor the amount of the actual Estimated Change in Project Costs in accordance with clause 50.6 (*Adjustment to Unitary Payment*) as applicable.

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.

50.6 **Adjustment to Unitary Payment**

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 Payment 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 an Authority Change (not including Small Works Changes) in accordance with this clause 52.1 (*Authority Changes*).

52.1.2 The Authority may not require an Authority Change which:-

- (a) requires that the Works or Services be performed in a way that infringes any Law or is inconsistent with Good Industry Practice; or

- (b) would cause any Necessary Consent to be revoked (or a new consent required to implement the Authority Change to be unobtainable); or
- (c) would, if implemented, materially and adversely change the nature of the Project (including its risk profile); or
- (d) would materially and adversely affect the Contractor's ability to deliver any of the Works and/or Services; or
- (e) would materially and adversely affect the health and safety of any person; or
- (f) 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
- (g) would require the Contractor to implement the Authority Change in an unreasonable period of time; or
- (h) would cause the financial ratios and/or other requirements in clause 14.4 of the Facility Agreement to be breached or would have an adverse affect on the ability of the Contractor to perform its obligations under the Financing Agreements; or
- (i) would or is likely to cause any risk which is required to be insured to become Uninsurable.

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 52.1.5 (**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, or such longer period as is appropriate taking into account the nature of the requested Authority Change, 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, or such longer period as is appropriate taking into account the nature of the requested Authority Change, after having received the Authority Notice of Change, the Contractor shall deliver either to the Authority the Estimate or a notice that the Authority may not require the relevant Authority Change. 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 which the Contractor, in respect of cost increases, shall be under a duty to mitigate and, in respect of cost reductions, which the Contractor shall be under a duty to maximise;
- (e) any loss or gain 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; 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).

In such discussions the Authority may modify the Authority Notice of Change and if the estimated increase in Capital Expenditure in respect of each change to the Works and/or the Services is expected to exceed £250,000 (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 The Contractor 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 Authority Change.

- 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 59 (*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 or determined pursuant to clause 52.1.8, then the Authority Notice of Change shall be deemed to have been withdrawn.
- 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 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, then unless the Contractor shall have no obligation to carry out the Authority Change:-
- (a) 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;
 - (c) where the Contractor has obtained financing for Capital Expenditure and/or where the Contractor has lost or will lose revenue and/or to the extent that any Estimated Change in Project Costs does not include Capital Expenditure and is a positive number, the Authority shall pay compensation to the Contractor by way of an adjustment to the Unitary Payment calculated in accordance with clause 31 (*Financial Adjustments*);

- (d) where the Contractor has gained or will gain revenue and/or to the extent that any Estimated Change in Project Costs is a negative number the Unitary Payment shall be adjusted downwards calculated in accordance with clause 31 (*Financial Adjustments*);

52.1.15 Where the Authority agrees to pay the costs for which funding is not available pursuant to this clause 52.1.

- (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 59 (*Dispute Resolution*) in the event of the Authority and the Contractor failing to agree as to its terms); and
- (b) the Authority shall make a payment to the Contractor within fifteen (15) Working Days of receipt by the Authority of invoices presented to the Authority (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 (such payment schedule and evidence to be determined in accordance with clause 59 (*Dispute Resolution*) in the event of the Authority and the Contractor failing to agree as to its terms); 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 fifteen (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 Save for the matters expressly covered by the Review Procedure 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 Payment 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 Payment 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 as soon as practicable following the Authority's acceptance. 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 specifically agrees to an increase in the Unitary Payment, there shall be no increase in the Unitary Payment 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 Payment as would place the Contractor in no better or no worse position as it would have been had the relevant Contractor Change not occurred.
- 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 Payment) shall be dealt with in accordance with clause 50

(*Change in Law*) and to the extent not dealt with shall be borne by the Authority.

52.3 Small Works Changes

52.3.1 As soon as is reasonably practicable after the Services Commencement Date and 28 days prior to the commencement of each subsequent 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. 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 19.5% (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 Any dispute between the parties relating to Small Works shall be determined in accordance with the Disputes Resolution Procedure.

52.3.4 The Authority may at any time request a Small Works Change which shall be implemented by the Contractor as soon as reasonably practicable.

52.3.5 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**).

52.3.6 Unless the Authority agrees to meet all of the expenditure incurred by the Contractor in respect of a Small Works Change and pays an amount equivalent to the cost of the Small Works Change (calculated by reference to Small Works Rates) within 20 Work Days of the completion of the Small Works, then the Authority shall pay compensation to the Contractor (comprising the Small Works Rates) by way of an adjustment to the Unitary Payment as would place the Contractor in no better or no worse position as it would have been had the relevant Small Works Change not occurred.

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 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%; or
- 53.1.4 when a Dwelling has not been available for a period exceeding the timescales set out in Annex D to Schedule 6 (**Payment and Performance Mechanism**).

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 (**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 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, 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. **INFORMATION AND CONFIDENTIALITY**

54.1 **Keep Confidential**

The parties shall keep confidential all matters relating to this Contract and the Project Documents and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any matter relating to the Contract.

54.2 Permitted Disclosure

Clause 54.1 (**Keep Confidential**) shall not apply to:-

- 54.2.1 any disclosure of information that is reasonably required by persons engaged in or connected with the performance of the Contractor's obligations under the Contract;
- 54.2.2 any matter which a party can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of clause 54.1 (**Keep Confidential**);
- 54.2.3 any disclosure to enable a determination to be made under the Disputes Resolution Procedure;
- 54.2.4 any disclosure which is required by any Legislation (including any order of a court of competent jurisdiction), any Parliamentary obligation or the rules of any stock exchange or governmental or regulatory authority having the force of law;
- 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 Senior Lenders or the Senior Lenders's 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, to that person but only to the extent reasonably necessary to enable a decision to be taken on the proposal and (for the avoidance of doubt) the Contractor will not be in breach of this clause 54 (**Information and Confidentiality**) where any Senior Lenders provides such information to any such person for such reason or for the purpose of transferring an interest under the Senior Financing Agreements to any such person;
- 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 Benchmarking or Market Testing;
- 54.2.8 any registration or recording of the Necessary 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;
- 54.2.10 any disclosure by the Authority of any document related to the Contract to which it is a party and which the Contractor (acting reasonably) has agreed with the Authority contains no Commercially Sensitive Information; and
- 54.2.11 any disclosure for the purpose of:-

- (a) the examination and certification of the Authority's or the Contractor's accounts; or
- (b) any examination pursuant to the Local Government Act 1999 or any other enactment relating to or applying to the Authority's Best Value Duty of the economy, efficiency and effectiveness with which the Authority has used its resources.

54.3 **Obligations Preserved**

Where disclosure is permitted under clause 54.2 (*Permitted Disclosure*), other than clauses 54.2.2, 54.2.3, 54.2.4, 54.2.5, 54.2.6 and 54.2.8, the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Contract.

54.4 **Information**

Save for Commercially Sensitive Information the Contractor shall provide to the Authority's Representative all information, documents, records and the like in the possession of, or available to, the Contractor (and to this end the Contractor shall use all reasonable endeavours to procure that all such items in the possession of the Contractor or any Sub-Contractor shall be available to it and the Contractor has included, or shall include, relevant terms in all contracts with the Sub-Contractor to this effect) as may be reasonably requested by the Authority's Representative for any purpose in connection with this Contract.

54.5 **Audit**

For the purposes of:-

- 54.5.1 the examination and certification of the Authority's accounts; and
- 54.5.2 the Local Government Finance Act 1982 (and any other legislation relating to the inspection, examination and auditing of the Authority's accounts); and
- 54.5.3 any examination pursuant to the Local Government Act 1999 of the economy, efficiency and effectiveness of which the Authority has performed its functions,

the District Auditor and the Audit Commission may examine such documents as he or it may reasonably require which are owned, or held by or otherwise in the control of the Contractor and any Sub-Contractor and may require the Contractor and (a) to produce such oral or written explanations as he or it considers necessary and (b) use reasonable endeavours to procure that Sub-Contractor to produce such oral or written explanations as he or it considers necessary.

54.6 **Exploitation of Information**

- 54.6.1 Neither the Authority nor the Contractor shall make use of the Contract or any information issued or provided by or on behalf of the other party in connection with the Contract otherwise than for the purpose of the Contract, except with the written consent of the other party.
- 54.6.2 Where the Contractor in carrying out its obligations under this Contract, is provided with information relating to Tenants, the Contractor shall not disclose nor make use of any such information otherwise for the purposes for which it was provided, unless the Contractor has sought and obtained the prior written

consent of that Tenant and has obtained the prior written consent of the Authority.

54.7 **Expiry**

On or before the Expiry Date, the Contractor shall ensure that copies of all documents or computer records in its possession, custody or control, which contain information relating to Tenants (and shall use reasonable endeavours to procure that any documents in the possession, custody or control of a Sub-Contractor) are delivered up to the Authority.

54.8 **Access to Government Information**

The Contractor will note and facilitate the Authority's compliance with the Publication of Information Direction (England) 1999 and the Code of Practice on Access to Government Information (1994). In the event that the Authority is required to provide information to a person as a result of a request made to it under the Direction and/or Code, the Authority shall adhere to the requirements of the Direction and/or Code (as relevant) in disclosing information relating to the Contract and the Contractor.

54.9 **Disclosure by Audit Commission**

The parties acknowledge that the Audit Commission has the right to publish details of the Contract (including Commercially Sensitive Information) in its relevant reports to Parliament.

54.10 **Custody of Financial Model**

54.10.1 Immediately after execution of this Contract, the Contractor shall deliver two (2) copies of the Financial Model to the Custodian (both on disc and in hard copy) to be held in custody in accordance with the provisions of the Custody Agreement.

54.10.2 Either party shall have the right to inspect and review the Financial Model at all reasonable times in accordance with the Custody Agreement.

54.10.3 Unless otherwise agreed between the parties, any amendments to the Financial Model shall reflect and be consistent with the provisions of this Contract.

54.10.4 If the Financial Model is amended, the Contractor shall forthwith deliver a copy of the revised Financial Model to the Authority, and two (2) copies to the Custodian, in the same form as the original form (or such other form as may be agreed by the parties from time to time).

54.10.5 The parties shall instruct the Custodian to keep a copy of all versions of the Financial Model on disc and in hard copy.

55. **INDEMNITIES AND RESPONSIBILITY**

55.1 **Contractor's Indemnity**

Without prejudice to clause 27.5.3 and, in particular, the restrictions in that clause on the obligation of the Contractor to indemnify the Authority pursuant to that clause, the Contractor shall, subject to clause 55.2 (**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:-

- 55.1.1 death or personal injury;
- 55.1.2 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)";
- 55.1.3 breach of statutory duty; and
- 55.1.4 actions, claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis), but only to the extent, in relation to each, that it arises as a result of a third party claim made against the Authority

in respect of each of clauses 55.1.1 to 55.1.4 inclusive:

- (a) prior to the Dwellings or Properties achieving the Availability Standards Council (Full) or Availability Standards Leasehold (Full), which may arise out of the wilful default, negligence of, or breach by or non-performance by the Contractor of its obligations under this Contract; or
- (b) thereafter, which may arise out of or in consequence of the design, construction, operation or maintenance of the Works or the wilful default or negligence of the Contractor or Sub-Contractor or from the non-performance by the Contractor of its obligations under this Contract.

55.2 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:-

- 55.2.1 any matter arising as a direct result of the Contractor acting on the instruction of the Authority; or
- 55.2.2 any injury, loss, damage, cost and expense caused by the negligence or wilful misconduct of the Authority or an Authority Related Party, its employees, agents or contractors or by the breach by the Authority of its obligations under this Contract; or
- 55.2.3 prior to that date which is 12 months after the Services Commencement Date the Authority having failed, or failed adequately, prior to the Services Commencement Date, to provide any works and/or services 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);
- 55.2.4 the lack of inadequacy of sound insulation, a Channel Tunnel Works Event or subsidence or changes in the water table;
- 55.2.5 (except in respect of claims in relation to death or personal injury caused by the negligence of the Contractor) any claims, in respect of risks against which the Contractor is obliged to insure under this Contract, in excess of the amounts actually recovered or which ought (if the Contractor had complied with its obligations under this Contract for such insurance) to have been recovered under such insurance and which claims the Contractor shall pursue but disregarding any excess or deductible for which the Contractor shall

remain responsible unless the Authority has caused the risks insured against to arise; or

55.2.6 (except in relation to death or personal injury caused by the negligence of the Contractor) any claims in respect of risks against which the Contractor is not obliged to insure against under this Contract in excess of the amount the Contractor is entitled to recover from the relevant Main Sub-Contractor(s) under the relevant Sub-Contract in respect of the claim made by the Authority against the Contractor, provided that no Sub-Contract shall contain a cap which solely relates to the Main Sub-Contractor's liability to the Contractor in respect of the Contractor's liability to the Authority under this Clause 55.

55.3 Authority's Indemnity

The Authority shall, subject to clause 55.4 (**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:-

55.3.1 death or personal injury;

55.3.2 loss of or damage to property including property belonging to the Contractor for which it is responsible; and

55.3.3 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

55.3.4 breach of statutory duty

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) in respect of the period ending on the date which is 12 months after the Services Commencement Date, the Authority having failed, or failed adequately, prior to the Services Commencement Date, to provide works and/or services the same as or similar to the Works and the Services (including without limitation all services which may be necessary to ensure that all gas appliances have 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); or

(c) the lack of or inadequacy of sound insulation.

55.4 Authority not Responsible

Notwithstanding any other provision of this Contract the Authority shall not be responsible or be obliged to indemnify the Contractor for:-

55.4.1 any of clauses 55.3.1 to 55.3.4 (**Authority's Indemnity**) arising as a direct result of the Authority acting on the express instructions of the Contractor;

55.4.2 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

55.4.3 any claims under clause 55.3.2 or 55.3.3 (**Authority's Indemnity**) in excess of the Unitary Payment payable in each Contract Year;

55.4.4 subject to clause 55.4.3 (**Authority Not Responsible**) any claims, in respect of risks against which the Contractor is obliged under this Contract to procure insurance with the Authority as the Co-insured, in excess of the amounts actually recovered or which ought to have been recovered (if the Authority had complied with its obligations under such insurance) (and which claims the Authority shall pursue) under such insurance (except claims in relation to death or personal injury caused by the negligence of the Authority) but disregarding any excess or deductible for which the Authority shall remain responsible if the Authority has caused the risks insured against to arise.

55.5 **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 omission 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.

55.6 **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.

55.7 **Conduct of Claims**

The Indemnifying Party may at its own expense and with the assistance and co-operation of the Indemnified Party have the conduct of the claim including its settlement and the Indemnified Party shall not, unless the Indemnifying Party has failed to resolve the claim within a reasonable period, take any action or settle or prosecute the claim.

55.8 **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.

55.9 **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.

55.10 **Exclusions**

55.10.1 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 loss of profits, loss of use, loss of production, loss of business or loss of business opportunity or is a claim for consequential loss or for indirect loss of any nature ("**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*), 27.5 (*Repair and Condition of the Accommodation*), 27.8 (*Reduction of Dwellings*), 28.3 (*Indemnity*), 17.6 (*Defects*), 41 (*Force Majeure Compensation*), 42 (*Compensation on Contractor Default*), 43 (*Compensation on Authority Default*), 44 (*Compensation on Termination for Corrupt Gifts and Fraud or Breach of the Refinancing Provisions*), 45 (*Method of Payment*), 50 (*Change in Law*), 52 (*Variations*), 55 (*Indemnities and Responsibility*), 77 (*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 as originally executed (or as amended in accordance with and subject to clause 7.1 (*Ancillary Documents*)) which are not, in themselves, Indirect Losses shall not be Indirect Losses for the purposes of this Contract.

55.10.2 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 sub-clause 55.10.2 shall apply only to the extent permitted by law.

55.11 Sole Remedy

55.11.1 Notwithstanding the rights of the Authority:

- (a) to claim under any indemnity;
- (b) to step-in;
- (c) to terminate this Contract; and
- (d) 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*).

55.11.2 Nothing in clause 55.11 (*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.

55.11.3 Notwithstanding any other provision of this Contract neither party shall be entitled to recover compensation or make 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.

56. INSURANCE

56.1 Requirement to Maintain

Subject to clause 58.1, 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).

56.2 **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.

56.3 **Nature of Insurances**

The Required Insurances shall:-

- 56.3.1 (subject to clause 56.4 (**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;
- 56.3.2 contain a clause waiving the insurers' subrogation rights against each co-insured, its employees and agents;
- 56.3.3 provide for non-vitiating protection in respect of any claim made by the each co-insured as co-insured;
- 56.3.4 provide for 30 days prior written notice of their cancellation, non-renewal or amendment to be given to each co-insured; and
- 56.3.5 provide for payment of any proceeds to be made by insurers in accordance with clause 57 (**Reinstatement**).

56.4 **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.

56.5 **Evidence of Policies**

The Contractor shall provide to the Authority:-

- 56.5.1 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 56.1 (**Requirement to maintain**) and the Authority shall be entitled to inspect them during ordinary business hours; and
- 56.5.2 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 56 (**Insurance**) and Schedule 14 (**Required Insurances**).

56.6 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.

56.7 Breach

If the Contractor is in breach of clause 56.1 (**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.

56.8 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 insurance policies 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.

56.9 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.

56.10 Premiums

56.10.1 The responsibility for the cost of the insurance premiums for the Relevant Insurances shall be as set out in this clause 56.10.

56.10.2 To the extent that the aggregate actual insurance premium payable by the Contractor in any Contract Year for the Relevant Insurances differs from the Modelled Insurance Costs as set out in Schedule 24 as the result of any cause other than the claims history of the Contractor then any costs or savings as the case may be for the Contract Year in question shall be allocated between the Contractor and the Authority in accordance with the following table so that to the extent that a cost or saving falls within a band in the first column of such table it shall be borne, enjoyed or shared between the parties in the percentages set out in the second and third column of such table:-

Band of Actual Annual Cost of Insurance as Percentage of Modelled Insurance Cost or Tendered Insurance Cost as applicable	Percentage of Annual Premium Change within relevant band allocated to the Contractor	Percentage of Annual Premium Change within relevant band allocated to the Authority
greater than 200%	0%	100%
150% to less than 200%	5%	95%
120% to less than 150%	10%	90%
115% to less than 120%	15%	85%

110% to less than 115%	35%	65%
105% to less than 110%	60%	40%
103% to less than 105%	75%	25%
97% to less than 103%	100%	0%
95% to less than 97%	75%	25%
90% to less than 95%	60%	40%
85% to less than 90%	35%	65%
80% to less than 85%	15%	85%
50% to less than 80%	10%	90%
less than 50%	5%	95%

For the avoidance of doubt, the total actual insurance premium paid in any Contract Year shall exclude any amounts payable by the Contractor by way of insurance premium tax and by way of brokers fees and leasehold insurance premiums.

56.10.3 Following the application of the sharing mechanism set out in clause 56.10.2 above, to the extent that:-

- (a) there is an increase in the annual insurance premium which is due from the Authority, such amount shall be paid by the Authority 5 Working Days prior to the date when such incremented insurance premium is due to be paid by the Contractor to the relevant insurers; and
- (b) there is a decrease in the annual insurance premium the Authority's share of such decrease shall be paid to the Authority by the Contractor when the reduced insurance premium is due or when any rebate in respect of over payment of premium is due.

56.10.4 On each Insurances Review Date if following the application of the sharing mechanism set out in Clause 56.10.2 and 56.10.3 there is an increase in the insurance premium

- (a) the parties shall meet to discuss the scope of the insurances with a view to agreeing a reduction in their scope so as to minimise premiums cost changes; and
- (b) the Relevant Insurances (the scope of which may have been varied under Clause 56.10.4) shall be re-tendered.

56.10.5 If following the application of the sharing mechanism set out in Clause 56.10.2 there is an increase in the insurance premium the parties may elect to meet to discuss the scope of insurances, with a view to agreeing a reduction in their scope so as to minimise the premium cost changes.

56.10.6 For the purposes of determining whether or not there has been an increase or decrease in premiums due to claims history, the Contractor shall, no later than

20 Working Days before the renewal of any Relevant Insurance policy and at its own cost, produce to the Authority a report from its insurance broker stating in the insurance broker's opinion the extent to which any Relevant Insurance policy premium has increased or decreased as a result of claims history of the Contractor. If the Authority disagrees with the opinion set out in the report it may, within 15 Working Days after receipt of the report, refer the matter to be determined under clause 59 (*Dispute Resolution*).

56.11 Authority Approval

The Required Insurances shall be effected with insurers approved by the Authority, such approval not to be unreasonably withheld or delayed.

56.12 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.

57. REINSTATEMENT

57.1 Application of Proceeds

57.1.1 Subject to the Direct Agreement all insurance proceeds received under any policy referred to in paragraphs 1 (**Construction All Risks**) and 3 (**Material Damage All Risks**) of Part I of Schedule 14 (*Required Insurances*) (the "**Physical Damage Policies**") in respect of loss of, destruction of or damaged to the Properties 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.

57.1.2 Subject to the Direct Agreement, all insurance proceeds received under any policy referred to in paragraph 3 (**Material Damage All Risks**) 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.

57.2 Joint Account

All insurance proceeds (excluding any insurance proceeds to be paid to the Contractor in respect of loss of Unitary Payment under clause 57.1.2) paid under any Physical Damage Policy in respect of loss of, destruction of or damage to the Properties in respect of a single event (or a series of related events) in excess of £50,000 (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**").

57.3 Obligations

Where a claim is made or proceeds of insurance are received or are receivable under any Physical Damage Policy in respect of loss of, destruction of or damage to the Properties in respect of a single event (or a series of related events) (the "**Relevant Incident**") in excess of £50,000 (indexed).

57.3.1 the Contractor shall deliver as soon as practicable and in any event within 28 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 57.4 (**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;

57.3.2 provided that the Authority (acting reasonably) is satisfied that the Reinstatement Plan will enable the Contractor to comply with clause 57.4 (**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;
- (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 57.2 (**Joint Account**) as required to enable it to make payments in accordance with the terms of the contractual arrangements referred to in clause 57.3.2(b) (**Obligations**), and to meet any other reasonable costs and expenses of the Contractor for the sole purposes of financing the Reinstatement Works. 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) notwithstanding any other provision of this Contract 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 (subject to any extension of time for Force Majeure Events and/or Compensation Events and/or Relief Events and/or Excusing Events or for any other reason under this Contract occurring or having effect during the currency of the Reinstatement Works) carried out and completed in accordance with the contractual arrangements referred to in clause 57.3.2(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; and

- (f) after the Reinstatement Plan has been implemented to the reasonable satisfaction of the Authority and in accordance with clause 57.4 (**Works Carried Out**) the Authority shall permit withdrawal by the Contractor of any Relevant Proceeds then held in the account referred to in clause 57.2 (**Joint Account**) that have not been paid under clause 57.3.2(c) (**Obligations**) in respect of the Relevant Incident, together with any interest accrued.

57.4 **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.

57.5 **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 27.8 (**Reduction of Dwellings**) shall apply and the benefit of the insurance proceeds shall be paid to the Authority.

58. **UNINSURABLE RISK**

58.1 **Obligation**

The Contractor shall not be obliged to take out insurance in respect of a risk which is Uninsurable or procure terms of insurance which are not obtainable in the European insurance market at reasonable commercial rates.

58.2 **Risks Become Uninsurable**

If either a:-

58.2.1 Specific Risk;

58.2.2 risk covered by Required Insurances;

58.2.3 risk under an insurance required by Legislation

becomes Uninsurable then:-

58.2.4 the Contractor shall notify the Authority within 5 Working Days of the risk becoming Uninsurable; and

58.2.5 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 a risk referred to in clauses 58.2.1 to 58.2.3, the Contractor has demonstrated to the Authority that the Contractor and other prudent Contractors operating the same or substantially similar business in the United Kingdom would, if faced with the same Uninsurable risk in similar circumstances, cease to insure such risk,

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).

58.3 If the requirements of clause 58.2 (***Risks Become Uninsurable***) are satisfied, but the parties cannot agree as to how to manage the risk, then the Contract shall continue but with the Unitary Payment being adjusted to deduct an amount equal to the premium that was payable for insurance for such risk immediately prior to it becoming Uninsurable provided that such premium has not been paid by the Contractor or has been paid by, but has been refunded to, the Contractor. On each occurrence of the risk (but only for as long as such risk remains Uninsurable) the Authority shall (at the Authority's option) either pay to the Contractor an amount equal to:-

58.3.1 the insurance proceeds that would have been payable had the relevant insurance continued to be available and the Contract will continue; or

58.3.2 where the occurrence of the Uninsurable risk or risks has had a detrimental effect on more than 25% of the Dwellings and/or the Properties as a consequence of the occurrence of one Uninsurable Risk or otherwise 66% of the Dwellings and/or the Properties, an amount equal to the amount set out in clause 41 (***Force Majeure Compensation***) and the Contract will terminate; or

58.3.3 withdraw the Dwelling and/or Property from this Contract and in which case clause 27.8 (***Reduction of Dwellings***) shall apply save that the quantum of compensation due to the Contractor shall be collected by reference to clause 43 (***Compensation on Authority Default***).

59. DISPUTE RESOLUTION

59.1 Disputes Arising

Any dispute arising in relation to any aspect of the Contract shall be resolved in accordance with this clause.

59.2 Consultation

If a dispute arises in relation to any aspect of this Contract, the Contractor and the Authority may first consult in good faith in an attempt to come to an agreement in relation to the disputed matter provided that this clause 59.2 shall not apply in circumstances where a Sub-Contractor has referred a dispute to adjudication which is substantially the same as or in connection with issues in dispute between the parties under this Contract, in which case the Contractor shall, subject to clause 59.3 (***Failure to Resolve Dispute***), be entitled to refer the dispute with the Authority to adjudication in accordance with clause 59.4 (***Selection of Adjudicator***).

59.3 Failure to Resolve Dispute

If the Contractor and the Authority fail to resolve the dispute through such consultation within 5 Working Days following the commencement of such consultation, either party may give the other party written notice of its intention to refer the matter to adjudication (a "***Notice of Adjudication***") and the Adjudicator shall be selected in accordance with clause 59.4 (***Selection of Adjudicator***).

59.4 Selection of Adjudicator

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.

59.5 **Submissions to Adjudicator**

59.5.1 The dispute shall be deemed to be referred to the Adjudicator on his acceptance of the appointment by written notice to the Parties (Notice of Acceptance). The referring party shall provide to the Adjudicator and the responding party within 7 days of the Notice of Adjudication a full statement of its case (the Referral Notice). Within 14 days of such submission the responding party shall provide the Adjudicator and the referring party with a full response to the referring party's Referral Notice. The Adjudicator shall consider whether a hearing is necessary in order to resolve the dispute.

59.5.2 The TeCSA rules (as amended from time to time, including any rules issued by any successor bodies, shall apply to any adjudication, as expressly amended by the provisions in this clause).

59.6 **Adjudicator's Decision**

In any event, the Adjudicator shall provide to both parties his written decision on the dispute, within 28 days of referral of the dispute to him (or such longer period as the parties may agree), or within 42 days from the date of reference if the Adjudicator requests such an extension and the party which referred the dispute agrees). The Adjudicator shall give reasons for his decision. In relation to all matters other than Fast Track Matters, unless and until the dispute is finally determined by a court following referral to a court in accordance with clause 59.11 (**Reference to Litigation**), or by a written agreement of the parties, 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.

59.7 **Adjudicator's Costs**

The Adjudicator's costs of any reference and the costs of the parties shall be borne as the Adjudicator shall specify or, in default, equally by the parties. In the first instance, each party shall bear its own costs arising out of the reference, including legal costs and the costs and expenses of any witnesses.

59.8 **Adjudicator as Expert**

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.

59.9 **Adjudicator's Duty and Powers**

59.9.1 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.

59.9.2 The Adjudicator shall have the power to award interest on sums awarded.

59.10 Confidential Information

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's appointment shall provide that the Adjudicator shall not, save as permitted by this clause 59 (*Dispute Resolution*), 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.

59.11 Reference to Litigation

If either party is dissatisfied with or otherwise wishes to challenge the Adjudicator's decision made in accordance with clause 59.6 (*Adjudicator's Decision*), then, other than in relation to Fast Track Matters, either party may (within 28 days of receipt of the Adjudicator's decision, 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 shall have exclusive jurisdiction in relation to all matters arising in respect of this Contract.

59.12 Related Disputes

In the event that any dispute shall arise between a party to this Contract and a third party (or parties) under a separate contract (or contracts) which provides for the adjudication of disputes and such dispute(s) is (are) substantially the same as or in connection with issues in dispute between the parties under this Contract which has been or will be submitted to adjudication then the Contractor shall be entitled to require that such third party (or parties) be joined as a party (or parties) to the dispute under this Contract which has been or will be submitted to adjudication and the parties to this Contract shall co-operate on such joinder.

60. 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.

61. INTELLECTUAL PROPERTY

61.1 Use of Project Data

The Contractor shall, on request, make available to the Authority free of charge (except for reasonable photocopying charges which shall be paid by the Authority) and hereby irrevocably licences the Authority 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:-

- 61.1.1 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
- 61.1.2 following 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**"), and in this clause "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.

61.2 **Grant of Rights to Authority**

The Contractor:-

61.2.1 hereby grants to the Authority, free of charge, an irrevocable, non-exclusive and transferable (but only to any assignee or transferee of any rights or benefits under this Contract or upon or at any time following termination of this Contract) licence (carrying the rights to grant sub-licences) to use all the Intellectual Properties Rights which are or become vested in the Contractor and which are capable of sub-licence; and

61.2.2 shall, where any Intellectual Properties Rights are or become vested in a third party, use its reasonable endeavours to procure the grant of a like licence to that referred to in clause 61.2.1 (**Grant of Rights to Authority**),

in both cases, solely for the Approved Purposes.

61.3 **Retention of Rights**

The Contractor shall use all reasonable endeavours to ensure that any Intellectual Properties Rights created, brought into existence or acquired during the term of this Contract vest, and remain vested throughout the term of this Contract, in the Contractor and shall use all reasonable endeavours to enter into appropriate agreements with any Sub-Contractor that may create or bring into existence, or from which it may acquire, any Intellectual Properties Rights.

61.4 **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 excluding systems owned, managed or created by the Authority), the Contractor shall:-

61.4.1 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 to enable the Authority or its nominee to access and otherwise use (subject to the payment by the Authority of the relevant fee, if any) the Project Data for the Approved Purposes. As an alternative, 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

61.4.2 enter into the NCC's then current multi-licence escrow deposit agreement or standard single licence escrow deposit agreement as appropriate in each case.

61.5 **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.

61.6 **Claims Against Authority**

Where a claim or proceeding is made or brought against the Authority which arises out of the infringement of any rights in or to any Intellectual Property Rights (other than in any Disclosed Data) or because the use of any materials, plant, machinery or equipment in connection with the Works 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 misuse of any Intellectual Property Rights, or the use by the Authority or an Authority Related Party of any Intellectual Property Rights other than in accordance with the terms of the licence under which they were granted, or the use of any Intellectual Property Rights granted to the Contractor by or on behalf of the Authority, the Contractor shall indemnify the Authority at all times from and against all such claims and proceedings and the provisions of clause 55.7 (**Conduct of Claims**) shall apply.

61.7 **Use of the Financial Model**

Subject to clause 54 (**Information and Confidentiality**) the Contractor hereby grants to the Authority a perpetual, transferable (but only to any permitted assignee 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 by a court of competent jurisdiction or regulatory body

62. **ASSIGNMENT AND SUB-CONTRACTING**

62.1 **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) other than in respect of the whole of this Contract to any person other than any person (being a single entity) having the legal capacity, power and authority to become a party to and perform the obligations of the Authority under this Contract being:-

- 62.1.1 a Minister of the Crown pursuant to an Order under the Ministers of the Crown Act 1975;
- 62.1.2 any Local Authority which has sufficient standing or financial resources to perform the obligations of the Authority under this Contract; or
- 62.1.3 any person 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 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.

62.2 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.

62.3 Restriction on the Contractor

Subject to clause 27.2 (*Management Agreements*) and clause 62.2 (*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:-

62.3.1 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

62.3.2 subcontract the provision of the Works or Services in whole or in part;

except with the prior written consent of the Authority.

62.4 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.

63. CORPORATE STRUCTURES

63.1 Change of Control

Subject to clauses 63.4.1 and 63.4.2 (*Change of Ownership*), save as permitted by the provisions of the Direct Agreement, prior to the expiry of the Works Period, no Change of Control in any or all of the shares of the Contractor or Holdco shall be permitted without the prior written consent of the Authority.

63.2 Obligation to Inform

Without prejudice to clause 63.1 (*Change of Control*) the Contractor shall inform the Authority as soon as reasonably practicable and in any event within 20 Working Days of any Change of Control in the Contractor.

63.3 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 2 of Schedule 11 (*Warranted Data*).

63.4 **Change of Ownership**

63.4.1 The Contractor shall not register any person as a member as a result of a Restricted Share Transfer without the prior written consent of the Authority.

63.4.2 For the purposes of clause 63.1 (**Change of Control**) and clause 63.4.1 (**Change of Ownership**):-

- (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 Affiliate; 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 Facility Agreement) and the Direct Agreement,

shall be disregarded.

64. **AGENCY AND PARTNERSHIP**

64.1 **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.

64.2 **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.

65. **ENTIRE AGREEMENT**

65.1 **Supersedes Communications**

Except for the letter between the parties dated 12 May 2003 setting out a Right to Buy procedure in relation to clause 27.8 (**Reduction of Dwellings**), 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, including the version of this Contract executed on 31 March 2003.

65.2 **No Reliance**

Each of the parties acknowledge that:-

65.2.1 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

65.2.2 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.

66. NOTICES

66.1 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 or by hand, leaving the same at:-

If to the Contractor 4-6 Colebrooke Row, Islington, London, N1
FAO Service Director and copied to The Company Secretary at United House Limited, United House, Goldsel, Swanley, Kent, BR8 8EX

If to the Authority Housing Department, Islington Council, Highbury House, 5 Highbury Crescent, London, N5 1RN
Fax No: 020 7527 4198

66.2 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 or by hand, leaving the same at:-

If to the Contractor's Representative The Company Secretary at United House Limited, United House, Goldsel, Swanley, Kent, BR8 8EX

If to the Authority's Representative Housing Department, Islington Council, Highbury House, 5 Highbury Crescent, London, N5 1RN
Fax No: 020 7527 4198

(copied in each case to the Authority and the Contractor).

66.3 Change of Address

Either party to this Contract may change its nominated address or facsimile number 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.

66.4 **Notices Effective**

Notices given by post shall be effective upon the earlier of (i) actual receipt, and (ii) five (5) Working Days after mailing. Notices delivered by hand shall be effective upon delivery. 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:-

66.4.1 within two (2) hours after sending, if sent on a Working Day between the hours of 9am and 4pm; or

66.4.2 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.

67. **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.

68. **WAIVER**

68.1 **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.

68.2 **Specific Waiver**

No waiver under clause 68 (**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.

69. **PUBLIC RELATIONS AND PUBLICITY**

69.1 **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.

69.2 **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.

70. **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.

71. **CONTRACTOR'S RECORDS**

71.1 **Record of Costs**

The Contractor shall at all times maintain a full record of particulars of the costs of performing the Services, including those relating to the design, construction, maintenance, operation and finance of the Project.

71.2 **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:-

71.2.1 administrative overheads;

71.2.2 payments made to Sub-Contractors;

71.2.3 capital and revenue expenditure;

71.2.4 such other items as the Authority may reasonably require to conduct cost audits for verification of cost expenditure or estimated expenditure, for the purpose of this Contract

and the Contractor shall have (and procure that the Sub-Contractors shall have) the books of account evidencing the items listed in clauses 71.2.1 to 71.2.4 (**Books of Account**) available for inspection by the Authority (and any expert) upon reasonable notice, and shall present a report of these to the Authority as and when requested.

71.3 **Records**

The Contractor shall maintain or procure that the following are maintained:-

71.3.1 a record of all incidents relating to health, safety and security which occur during the term of the Contract; and

71.3.2 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 71.3.1 and 71.3.2 (**Records**) available for inspection by the Authority upon reasonable notice, and shall present a report of them to the Authority as and when requested.

71.4 **Auditor**

The Contractor shall permit records referred to in this clause to be examined and copied by the Authority, and by the Audit Commission.

71.5 **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.

71.6 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.

71.7 Confidentiality

All information referred to in this clause is subject to the obligations set out in clause 54 (*Information and Confidentiality*).

72. DATA PROTECTION

72.1 General

72.1.1 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.

72.1.2 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.

72.2 The Contractor shall not disclose Personal Data to any third parties other than:-

72.2.1 to employees and Sub-Contractors to whom such disclosure is reasonably necessary in order for the Contractor to carry out the Services; or

72.2.2 to the extent required under a court order,

provided that disclosure under clause 72.2.1 (*Data Protection*) is made subject to written terms substantially the same as, and no less stringent than, the terms contained in this clause 72 (*Data Protection*) and that the Contractor shall give notice in writing to the Authority of any disclosure of Personal Data it or a Sub-Contractor is required to make under clause 72.2.2 (*Data Protection*) immediately it is aware of such a requirement.

72.3 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.

72.4 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 71.3 (*Records*). Within 30 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.

72.5 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 72 (*Data Protection*) by the Contractor.

73. **CORRUPT GIFTS AND PAYMENTS OF COMMISSION**

73.1 **Corrupt Gifts and Fraud**

The Contractor warrants that in entering into this Contract it has not committed any Prohibited Act.

73.2 **Termination for Corrupt Gifts and Fraud**

73.2.1 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 73.2.2 to 73.2.7 (*Termination for Corrupt Gifts and Fraud*).

73.2.2 If a Prohibited Act is committed by the Contractor or by an employee not acting independently of the Contractor and with the knowledge of the management of the Contractor, then the Authority may terminate the Contract by giving notice to the Contractor.

73.2.3 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 30 days of receipt of such notice the Contractor terminates the employee's employment or the employee's involvement in the Works and/or Services and (if necessary) procures the performance of such part of the Works and/or Services by another person.

73.2.4 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 and with the knowledge of the management of the Contractor, then the Authority may give notice to the Contractor of termination and the Contract will terminate, unless within 30 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.

73.2.5 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 30 days of receipt of such notice the Sub-Contractor terminates the employee's employment or the employee's involvement in the provisions of the Works and/or Services and (if necessary) procures the performance of such part of the Works and/or Services by another person.

73.2.6 If the Prohibited Act is committed by any other person under the control of the Contractor or Sub-Contractor with the knowledge of the management of the Contractor, then the Authority may give notice to the Contractor of termination and the Contract will terminate unless within 30 days of receipt of such notice, the Contractor procures the termination of such person's employment or such person's involvement in the provision of the Works and/or the Services and 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.

73.2.7 Any notice of termination under this clause 73 (***Corrupt Gifts and Payment of Commission***) shall specify:-

- (a) the nature of the Prohibited Act and detailed evidence of the commission of the Prohibited Act;
- (b) the identity of the party who has committed the Prohibited Act;
- (c) the date on which the relevant contract will terminate, in accordance with the applicable provision of this clause 73 (***Corrupt Gifts and Payment of Commission***); and
- (d) the Authority's chosen option under clause 73.2 (***Termination for Corrupt Gifts and Fraud***).

73.2.8 In exercising its rights pursuant to this clause 73 the Authority shall act in good faith and in a fair and reasonable manner having regard to the nature and gravity of the Prohibited Act and the person undertaking it.

73.3 **Compensation on Termination for Corrupt Gifts and Fraud**

On termination of the Contract in accordance with clause 73.2 (***Termination for Corrupt Gifts and Fraud***), then the Authority shall pay the Contractor compensation in accordance with the provisions of clause 44 (***Compensation on Termination for Corrupt Gifts and Fraud or Breach of the Refinancing Provisions***) in accordance with clause 45 (***Method of Payment***) and 47 (***Gross-Up***).

74. **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.

75. **CONTINUING OBLIGATIONS**

Save as otherwise expressly provided in this Contract:-

75.1 termination of this Contract shall be without prejudice to any accrued rights and obligations under this Contract as at the Termination Date; and

75.2 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 (***TUPE***), 29 (***Employees***), 30 (***Payment Provisions***), 34 (***Termination of this Contract***), 36 (***Force Majeure***), 37 (***Consequences of Termination***), 41 (***Force Majeure Compensation***), 42 (***Compensation on Contractor Default***), 43 (***Compensation on Authority Default***), 44 (***Compensation on Termination for Corrupt Gifts and Fraud or Breach of the Refinancing Provisions***), 45 (***Method of Payment***), 47 (***Gross Up***), 48 (***Set-Off on Termination and Exclusivity***), 54 (***Information and Confidentiality***), 55 (***Indemnities and Responsibility***), 56 (***Insurance***), 59 (***Dispute Resolution***), 61 (***Intellectual Property***), 66 (***Notices***), 71

(*Contractor's Records*), 72 (*Data Protection*), 73 (*Corrupt Gifts and Payments of Commission*), 74 (*Interest on Late Payment*), 77 (*Relevant-Discharge Terms*) 80 (*Governing Law and Jurisdiction*) and this clause 75 (*Continuing Obligations*) 77 (*Relevant-Discharge Terms*) 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.

76. **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.

77. **LOCAL GOVERNMENT (CONTRACTS) ACT 1997**

77.1 **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.

77.2 **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.

77.3 **Relevant Discharge Terms**

The relevant discharge terms within the meaning of Section 6 of the Local Government (Contracts) Act 1977 are set out in this clause 77 and Schedule 12 (*Relevant Discharge Terms*).

78. **CONTRACTUAL AND OTHER REMEDIES**

79. **COUNTERPARTS**

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

80. **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 59 (*Dispute Resolution*), the English Courts shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Contract.

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:-)

..... Authorised Officer

SIGNED as a Deed)
by **PARTNERS FOR IMPROVEMENT IN**)
ISLINGTON LIMITED)
acting by its duly authorised officers:-)

..... Director

..... Director/Secretary