

# Public Document Pack

## Housing Select Committee Supplementary Agenda

Tuesday, 26 January 2016  
**7.30 pm**, Committee Room 1  
Civic Suite  
Lewisham Town Hall  
London SE6 4RU

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This meeting is an open meeting and all items on the agenda may be audio recorded and/or filmed except for item numbered 1 on the Agenda. For legal reasons, part of this item will be considered in private with the press and public excluded.

### Part 1

Item	Pages
4. Lewisham Homes Management Agreement Update Report to follow	1 - 48

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<b>Housing Select Committee</b>			
<b>Title</b>	Lewisham Homes Management Agreement		
<b>Key decision</b>	No	<b>Item no</b>	4
<b>Wards</b>	All		
<b>Contributors</b>	Head of Strategic Housing, Head of Law		
<b>Class</b>	Part 1	26 January 2016	

### **Reasons for lateness and urgency**

This report is late due to need to provide Housing Select Committee with the latest information regarding officer discussions with Lewisham Homes regarding the Management Agreement and potential services to be transferred. It is urgent as there is no other occasion for Committee to consider the report prior to a decision by Mayor and Cabinet in March 2016.

### **1 Summary**

- 1.1 On 14 January 2015 Mayor and Cabinet noted the timetable and scope of a project to extend the Lewisham Homes' Management Agreement after its expiry in June 2017. This project was to include a review of the potential ways in which Lewisham Homes might further evolve to help meet the Council's housing priorities to reflect the continued financial pressure on the Council and the wide ranging housing changes being brought forward in legislation such as the Housing and Planning Bill.
- 1.2 Lewisham Homes is a strongly performing ALMO. It is now drawing to the close of the £95m project to deliver the Decent Homes standard across 13,000 homes. This has helped to increase resident satisfaction with repairs from 59 per cent in 2007 to 72 per cent in 2015. Over the nine years of its existence, Lewisham Homes has increased satisfaction from 58 per cent to 71 per cent whilst its management fee has reduced from £22.5m to £18.7m.
- 1.3 Furthermore, in the past three years Lewisham Homes has successfully increased the range and scope of services it provides on behalf of the Council. It is leading the development of new Council homes on behalf of the Council, with nine homes complete, 75 on site and a further 102 homes approved by Mayor and Cabinet to start on site imminently. Since January 2015 it has led a programme of housing acquisition as one of a number of approaches to tackle the homelessness crisis affecting London, and in the past year has purchased 23 homes at a cost that means the Council can both offer better accommodation and save money, and has a further 25 homes in the purchase process.

- 1.4 Since the wider review of the management agreement of last year, two service transfers have already taken place to reflect an evolving approach whereby operational services are considered for transfer to Lewisham Homes, when doing so might enable those services to be both more responsive to tenants' needs, and to be delivered more efficiently. The first of these transfers has completed, and now sees all grounds maintenance services on Lewisham Homes estates provided directly by Lewisham Homes staff. The second will complete in April of this year, and will see sheltered housing transferred and an enhanced service offered to residents.
- 1.5 A new Management Agreement is therefore an opportunity for the Council to formally record the direction that has already emerged over the past three years. This is an opportunity to review the purpose and function of the organisation, and the roles that it can most usefully play in supporting the Council to deliver its housing aims in the light of legislative, financial and strategic change. At the same time, by extending the duration of the existing agreement, this is an opportunity to put Lewisham Homes onto a sound strategic and financial footing, enabling it to plan for the medium term, and to recruit and retain the staffing capacity appropriate to the purpose that the Council has set for it over that period.

## **2 Policy Context**

- 2.1 The proposed changes to Lewisham Homes' Management Agreement will be designed to help the Council deliver on a number of its key policy priorities. It supports the achievements of the Sustainable Community Strategy policy objectives:
- Ambitious and achieving: where people are inspired and supported to fulfil their potential.
  - Empowered and responsible: where people can be actively involved in their local area and contribute to tolerant, caring and supportive local communities.
  - Healthy, active and enjoyable: where people can actively participate in maintaining and improving their health and well-being, supported by high quality health and care services, leisure, culture and recreational activities.
- 2.2 It will also help meet the Council's Housing Strategy in which the Council commits to the following key objectives:
- Helping residents at times of severe and urgent housing need
  - Building the homes our residents need
- 2.3 Additionally, Housing Select Committee has received a number of reports over the past six months about the unprecedented scale of change in national housing policy contained both in forthcoming legalisation, principally the Housing and Planning Bill, and in changes to public spending. The impact of these changes is covered in more detail in section five.

### **3 Recommendation**

3.1 Housing Select Committee is recommended to:

- Note the terms and scope for the proposed extension of the Management Agreement between the Council and Lewisham Homes
- Provide comments which can help to shape the final drafting and also inform the final decision on the matter scheduled for consideration at M&C on 23rd March.

### **4 Background**

4.1 Previous government policy required Local Authorities to undertake a stock options appraisal to develop a strategy by which all their stock could meet the Decent Homes Standard. In order to bring in the investment needed to achieve this objective, the government provided three main ways to support local authorities who need additional funding to make their homes decent. These were:

- Setting up an Arms-Length Management Organisation (ALMO)
- Entering into a Private Finance Initiative (PFI) contract
- Transferring properties to a Registered Provider of social housing

4.2 The creation of Lewisham Homes as an ALMO was a major strand of Lewisham's Decent Homes strategy which was agreed by full Council on 29 June 2005 and approved by the Office of the Deputy Prime Minister (ODPM) in November 2005. The strategy also made use of the government's Private Finance Initiative and stock transfers to Housing Associations.

4.3 Lewisham Homes was established in June 2007 and currently manages 13,000 social housing tenancies and 5,000 leasehold properties within the borough, on behalf of the Council. The details of the arrangements between the Council and the ALMO for the delivery of the Housing Management service are set out in a Management Agreement that was established at the inception of the ALMO. This initial management agreement was for ten years and is due to expire in June 2017.

4.4 Lewisham Homes is a strongly performing organisation which has improved housing management services considerably in the short time that it has been charged with managing the Council's housing stock. This year it will manage more capital expenditure, and will continue to make more Council homes "decent".

4.5 By the end of March 2017, Lewisham Homes will have fully completed the Decent Homes works and the Council will be able to make greater use of its programme management and service delivery expertise in other service areas.

- 4.6 In recent years various amendments have been made to the management agreement to allow Lewisham Homes to take on additional services on behalf of the Council, including management of the Council housing IT systems, the delivery of the new build housing programme, grounds maintenance on estates, and potentially to provide an enhanced Sheltered Housing management service.
- 4.7 In addition to expanding its housing management services, Lewisham Homes has also been making excellent strides in developing the first new Council homes on behalf of the Council; the first of these homes have now been completed, and an update on progress is provided elsewhere on this agenda. It is also leading on acquiring new temporary accommodation on behalf of the council to help us manage the increasing housing need in the borough.

## **5 National policy and legislative change**

- 5.1 Since the General Election in May 2015 a large number of changes have taken place in the housing policy context. The Housing and Planning Bill was introduced into Parliament on 13<sup>th</sup> October 2015 and is expected to receive Royal Assent early in 2016. This bill contains a number of significant measures including:
- A requirement for local authorities to consider selling high value assets, and pay a set amount to the Treasury
  - 'Pay to Stay' for households in social housing who earn more than £40,000 a year in London
  - The Right to Buy extended to tenants of Housing Associations
- 5.2 In addition, the Welfare Reform and Work Bill includes further changes to welfare. Announcements in the budget and in the Comprehensive Spending Review introduce further changes including:
- A one per cent reduction in social rents
  - Further welfare reform including a reduction of the benefit cap
  - A shift towards new homes being provided for ownership rather than to rent.
- 5.3 The changes outlined above, alongside the on-going financial challenges faced by local authorities, means that the Council has to consider carefully how it adapts its strategy to meet these new challenges.
- 5.4 Since the establishment of Lewisham Homes, the Council has been reframing its Housing role so that it focuses more on the strategic aspects of housing demand, housing supply and housing need, whilst expanding the role of Lewisham Homes to become the main organisation undertaking operational housing management services on behalf of the Council. The principle behind the approach is to combine all services provided to residents under single management, in order to both drive up the level of responsiveness to specific local preferences, and to achieve operational and management efficiencies.

5.5 Given that Lewisham Homes is operating successfully, it is recommended to extend their scope to enable the Council to meet the increasing demand for housing as well as the policy and legislative changes required by government.

## **6 Proposed “heads of terms”**

6.1 This section outlines the terms that have been discussed and agreed in principle at an officer level between officers of Lewisham Homes and the Council. The same terms are being considered by the Lewisham Homes board at its meeting scheduled for the same date as this committee meeting.

### Length of contract extension

6.2 It is proposed that the contract be extended by a period of 10 years, subject to the termination clauses set out below.

### Provisions for termination

6.3 On 16 September when Housing Select Committee first considered the proposal to extend the management agreement, it recommended that “with the level of uncertainty and associated risks at the present time, a ‘break clause’ should be considered so both parties can review the agreement at a later date.”

6.4 Under the proposed new terms, the Council is entitled to terminate the Agreement at its discretion on the fifth anniversary of the Commencement Date.

6.5 It may also terminate in the following circumstances:

- where any tenants propose the formation of a tenant management organisation and in compliance with legislation a tenant management organisation is established which affects a substantial portion of the stock managed by Lewisham Homes;
- where Lewisham Homes is in material breach of its obligations and the breach is irremediable;
- where it is insolvent

### Form of agreement

6.6 As part of the review, the management agreement document will be simplified and updated. However the requirements for Lewisham Homes to report its Business Plan and performance to Housing Select Committee and to Mayor & Cabinet will remain unchanged.

### Scope of agreement

- 6.7 As outlined in 5.4, the revisions to the management agreement are designed to help enable Lewisham Homes to become the main organisation undertaking housing management services on behalf of the Council. Members are aware that the Grounds Maintenance service o housing estates has already been transferred and that agreement has been reached to transfer an enhanced service for Sheltered Housing. Work is underway to transfer other service to Lewisham Homes, such as Lumber and bulk waste collection.. Further services of this kind may be considered for transfer in the future depending on the priorities of the Council and the performance of Lewisham Homes.

#### Timetable and next steps

- 6.8 A report recommending the extension of Lewisham Homes' management agreement will be presented to Mayor & Cabinet for decision on 23<sup>rd</sup> March. Comments of the Housing Select Committee will be incorporated into this report. There is a duty to consult secure tenants who are likely to be substantially affected by a matter of housing management
- 6.9 Once approved by Mayor & Cabinet, the Council will need to apply to the Secretary of State for consent to extend the Management Agreement. It is anticipated that the new agreement should be effective from April 2017 and run for ten years.

### **7 Financial Implications**

- 7.1 Under the extended management agreement, Lewisham Homes will continue to be paid an annual management fee. The method of calculating that fee will be set out in the financial schedule of the agreement and will form a part of the HRA budget agreed annually as a part of the Council's budget setting process.
- 7.2 The finance schedule will also cover financial management and control requirements, relating to budget setting, monitoring and final accounts, and will set out arrangements for payments and the collection of income.
- 7.3 Funding for the transfer of new services will need to be contained within existing budgets.

### **8 Legal Implications**

- 8.1 Section 27 of the Housing Act 1985, provides the power to allow another person to exercise housing management on behalf of the local housing authority. This power enabled Lewisham Homes to be set up in 2007. The approval of the Secretary of State is necessary for such an agreement, and the variation or extension of a provision of a management agreement.
- 8.2 By virtue of Section 105 of the Housing Act 1985, there is a duty to consult secure tenants who are likely to be substantially affected by a matter of housing management i.e. which relates to the management of dwelling houses let by the Council under secure tenancies.



- 8.3 Lewisham Homes is a company limited by guarantee not having a share capital and is wholly owned by the Council. It has its own governance arrangements which are governed by its Articles which sets out its objects. Its decision making is through a Board comprising fifteen members consisting of three Council Board members, seven Board members representing tenants and leaseholders and five independent Board members. This conforms to the model for ALMOs recommended by DCLG. Subject to the provisions of the Companies Act 2006 and the directions of the London Borough of Lewisham in general meeting the business of Lewisham Homes is managed by its Board.
- 8.4 Lewisham Homes has its own Standing Orders and Financial Regulations which are approved by the Council and its accounts are subject to internal and external audit.
- 8.5 The proposed new Management Agreement requires Lewisham Homes, as the Council's housing manager for its housing stock, to comply with all statutory requirements to be observed and performed in connection with the services and to discharge all statutory functions of the Council delegated by the Council to it pursuant to section 27 of the Housing Act 1985 (as amended).
- 8.6 As set out in paragraph 6.6 the Council has currently delegated various functions to Lewisham Homes and plans to delegate further housing management functions to bring all of its housing management services under one operation. This is permissible under the legislation. The new Management Agreement will set out clearly the functions to be delegated.
- 8.7 The services proposed to be undertaken by Lewisham Homes under the new Management Agreement are largely regulated by statute and are subject to the regulatory framework of the Regulator, which is the HCA, where applicable. However, the new Agreement also provides for monitoring and overview by the Council. To achieve this, Lewisham Council requires Lewisham Homes to submit a Business Plan which incorporates performance indicators as to its performance. Schedule 4 of the new Management Agreement will set out the requirements of the Business Plan which is subject to a three year substantial review and intervening annual reviews.
- 8.8 If Lewisham Homes fails to provide any of the services or is in breach of its obligations, the Council has a contractual right to set a remedial plan for improvement within set timescales and to terminate services or the whole Agreement if the plan is not met within these timescales.
- 8.9 There is a requirement for consultation and engagement with tenants and leaseholders through a Community Engagement Strategy, the form of which will be annexed to the new Management Agreement. No variation of a tenancy is permitted without the Council's prior written consent

8.10 The usual protections are provided in the new Agreement including those relating to data protection and data sharing, Freedom of Information in compliance with statute, health and safety, insurance, and the handling of complaints. There is also an IT protocol governing the use of the Council's computer systems and or software.

8.11 Where further functions are delegated to Lewisham Homes, a process has to be followed which includes consultation with employees who may transfer and compliance with the Transfer of Undertakings Protection of Employee Regulations 2006 (TUPE).

8.12 There is a requirement for Lewisham Homes to co-operate and assist the Council in the discharge of functions which are reserved to the Council, for example its nomination and allocation rights.

## **9 Crime and Disorder Implications**

9.1 There are no specific crime and disorder implications arising from this report.

## **10 Equalities Implications**

10.1 There are no specific equalities implications arising from this report.

## **11 Environmental Implications**

11.1 There are no specific environmental implications arising from this report.

## **12 Background documents and originator**

12.1 There are no background documents to this report.

12.2 If you would like any further information on this report please contact Jeff Endean on 020 8314 6213

<b>Housing Select Committee</b>			
<b>Title</b>	Lewisham Homes Management Agreement - Appendix A		
<b>Key decision</b>	No	<b>Item no</b>	4
<b>Wards</b>	All		
<b>Contributors</b>	Executive Director for Customer Services		
<b>Class</b>	Part 1	Date: 26 <sup>th</sup> January	

## **1 Proposed Management Agreement Amendments**

- 1.1 The attached document shows the proposed amendments to the Lewisham Homes Management Agreement, highlighted as tracked changes following discussions between the Council's legal team and Lewisham Homes.
- 1.2 A final version of the Lewisham Homes Management Agreement will be presented for approval to Mayor and Cabinet in March incorporating the comments of Housing Select Committee.

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Draft Date ~~14 January 2016~~ ~~10 December 2015~~ incorporating Council's comments to LH  
redraft of 8.11.15

THE LONDON BOROUGH OF LEWISHAM (1)

- and -

LEWISHAM HOMES (2)

AGREEMENT FOR  
HOUSING MANAGEMENT AND OTHER SERVICES

DATED 2016

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**THIS AGREEMENT** is made the        day of        2016

**BETWEEN:**

(1)     **THE LONDON BOROUGH OF LEWISHAM** of 1 Catford Road, Town Hall, Catford, London, SE6 4RU ("the Council");

and

(2)     **LEWISHAM HOMES LIMITED** whose registered office is situated at Old Town Hall, Catford Road, London, SE6 4RU ("the Organisation").

**WHEREAS**

- (A)     The Council is the local housing authority for its area pursuant to Sections 1 and 2 of the Housing Act 1985 and pursuant to the powers contained in that Act provides housing accommodation and exercises general management, regulation and control of its housing accommodation.
- (B)     Pursuant to Section 27 of the Housing Act 1985 and with the approval of the Secretary of State and pursuant also to Section 1 of the Localism Act 2011 and all other enabling powers the Council agrees that a third party exercises such of the Council's management and other functions as are herein specified.
- (C)     The Council and the Organisation have agreed to terminate the Original Management Agreement with effect from the date of this Agreement and that the Organisation shall provide and the Council shall co-operate with it in providing the Services in the manner and upon the terms hereinafter set out.
- (D)     The Council and the Organisation intend to work together within a spirit of mutual cooperation and partnership in order continuously to improve the Services and the way in which they are delivered.



IT IS AGREED as follows:-

1. DEFINITIONS AND INTERPRETATION

1.1 The definitions are as follows:-

**"Agreement"** means this Agreement (including the Schedules and Annexes) and any variations in accordance with Clause 56.

**"Business Plan"** means the document so entitled which describes the outputs to be achieved by means of the Services to be provided by the Organisation which ~~in respect of the period up to (but not including) [.....] shall be the current Business Plan forming Annex 1 and in respect of subsequent years of the Agreement means the Business Plan~~ to be submitted by the Organisation pursuant to Clause 6 and any variations of such document made pursuant to Clause 63.

**"Business Plan Format"** is the format ~~stipulated by the Council~~ for the Business Plan for the Services to be provided by the Organisation and forming Annex 12.

**"Commencement Date"** means 1 April 2016 [.....].

**"Contract Period"** means the period beginning on the Commencement Date and continuing for ten years unless (a) terminated sooner in accordance with Clause 58 or in accordance with common law or statute or (b) terminated or extended in accordance with Clause 55.

**"Contract Standard"** means the standard to which the Services are to be provided as defined in Clause 13.

**"Council's Computer Systems"** means the computer hardware systems owned, leased and/or operated from time to time by the Council or any third party either in whole or in part in connection with the Undertaking.

**"Council's Data"** means any information or data compiled by or on behalf of the Council in connection with the Services.

**"Council's Emergency Officer"** means the Chief Executive of the Council or such other individual as the Council may appoint from time to time.

**"Council's Representative"** means the person nominated pursuant to Clause 53.

**"Council's Software"** means any computer software owned by or licensed to the Council relating to or used in connection with the Services.

**"Dwelling"** means any leasehold or tenanted dwelling house to be managed by the Organisation pursuant to this Agreement and includes (a) any part of a building occupied or intended to be occupied as a separate dwelling house (in particular but without limitation a flat and the communal areas of blocks of flats save that any flat let together with a shop unit as part of the same demise or otherwise as set out in the Third Schedule shall be excluded), (b) any land, gardens, outhouses, private paths or driveways usually enjoyed with any such dwelling house and (c) group homes for sheltered accommodation provided under the Enabling Acts together with any land, gardens or driveways usually enjoyed with any such sheltered accommodation.

**"Enabling Acts"** means all those Acts which enable the Council to enter into this Agreement, including (but not limited to) the Housing Act 1985, the Local Government Act 1972 and the Local Government Act 2000

**"Expert"** means an individual appointed in accordance with Clause 60.

**"Fully Funded"** means funded to the extent necessary to ensure that there is no liability for the Organisation to make any contributions in relation to the benefits accrued up to the Commencement Date.

**"Guidance"** means the guidance entitled "Guidance on Arms Length Management of Local Authority Housing" and any subsequent guidance which modifies or replaces the same.

**"ICT Protocol"** means the protocol referred to in Clause 20 and appearing ~~at-in the Fourth Schedule Annex [ ]~~ as updated from time to time

**"Key Documents"** Means the documents listed in the First Schedule or such other list as may be agreed between the parties from time to time.

**"Management Fee"** means the fee received by the Organisation from the Council for providing the Services and for rent collection accordance with Clause 45 as more particularly described in the Sixth Schedule.

**"Organisation's Representative"** means the person who is to represent the Organisation appointed pursuant to Clause 16.

**"Original Management Agreement"** means the Agreement for Housing Management and other Services between the Council and the Organisation dated 26 June 2007 together with any Deeds of Variation thereto

**"Performance Indicators"** means ~~the Performance Indicators more particularly defined in the Business Plan[ ]~~

~~**"Premises"** means the offices and other premises described in the Third Schedule and comprised in the form of Lease set out in the Seventh Schedule~~

**"Regulations"** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 and shall be deemed to include (without limitation) the Acquired Rights Directive 77/187 (howsoever amended or interpreted) as it applies to the Council and/or this Agreement and/or this or any subsequent transfer of the Undertaking.

**"Regulator"** means the Homes and Communities Agency or any successor body

**"Relevant Employee"** means the employees which are the subject of a Relevant Transfer

**"Relevant Transfer"** means a relevant transfer for the purposes of TUPE

**"Services"** means the services to be provided by the Organisation in accordance with the Agreement and includes any variations thereto made pursuant to Clause 56.

**"Service Transfer Agreement"** means the form of agreement contained at the Third Schedule.

**"Standing Orders and Financial Regulations"** means the Organisation's rules and procedures adopted from time to time in accordance with Clause 13.5.

**"Tenancy Conditions"** means the conditions on the basis of which the Council's tenants occupy the Dwellings and shall be deemed to include all the rights and obligations of the Council's tenants whether statutory or contractual and whether or not expressly incorporated.

**"Tenant Management Organisation"** means a Tenant Management Organisation as defined in Section 27AB(8) of the Housing Act 1985.

**"Term"** means the period commencing on the Commencement Date and expiring pursuant to Clause 55 subject to earlier termination or subsequent extension as herein provided.

**"Transferring Employees"** means an employee of the Council (excluding, to avoid doubt (without limitation), any person engaged by the Council as an independent contractor or persons employed by any sub-contractor engaged by the Council ) whose contract of employment becomes, by virtue of the application of TUPE in relation to what is done for the purposes of carrying out this Agreement between the Council and the Organisation, a contract of employment with the Organisation

**"TUPE"** means the Transfer of Undertakings (Protection of Employment) Regulations 2006

**"Undertaking"** means all of the undertaking of the provision of housing management services by the Council its servants or agents immediately before the Commencement Date

**"Working Day"** means any day between the hours of 9.00 am and 5.00 pm save for Saturdays, Sundays, public holidays and other non-statutory holidays taken as public holidays by the Council and in relation to any time after 5.00 pm shall mean the following Working Day.

- 1.2 Reference to the Organisation's personnel shall be deemed to include the Organisation's directors and employees and the Organisation's agents, sub- contractors and essential visitors (as referred to in Clause 33.2) unless the context otherwise requires.
- 1.3 The Agreement shall be governed by and construed in accordance with English Law, and the English courts shall have jurisdiction over any dispute or difference which shall arise between the Council or the Council's Representative and the Organisation out of or in connection with the Agreement.
- 1.4 A reference to the Enabling Acts or any other Act of Parliament, or to any Order, Regulation, Statutory Instrument, or the like, shall be deemed to include a reference to any amendment, re-enactment, consolidation, variation, replacement or extension of the same respectively from time to time and for the time being in force.
- 1.5 Words denoting the singular shall include the plural and vice versa and words denoting the masculine gender shall include the feminine gender and vice versa and words denoting persons shall include firms and corporation.
- 1.6 References to Clauses, Schedules and Annexes shall be deemed to be references to the Clauses in and the Schedules and Annexes to this Agreement as so numbered.
- 1.7 In this Agreement headings are included for ease of reference only and shall not affect this Agreement or the interpretation thereof.

## **2. THE BUSINESS PLAN**

- 2.1 The current Business Plan is set out in Annex1.
- 2.2 The Business Plan:-
  - 2.2.1 sets all the outputs of the Organisation, the key performance requirements of the Services and includes the performance standards and target timescales expected;
  - 2.2.2 includes the overall strategy and objectives of the Organisation and how the Organisation will deliver the key strategic goals of the Council and the community the Council represents;

- 2.2.3 details the financial and staffing resources required to enable the Organisation to deliver the Business Plan and perform the Services with skill, care and diligence;
- 2.2.4 shall promote effective performance and efficiency having regard to value for money and best value principles; and
- 2.2.5 provides a summary of the past year's achievements and performance targets.

### **3. COMMITMENT TO THE COMMUNITY**

- 3.1 The Services to be carried out by the Organisation are set out in the Business Plan and are part of an important relationship between the Council and the community it represents. The Organisation through the Business Plan will ensure that all its policies and activities support the Council's Sustainability Community Strategy and will on request provide the Council with information to help the Council to update and develop related strategies.

### **4. EQUAL OPPORTUNITIES**

- 4.1 The Council has a strong commitment to equal opportunities and in providing the Services the Organisation shall operate equal opportunity policies and procedures in all aspects of its work. By implementing these policies and procedures the Organisation shall ensure that it does not discriminate against any person or other organisation on the grounds of race, ethnic origin, disability, nationality, gender, sexuality, age, class, appearance, religion, responsibility for dependants, unrelated criminal activities, being HIV positive or having AIDS, or any other matter which causes a person to be treated with injustice.
- 4.2 The Organisation shall follow the best professional practice in relation to equal opportunities and in particular (but without limitation) shall comply with all relevant legislation as well as statutory and other official guidance and codes of practice.
- 4.3 The Organisation shall maintain its own Equality and Diversity Strategy. ~~The current Equality and Diversity Strategy is set out at Annex [ ]~~. The Organisation may amend the Equality and Diversity Strategy from time to time ~~(following consultation with the Council)~~

### **5. TENANT AND LEASEHOLDER INVOLVEMENT**

- 5.1 The Organisation will maintain a Community Engagement Strategy to support and encourage involvement by the Council's tenants and leaseholders. ~~The current form of the Community Engagement Strategy forms Annex [ ]~~ and the Business Plan will include sufficient resources to ensure that the objectives of the Organisation's Community Engagement Strategy are met.
- 5.2 The Community Engagement Strategy will be reviewed and consulted upon from time to time and sufficient resources will be provided for in the Business Plan to implement any changes resulting from the review. -

### **6. FUTURE BUSINESS PLANS**

- 6.1 Prior to implementation future Business Plan's must be approved in accordance with the parties' respective decision-making processes.

6.2 The parties agree that there shall be a detailed review of the Business Plan once every three years with the timetable for each review process being agreed in advance between the parties allowing sufficient time for full consideration of any proposals submitted by the Council to the Organisation prior to implementation of the future Business Plan. ~~The first such r~~Reviews shall be completed in accordance with the terms of Annex 1 by [ ] with subsequent detailed reviews concluding triennially thereafter.

6.3 Notwithstanding this detailed review by the Council of the Organisation's Business Plan the Organisation shall in accordance with such timescales are agreed in accordance with Annex 1 in [January] of each year present to the Council the draft [Annual] Business Plan ~~annually~~ for approval. Either party proposing significant changes to the Business Plan in these intervening years must act reasonably and the party proposing the change shall demonstrate to the other party clear justification for requiring that change.

6.4 In the event that the Council and the Organisation shall not have agreed the Business Plan within two months of by the [ ] relevant anniversary of the Commencement Date the matter shall be resolved in accordance with the dispute resolution provisions in Clause 60 and pending the resolution the then current Business Plan shall continue in full force and effect (incorporating such changes as shall have been agreed by both parties) until the resolution whereupon the draft Business Plan shall be adopted in accordance with the outcome of the dispute resolution process.

## **7. OFFICIAL RETURNS ETC**

7.1 Organisation shall keep and maintain all necessary information and shall provide all necessary assistance to enable the Council to complete all necessary returns of housing statistics and other information relating to the Services as notified by the Council to the Organisation from time to time.

7.2 The Organisation shall provide the Council with such assistance and information as the Council may reasonably require (in line with the Council's budget timetable) to enable it to allocate such expenditure as the Council may incur under this Agreement between its general fund and housing revenue accounts.

7.3 The Organisation will provide such information as the Council from time to time shall reasonably require to permit the Council to complete management reports (whether of a regular or cyclical nature) on the provision of the Services.

## **8. ADVICE AND SUPPORT IN DEVELOPING CORPORATE STRATEGIES AND REVIEWS IN THE COUNCIL**

8.1 The Organisation will be a strategic partner of the Council. The Council shall consult the Organisation on developing corporate strategies relevant to the Organisation and the Organisation will respond promptly to consultation requests on such corporate issues and will provide information as required. The Council shall have regard to such responses, acting reasonably.

## **9. REPRESENTING THE COUNCIL IN RELATED OR PARTNERSHIP ACTIVITY**

9.1 The Organisation will at the request of the Council's Representative and in pursuit of Business Plan objectives work with other agencies, bodies and organisations in partnerships, fora and projects. This might include (but not be limited to) area and other consultative fora, community safety meetings, regeneration partnerships and social services case conferences.

9.2 From time to time the parties may agree that the Organisation shall act as the Council's nominated representative for the purposes of fulfilling the Council's role in respect of any such partnership referred to in 9.1 above and as may be specified by the Council and agreed by the Organisation.

## **10. CONSULTATION WITH STATUTORY AND OTHER BODIES**

10.1 The Council's Representative shall carry out any and all consultations and negotiations with statutory or voluntary bodies in relation to such matters as shall from time to time be stipulated by the Council's Representative and the Organisation shall when required to do so by the Council's Representative provide information, advice and assistance to support such consultations or negotiations.

10.2 Subject to Clause 10.1 the Organisation shall carry out all other consultations or negotiations with the said statutory or voluntary bodies and shall respond to any enquiries from such bodies in relation to the circumstances of individual tenants or applicants for accommodation on such a basis (as to confidentiality and otherwise) as is appropriate and consistent with both the Organisation's and the Council's legal obligations and duties.

## **11. CONSULTATION WITH TENANTS**

11.1 Without prejudice to its continuing obligations under Section 105 of the Housing Act 1985 or Section 137 of the Housing Act 1996 the Council shall whenever reasonably requested by the Organisation to do so or otherwise as the Council shall deem appropriate in connection with the Services consult with its tenants about the subject-matter of this Agreement including but not limited to any decision

11.1.1 not to renew this Agreement pursuant to Clause 55; or

11.1.2 to change the status of the Organisation in which circumstances the consultation shall take the form of a ballot of secure and introductory tenants.

11.2 Where appropriate and where there is no conflict any consultation under this clause shall be carried out in the joint names of the Organisation and the Council.

## **12. FUNCTIONS DELEGATED**

12.1 The functions delegated by the Council for the purposes of this Agreement shall be those functions or activities identified in Part I of the Second Schedule as the responsibility of the Organisation.

12.2 The parties have identified a number of functions more particularly described in Part II of the Second Schedule which it is agreed in principle the Council may delegate to the Organisation on such future date or dates as may be agreed and subject to the parties first entering into a form of Service Transfer Agreement substantially in the form set out in the Third Schedule.

12.3 The Organisation shall at any time be entitled to propose the delegation from the Council of any further functions or activities to the Organisation where the Organisation believes that such delegation may assist in the delivery of an improved housing service to tenants and leaseholders of the Council. The Council, upon receiving such a proposal at its discretion shall have regard to such proposal acting reasonably. Any further functions delegated under this clause 12.3 shall be delegated to the Organisation upon the parties entering into a form of Service Transfer Agreement substantially in the form set out in the Third Schedule and subject to the parties' agreement on any subsequent adjustment to the Management Fee.

## **13. PROVIDING THE SERVICES**

- 13.1 In consideration of the Management Fee the Organisation shall at all times perform the Services to the satisfaction of the Council's Representative in accordance with and in compliance with the Contract Standard which shall require the Organisation to perform the Services with all due skill, care and diligence and in accordance with and otherwise in compliance with:-
- 13.1.1 the Business Plan and in particular (but without limitation) the key performance requirements of the Services set out therein;
  - 13.1.2 any reasonable instructions issued to the Organisation by the Council Representative pursuant to or in connection with the Agreement;
  - 13.1.3 any conditions upon the approval given by the Secretary of State pursuant to Section 27 of the Housing Act 1985, to delegate those functions referred to in Clause 12;
  - 13.1.4 in a manner which shall preserve, promote and enhance and shall not prejudice the reputation and interests of the Council;
  - 13.1.5 in good and full co-operation with any other company or consultant engaged by the Council to carry out related or relevant works or services on behalf of the Council;
  - 13.1.6 in a manner which has regard to the interests and welfare of tenants and/or residents and the management and maintenance of the Dwellings to a high standard; and
  - 13.1.7 all legislation.
- 13.2 The Organisation shall inform the Council's Representative promptly of and confirm in writing if the Organisation is unable or fails to provide the Services or any part thereof, or if the Organisation is aware of anything of whatsoever nature and whether or not the result of any act or omission on the part of the Council which prevents or hinders or which may prevent or hinder the Organisation from complying with the Agreement giving details of the circumstances, reasons and likely duration. The provision of information under this Clause shall not in any way release or excuse the Organisation from any of its obligations under the Agreement.
- 13.3 Should the Organisation require any further instruction or information which is necessary for or in connection with the provision of the Services, the Organisation shall make a written application in adequate detail for the same to the Council's Representative and the Council shall respond within a reasonable period.
- 13.4 The Organisation shall at all times during the provision of the Services allow the Council's Representative and such persons as may from time to time be nominated by the Council's Representative access to:-
- 13.4.1 all offices and work places of the Organisation for the purpose of monitoring and inspecting work being performed in order to provide the Services;
  - 13.4.2 all offices and work places of the Organisation for the purpose of inspecting any or all records and documents in the possession, custody or control of the Organisation in connection with the provision of the Services;
  - 13.4.3 any personnel or agents of the Organisation for the purpose of interviewing such persons in connection with the provision of the Services;
  - 13.4.4 for the purposes of complying with Clauses 13.4.1-13.4.3 all technology, resources, equipment, systems and procedures used or proposed to be used in connection with the provision of the Services.

- 13.5 The Organisation shall maintain its own Standing Orders and Financial Regulations which should reflect best practice and provide a practical source of advice to assist officers in the discharge of their duties.
- 13.6 The Organisation shall ensure that the Council has at all times access to current versions of the Key Documents. The Organisation shall notify the Council's Representative or such other officer of the Council as may from time to time be notified to the Organisation for the purposes of this clause 13.6 only of any change to the Key Documents as soon as practicable and in any event no later than 14 days from later of the change taking effect or the documentation being available.
- 13.7 If the Organisation is unable or fails to provide the Services or any part thereof in accordance with the requirements of Clause 13.1, the Council may itself provide or may employ and pay other persons to provide the Services or any part thereof and all costs incurred thereby shall (if and to the extent the Council so determines) be reflected in a variation to the then Business Plan. The Council's rights under this Clause 13.7 shall be without prejudice to any other rights or remedies which it may possess.
- 13.8 The Organisation shall as may be necessary or desirable co-operate, liaise with, and co-ordinate its activities with those of any other companies or any company or subcontractor employed directly or indirectly by the Council and shall provide the Services in harmony with and at no detriment to any other services provided by or on behalf of or to the Council. In particular (but without limitation) the Organisation shall take all practicable steps to ensure that at the expiry or earlier termination of this Agreement any subsequent company or the Council's own employees can immediately provide services to the Council on the same basis and to the same standard as set out herein.
- 13.9 The Organisation shall provide each year to the Council's Representative a copy of its audited accounts within six months of the relevant accounting reference date. In the event that the Organisation fails to provide accounts in accordance with this Clause 13.9 then, without prejudice to any other rights or remedies available to the Council, the Council's Representative or such persons as may from time to time be nominated by the Council's Representative shall be given access to all and any accounting documents and information in the possession, custody or control of the Organisation.
- 13.10 The Organisation shall throughout the Term maintain and implement such quality assurance systems and procedures as are appropriate to enable the Organisation to comply with its obligations under this Agreement and the Organisation shall afford the Council full access to such systems and procedures for audit or other purposes.
- 13.11 The Organisation from its own resources shall join and co-operate with the Council in such tenant consultation and liaison as the Council may reasonably require from time to time.
- 13.12 In addition to the agreed procedures for office opening and availability of staff set out in the Business Plan, the Organisation will ensure that in the event of any emergency or significant unforeseen difficulty occurring with respect to the delivery of the Services appropriate Organisation personnel will advise the Council's Representative as a matter of urgency and will continue to take responsibility for the situation until it is agreed by the Council's Representative that responsibility may be handed over to another agency or authority.
- 13.13 The Organisation shall not, whether itself, or by any director to be engaged in the provision of the Services, or by any person employed by it to provide the Services, solicit or accept any gratuity, tip or any other form of money or take any reward or make any unauthorised charge for any part of the Services.



- 13.14 The Organisation shall not permit its interests to interfere or conflict with its duty (which the Organisation hereby acknowledges) to provide the Services in the utmost good faith.
- 13.15 The Organisation shall notify the Council's Representative immediately upon becoming aware of a matter which the Organisation reasonably considers may be a conflict of interest for the Organisation in providing the Services.
- 13.16 Following receipt of such notification, the Council's Representative and the Organisation's Managing Director shall meet as soon as reasonably practicable to discuss the potential conflict of interest and use all reasonable endeavours to agree upon steps to be taken by the Organisation to eliminate the risk of such potential conflict of interest arising
- 13.17 The parties shall comply with the terms of the Development Delivery Arrangements set out in the Seventh Schedule.

#### **14. STATUTORY REQUIREMENTS**

- 14.1 Without prejudice to the particularity of other Clauses in this Agreement the Organisation shall comply with all statutory requirements to be observed and performed in connection with the Services and shall discharge all statutory functions of the Council delegated by the Council to the Organisation for the purposes of this Agreement pursuant to section 27 of the Housing Act 1985 (as amended).
- 14.2 Nothing in this Agreement shall fetter or limit the Council's ability to discharge its statutory functions.
- 14.3 Save in so far as the same arises out of an express provision of this Agreement, the Organisation shall have no right, remedy or claim against the Council arising out of or under this Agreement for any act of omission of the Council whether as planning authority or otherwise save in relation to any deliberate or negligent act or omission of the Council or any of its employees (in the course of their employment).

#### **15. VARIATIONS TO TENANCY AGREEMENTS**

- 15.1 The Organisation shall not vary or accept or acquiesce in any variation to the Council's form of secure tenancy agreement or conditions without the prior written consent of the Council.

#### **16. THE ORGANISATION'S PERSONNEL**

- 16.1 The Organisation shall employ sufficient persons to ensure that the Services are provided at all times and in all respects in accordance with the Agreement.
- 16.2 The Organisation's personnel employed in and about the provision of the Services shall be properly and sufficiently qualified, competent, skilled, honest and experienced and shall at all times exercise care in the execution of their duties and the Organisation shall ensure that such persons are properly and sufficiently instructed and supervised with regard to the provision of the Services
- 16.3 If the circumstances under which the Services are provided are such that any personnel of the Organisation are exempt from the provisions of Section 4(2) of the Rehabilitation of Offenders Act 1974 by virtue of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended) then the Organisation shall ensure that all personnel engaged in the provision of the Services shall provide information in accordance with the said Act and Order about convictions which would otherwise be spent under the provisions of the said Act.

#### **17. ORGANISATION'S REPRESENTATIVE**

17.1 The Organisation shall appoint a senior person as its representative empowered to act on behalf of the Organisation for all purposes connected with the Agreement.

17.2 The Organisation shall forthwith give notice in writing to the Council's Representative of the identity, address and telephone numbers of any person authorized to act for any period as deputy for the Organisation's Representative and when such deputy ceases to be so authorised.

## **18. USE OF ASSETS**

18.1 The Organisation shall at all times during the Term provide and maintain all such vehicles, equipment and other assets (hereinafter together referred to as "Assets") and materials as may be necessary from time to time for the provision of the Services.

18.2 The Organisation shall be responsible for the maintenance and (where necessary) replacement of all Assets.

18.3 The Organisation shall at all times be responsible for any necessary licensing and for the payment of all licensing fees, taxes and insurances as may be required in connection with the possession or use of all Assets employed in the provision of the Services.

18.4 The Organisation shall put, keep and maintain all Assets employed in the performance of the Services at all times in good and serviceable repair and in such condition as is required' for the proper performance by the Organisation of its obligations under the Agreement.

18.5 At the expiry of the Term or upon termination of this Agreement (whichever shall first occur) the Council may serve a notice upon the Organisation requiring the Organisation to transfer free of charge to the Council or any other person or persons as may be specified in such notice (a) all Assets and materials used by the Organisation and (b) the benefit of all contracts or agreements relating to the hire of the Assets.

18.6 Upon receipt of a notice under Clause 18.5 requiring the Organisation to transfer to the Council or any Council nominee the benefit of any contract or agreement for the hire of any Assets the Organisation shall forthwith execute all documents required to effect such transfer and shall deliver such Assets to the Council in such condition as it may be in at the date of the said notice.

## **19. ASSIGNMENT AND SUB-CONTRACTING**

19.1 The Organisation shall not:-

19.1.1 assign the Agreement or any part thereof or the benefit or advantage of the Agreement or any part thereof;

19.1.2 sub-contract the provision of the Services or any part thereof to any person without the previous consent of the Council's Representative and which if given shall not relieve the Organisation from any liability or obligation under the Agreement and the Organisation shall be responsible for the acts, defaults or neglect of any subcontractors, its employees or agents in all respects as if they were the acts, defaults or neglect of the Organisation itself.

19.1.3 The Organisation shall ensure that any sub-contractor permitted to perform any part of the Services under Clause 19.1.2 shall be fully supplied with all necessary information about this Agreement (including any relevant instructions given by the Council's Representative to the Organisation).

19.1.4 The Organisation shall not carry out work for or provide services to third parties (other than in accordance with this Agreement) without the Council's prior written consent which shall not be unreasonably withheld or delayed ~~SAVE THAT the Council's consent shall not be required where the Organisation is reasonably satisfied that such work and or services will not prevent the Organisation from complying with its obligations under this Agreement.~~

## **20. USE OF COMPUTER SYSTEMS AND SOFTWARE**

- 20.1 The Council shall permit the Organisation to use for the purposes of providing the Services the Council's Computer Systems and/or Council's Software as set out in the ICT Protocol subject to such terms, conditions and stipulations as are set in the ICT Protocol .
- 20.2 If and to the extent required the Organisation shall use the Council's Computer Systems and/or Council's Software for the purposes of providing the Services and for the benefit of the Council and shall not under any circumstances (unless expressly authorised so to do by the Council's Representative) make use of the Council's Computer Systems and/or Council's Software for any third person or allow any other person to use the same.
- 20.3 The Council will from time to time make available to the Organisation the technical specifications of the Council's Computer Systems and/or the Council's Software used by the Council in relation to the Undertaking.
- 20.4 The Organisation shall take all practicable steps to safeguard those parts of the Council's Computer Systems and the Council's Software under the control or influence of the Organisation against unauthorised access, tampering or systems failure.
- 20.5 If at any time the Organisation believes that changes, modifications or updating to the Council's Computer Systems and/or Council's Software or to its other computer systems and/or software (as the case may be) are required or would assist in the provision of the Services the Organisation may make proposals for such changes to the Council's Representative and if the Council's Representative gives his consent to such changes it shall be a condition of such consent that the Council shall be entitled to require the Organisation on termination of this Agreement by expiry of time or otherwise either to take all necessary steps (including the assignment of licences) to vest the rights in such changes and all data and information in respect of the Services and all related matters in the Council or such other person as the Council may direct or to restore the Council's Computer Systems and/or the Council's Software to the status quo prior to the said changes. The cost of such changes modifications or updating shall be reflected in the relevant part of the Business Plan.
- 20.6 On termination of this Agreement by expiry of time or otherwise the Organisation shall transfer all data and information in respect of the Services and all matters relating thereto within a reasonable time and with due expedition to the Council or such other person as the Council may direct and until such transfer shall on being so requested by the Council afford access to the same to the Council or such other person as the Council may authorise including but not limited to permitting use thereof and providing all data and/or information requested.
- 20.7 The Organisation shall ensure that it has suitable security policies and procedures in place to protect the integrity of its systems and data and that these comply with best industry practice, the Council's requirements and the requirements of the Data Protection Act 1998 and other relevant legislation.

## **21. DATA**

- 21.1 Subject to the provisions of Clauses 20 and 22 the Organisation shall be entitled to access such data and information as is stored on the Council's Computer Systems and which the Organisation may require in order to provide the Services.
- 21.2 In addition to any requirements set out in the Business Plan the Organisation will ensure that the Council's Data relating to the Services is kept up-to-date.
- 21.3 Without prejudice to Clause 20.4 and subject to Clause 22 the Organisation shall take all practicable steps to safeguard such data and information as is stored on the Council's Computer Systems and/or Council's Software against unauthorised access, tampering or system failure.

## **22. DATA PROTECTION**

- 22.1 Without prejudice to Clause 21
- 22.1.1 both parties shall comply with their obligations under the Data Protection Act 1998 (including where appropriate obtaining registration thereunder), the Human Rights Act 1998, the Freedom of Information Act 2000, the Regulation of Investigatory Powers Act 2000 and the Computer Misuse Act 1990 insofar as the performance of the Services and the other requirements of this Contract give rise to obligations under those Acts;
- 22.1.2 the Organisation shall provide the Council with such information as the Council may require to satisfy itself that the Organisation is complying with the obligations referred to in Clause 22.1.1;
- 22.1.3 both parties shall provide each other with all such assistance as they may reasonably require to enable the parties to comply with the obligations referred to in Clause 22.1.1;
- 22.1.4 the Organisation shall notify changes to the registrable particulars and take such other steps as may be necessary to afford the Council access to information which is required by the Council in connection with any of its statutory duties and responsibilities and for any purpose connected with this Agreement.
- 22.2 Neither party shall knowingly do anything which places the other in breach of its obligations under the Data Protection Act 1998 or under the Human Rights Act 1998 or the Freedom of Information Act 2000.

## **23. CONFIDENTIALITY**

- 23.1 The Organisation shall not and shall ensure that its employees agents and subcontractors shall not divulge or dispose of or part with possession custody or control of any confidential material or information provided to the Organisation by the Council pursuant to the Agreement or prepared or obtained by the Organisation pursuant to the Agreement other than in accordance with the express written instructions of the Council's Representative or in compliance with statutory requirements.

## **24. HEALTH AND SAFETY**

- 24.1 Both parties shall at all times comply with the requirements of the Health and Safety at Work, etc. Act 1974, the Management of Health and Safety at Work Regulations 1999 (including the provision by the Organisation of a copy of its risk assessment under such regulations) and of all other Acts, Regulations, Orders or rules of law and codes of practice pertaining to health and safety.

## **25. INSURANCES**

- 25.1 The Organisation's obligation to insure under this Clause 25 shall not apply in respect of a particular area of insurance to the extent that the parties agree that such insurance is not available from a reputable insurer at commercially acceptable rates.
- 25.2 Subject to Clause 25.1 the Organisation shall at all times maintain in force such policies of insurance with reputable insurers or underwriters approved by the Council as shall fully insure and indemnify the Organisation against its liability:-
- 25.2.1 to the Council and any employee of the Council;
- 25.2.2 to the employees of the Organisation;
- 25.2.3 to any other person.
- 25.3 The Organisation shall insure against any expense, liability, loss, claim or proceedings in respect of any damage whatever to private property (real or personal) insofar as such damage is due to the negligence, omission or default of the Organisation, its employees or agents or any sub-contractor or person for whom the sub-contractor is responsible.
- 25.4 The Organisation shall maintain insurance to an unlimited sum in respect of personal injury to or the death of any person under a contract of service with the Organisation and arising out of an incident occurring during the course of such person's employment in compliance with the Employer's Liability (Compulsory Insurance) Act 1969 and the Road Traffic Act 1988 and any statutory orders made thereunder.
- 25.5 The Organisation shall maintain all other insurances as may be necessary or prudent for the performance of the Agreement.
- 25.6 The Organisation shall ensure that all relevant insurance policies shall have the interest of the Council endorsed upon them or shall otherwise expressly by their terms confer their benefits upon the Council.
- 25.7 The Organisation shall at the Commencement Date and thereafter on the anniversary thereof and at such other times as the Council may reasonably require supply the Council with certified copies of all insurance policies required by any of the provisions of this Clause and with any cover notes, premium receipts or other documents necessary to show that such policies are fully maintained and otherwise comply with the Agreement.
- 25.8 If and to the extent that the Council is reasonably dissatisfied as to the adequacy of any policy of insurance effected by the Organisation pursuant to this Clause it shall give notice in writing to the Organisation to that effect and upon receipt of such notice the Organisation shall forthwith procure and effect such additional, enhanced or other insurance as the Council may require.
- 25.9 In the event that the Organisation fails to comply with a requirement of the Council in accordance with Clause 25.8 the Council shall be entitled to take either or both of the following steps:-
- 25.9.1 effect such insurances itself and reflect the costs of so doing in the then current Business Plan;
- 25.9.2 commence termination or other action in accordance with Clause 65.
- 25.10 The Council acknowledges that the Organisation may (if the Council so agrees) discharge its obligations under this Clause by procuring some or all the above insurances through or by the Council or its agents.

## **26. HOUSING REGULATOR**

26.1 Without prejudice to the other applicable provisions of this Agreement the Organisation shall co-operate fully with the Regulator in respect of the inspection of

26.1.1 the operation of this Agreement and the work of the Organisation and

26.1.2 the Council's own housing service whether in relation to the Organisation's work on behalf of the Council or the Council's own retained functions and activities.

## **27. PROVISION OF INFORMATION**

27.1 Without prejudice to the other provisions of this Agreement the Organisation shall provide all relevant information which may be required by the Council in order that the Council can act fairly, properly and in accordance with its statutory obligations in connection with the provision of the Services or the future provision of the same or any similar services and also to deal with investigations or inquiries by the Secretary of State, the District Auditor, Ombudsman and similar persons or bodies. The Council may make a request for any such information at any reasonable time and the Organisation shall comply with that request as soon as possible.

27.2 The Organisation shall inform the Council's Representative immediately by telephone or email (and shall confirm in writing delivered by hand or prepaid first class post or facsimile transmission as soon as practicable following such call or email) of any or all of the following matters:-

27.2.1 any significant failure by the Council or its employees or agents or other persons providing services to the Council to meet obligations under this Agreement;

27.2.2 any acts or omissions by the Council or such other persons as are referred to in Clause 27.2.1 which prevent or hinder or are likely to prevent or hinder the Organisation from complying with its obligations under this Agreement;

27.2.3 any points of contention or other difficulties with any local tenants groups or comparable tenant representative organisations which might prevent or hinder the Organisation from complying with its obligations under this Agreement.

27.3 The Organisation shall co-operate with all Council departments to enable them the better to perform their functions and duties either by means of the provision of information or by such other appropriate means as do not involve out-of-pocket expenditure.

27.4 The Organisation shall liaise with Council Members, Members of Parliament and other elected representatives in such a manner as shall be reasonably required from time to time by the Council's Representative.

## **28. FRAUD**

28.1 As soon as the Organisation becomes aware of or suspects any fraudulent action or malpractice in the provision of the Services or which otherwise affects it the Organisation's Representative shall notify the Council's Representative.

28.2 On receiving notification under Clause ~~28.132.1~~ and without prejudice to the Organisation's legal liability and financial responsibility the Council's Representative shall assume and be given sole responsibility for investigating or arranging for the investigation of such fraudulent action or malpractice.

## **29. COMPLAINTS**

- 29.1 The Organisation shall arrange for notices to be permanently displayed giving information as to how complaints about the provision of the Services may be made. The Organisation shall deal with any complaints received from whatever source in a prompt, courteous and efficient manner.
- 29.2 The Organisation shall keep an electronic record of all complaints received and of the action taken in relation to such complaints. Such records shall be kept available for inspection by the Council's Representative at all reasonable times.
- 29.3 The Organisation maintain a complaints policy to comply with best practice and legislation.
- 29.4 The Organisation shall co-operate fully and provide all such reasonable assistance as may be required by the Housing Ombudsman in the course of its investigations from time to time.

### **30. LEGAL INVESTIGATIONS**

- 30.1 The Organisation immediately upon becoming aware of the same shall notify the Council's Representative of any accident, damage or breach of any statutory provision which affects or might reasonably be expected to affect the Organisation's ability to comply with the Business Plan or deliver the Services in accordance with this Agreement.
- 30.2 If requested to do so by the Council's Representative, the Organisation shall provide the Council's Representative with any relevant information in connection with any legal inquiry, arbitration or court proceedings in which the Council may become involved or any relevant disciplinary hearing internal to the Council and through the appropriate officers or employees shall give evidence in such inquiries or proceedings or hearings.
- 30.3 Should any part of the Services involve the Organisation in performing duties or exercising powers under some other contract it shall upon becoming aware of anything which is likely to give rise to arbitration or litigation forthwith notify the Council's Representative of the existence of any such matter together with such particulars as are available.

### **31. AUDITS**

- 31.1 The Organisation shall at all times (including following the termination of this Agreement) allow or procure for any auditor or for the Council's Representative (or nominee) for the purposes of an internal or external audit or inspection:-
- 31.1.1 immediate access to;
  - 31.1.2 permission to copy and remove any copies of;
  - 31.1.3 permission to remove the originals of any books, records and information in the possession or control of the Organisation which in any way relate to or are or were used in connection with the provision of the Services including (but without limitation) any of the Council's Data and any such information stored on a computer system operated by the Organisation.
- 31.2 The Organisation will provide all co-operation and afford all access to personnel and records in order to assist the Council in carrying out any audits or investigations which are already under way at the Commencement Date and any audits or investigations which are carried out after the termination or expiry of this Agreement.

### **32. AGENCY**

32.1 Neither the Organisation nor its personnel shall in any circumstances hold itself or themselves out as being the servant or agent of the Council otherwise than in circumstances expressly permitted by the Agreement.

32.2 Neither the Organisation nor its personnel shall in any circumstances hold itself or themselves out as being authorised to enter into any contract on behalf of the Council or in any other way to bind the Council to the performance, variation, release or discharge of any obligation otherwise than in circumstances expressly permitted by the Agreement.

32.3 Neither the Organisation nor its personnel shall in any circumstances hold itself or themselves out as having the power to make, vary, discharge or waive any bylaw or regulation of any kind.

**33. NOT USED**

**34. FAILURE TO PERFORM**

34.1 No liability shall be incurred by the Organisation if but only to the extent that such liability would not have arisen if the Council had properly complied with its obligations under this Agreement.

**35. PROVISION OF INFORMATION**

35.1 Subject always to any legally binding constraints (whether under statute or otherwise) the Council shall use its reasonable endeavours to provide the Organisation with such information as the Organisation may properly require to enable it to comply with its obligations under this Agreement.

**36. ASSIGNMENT**

36.1 The Council shall not assign the benefit of this Agreement save by operation of law pursuant to a statutory scheme or otherwise as directed by the Secretary of State.

**37. SERVICES SUPPLIED BY THE COUNCIL**

37.1 A list of the services supplied by the Council shall be maintained and held by the Organisation (the "Schedule of Services"). The Schedule of Services shall be updated by the Organisation following any change in the services supplied to the Organisation by the Council and an updated Schedule of Services provide to the Council's Representative or such other person as nominated by the Council from time to time for the purposes of this Schedule as soon as reasonably practicable.

**38. INTELLECTUAL PROPERTY RIGHTS**

38.1 At the expiry or earlier termination of the Agreement, the Organisation shall transfer to the Council or whomsoever the Council shall direct all documents, material, data and other information (in whatever form) in its possession relating to the Agreement, together with any relevant computer software processing facilities.



38.2 Any and all intellectual property rights in any matter or thing developed under this Agreement or arising from the provision of the Services by the Organisation (including, without prejudice to the generality of the foregoing, any software) other than intellectual property rights belonging to a third party shall belong to the Council and the Organisation agrees that it shall execute or cause to be executed all deeds, documents and acts required to vest such intellectual property rights in the Council.

### **39. RIGHT TO USE DOCUMENTS**

39.1 The ownership of and an unrestricted right to use any document produced by the Organisation, its sub-contractors and agents for all purposes envisaged by or arising under this Agreement shall be vested in the Council.

39.2 At the expiry or earlier determination of the Agreement the Organisation shall transfer all documents, materials and other information (in whatever form) in its possession relating to the Agreement to the Council or whomsoever the Council shall direct.

### **40. RIGHT TO USE PREMISES IN CIVIL EMERGENCIES**

40.1 The Organisation shall permit the Council to use any of the Premises at any time in the event of a declaration of a civil emergency by the Council and the Organisation shall give all necessary assistance including the provision of staff to the Council in arranging emergency use.

40.2 Without prejudice to the provisions of Clause 40.1 the Organisation shall upon the occurrence of a civil emergency and at the request of the Council use its best endeavours to provide the following services under the control and direction of the Council's Emergency Officer or his designated representative:-

40.2.1 to make provision for persons made homeless as a result of the emergency and evacuees and to supervise and co-ordinate the efforts to secure immediate temporary accommodation for the same including the use of vacant dwellings, sheltered schemes, communal areas in community centres, and other halls and meeting places as the Organisation (having consulted with the Council) deems appropriate and in addition the Organisation shall so far as possible assist in the equipping of such places for use as temporary accommodation;

40.2.2 to liaise with the Council and such other organisations as the Council shall decide in order to co-ordinate action in dealing with homeless persons and evacuees;

40.2.3 to co-ordinate and supervise the operation of the provision of temporary accommodation described in Clause 40.2.1;

40.2.4 to set up and maintain arrangements for the reasonable protection of any property brought to any temporary accommodation by evacuees and to liaise with the police and other relevant bodies in relation to the safe custody of the same;

40.2.5 whenever so requested by the Council to arrange for the provision of temporary accommodation for homeless persons and/or evacuees;

40.2.6 to manage the temporary accommodation secured pursuant to these provisions for so long as the emergency lasts;

40.2.7 to produce monthly accounts to the Council itemising its reasonable costs incurred in the provision of the services detailed in Clauses 40.2.1-40.2.6 such costs to be agreed between the parties (and thereupon treated as a variation of the Business Plan) and in default of such agreement the matter shall be referred to dispute resolution pursuant to the provisions of Clause 60.

40.3 At the request of the Council the Organisation will attend such training sessions and/or exercises as may be specified by the Council and the number of the Organisation's employees who shall be required so to attend shall be agreed between the Council and the Organisation and in default of agreement the Council shall specify the number of the Organisation's employees to attend.

40.4 During the period when the Council is occupying the Premises the Organisation shall not be liable to the Council for any loss or damage caused as a result of the Council's occupation of the Premises and shall not be liable for any breach of this Agreement which is attributable to the Council's occupation of the Premises pursuant to this Clause 40.

#### **41. EXCLUSION OF LIABILITY**

41.1 The Council shall not be liable to the Organisation, whether in contract, tort or otherwise, for any loss damage or injury howsoever caused or arising out of or in connection with the provision by the Organisation of the Services or the use of or occupation by the Organisation of any of the Council's premises (including the Premises) save in relation to any deliberate or negligent act or omission of the Council or any of its employees (in the course of their employment) and in particular any such deliberate or negligent act or omission which gives rise to death or personal injury.

41.2 The Council shall not in any circumstances be liable to the Organisation for any indirect or consequential loss whatsoever, irrespective of the cause or causes of such loss.

#### **42. RIGHTS AND DUTIES RESERVED**

42.1 All rights, duties and powers which the Council has as a local authority or which the Council's officers have as local authority officers are expressly reserved and in particular (but without limitation) the Council reserves the right to exercise its powers as a landlord in respect of any of its properties notwithstanding the provisions of this Agreement.

#### **43. WAIVER**

43.1 Failure by the Council at any time to enforce the provisions of the Agreement or to require performance by the Organisation of any of the provisions of the Agreement shall not be construed as a waiver of or as creating an estoppel in connection with any such provision and shall not affect the validity of the Agreement or any part thereof or the right of the Council to enforce any provision in accordance with its terms.

#### **44. FINANCIAL ARRANGEMENTS**

44.1 The Organisation shall comply with all the financial arrangements described in the Sixth Schedule.

#### **45. RECOVERY OF RENT**

45.1 In collecting rent or other sum or sums from tenants or any other third parties on the Council's behalf, the Organisation shall proceed therewith with all due expedition and diligence and generally in accordance with all requirements of the Council's Representative. Any rent or sums so obtained shall be remitted forthwith to the Council and shall until receipt by the Council be held by the Organisation on trust for the Council. If any such other monies are temporarily paid by the Organisation into any bank, building society or other similar account, such account shall be designated as a trust account with the Council's name appearing in its title. No such monies shall be mixed with any other money. The Organisation shall keep full and proper records as to the receipt and transfer of such monies in such form as the Council's Representative may approve and shall provide whenever requested access thereto and copies thereof. The fee for the provision of this part of the Services shall be included in the Management Fee.

#### **46. RIGHT TO USE SURPLUSES**

46.1 If the Organisation out-performs the Business Plan then to the extent permitted by and subject to any conditions set out in the Business Plan the Organisation shall be entitled to use such sums in accordance with any scheme for surpluses forming part of the Business Plan or such other scheme for surpluses as may be agreed by the Council (such agreement not to be unreasonably withheld or delayed).

#### **47. INTEREST ON OVERDUE PAYMENTS**

47.1 Save where payment is reasonably disputed by the Council and the Organisation has been notified of such dispute, if and whenever any payment due by either party in accordance with this Agreement shall at any time remain unpaid for a space of twenty-one (21) days next after becoming payable a further and additional sum by way of interest on the same calculated on a day-to-day basis at an annual rate higher by two (2) per cent than the Bank of England Base Rate in force from time to time from the date upon which such sum first became payable shall (if demanded) be accounted for (as if paid by) the defaulting party to the other party.

#### **48. VALUE ADDED TAX**

48.1 All payments by either party hereto to the other party pursuant to the terms of this Agreement shall be exclusive of any Value Added Tax chargeable in respect of the supply of goods or services for which the payment is consideration and in so far as such payments fall to be made under this Agreement such Value Added Tax shall be added to the amount thereof and paid in addition thereto upon production of a proper Value Added Tax invoice.

#### **49. EMPLOYEES**

49.1 The Organisation shall notify the Council's Representative in writing of any significant amendments to the staffing structure during the Term.

- 49.2 The Council will in relation to any Transferring Employees ~~and any new employees of the Organisation~~ who transfer from the Council pursuant to a Service Transfer Agreement and are members of the Local Government Pension Scheme upon demand make such payments to the Administering Authority as are necessary ~~on each occasion~~ to ensure that all the accrued benefits in respect of any such employees are not Underfunded at the date of the Relevant Transfer . (For the avoidance of doubt Underfunded means the amount by which the assets of the Local Government Pension Scheme in respect of any such Transferring Employees are less than the anticipated liabilities of the Local Government Pension Scheme in respect of the said new employees at the date of the Relevant Transfer ).
- 49.3 Until such payments under Clause ~~49.256-15~~ are made the Council agrees to indemnify the Organisation against all costs, proceedings, liabilities and claims of whatever nature in respect of and any such Transferring Employees' employees' membership of the Local Government Pension Scheme. The Organisation shall promptly notify the Council whenever: an employee of the Organisation who is aged 55 or more is retiring by reason of redundancy or in the interests of efficiency; or an employee of the Organisation is retiring voluntarily with the consent of the Organisation on or after age 55 and before age 60; or an employee of the Organisation is retiring on the grounds of permanent ill health or permanent infirmity of mind or body; or the deferred benefit of an employee of the Organisation is brought into payment with the consent of the Organisation on or after age 55 and before age 60; or the deferred benefit of an employee of the Organisation is brought into payment on the grounds of permanent ill health or permanent infirmity of mind or body and the date from which immediate benefits are payable under the LGPS Regulations applicable to the Local Government Pension Scheme .
- 49.4 Where any early retirement is effected or a discretion exercised by the Organisation in accordance with the LGPS Regulations and such early retirement or exercise of discretion causes the Council's pension fund additional identifiable costs (such costs to be calculated by the pension fund actuary) the Organisation shall pay to the Council the additional capitalised cost specified by the pension fund actuary by three equal payments, the first payment being made by the end of the Contract Year in which the costs were incurred by the Council's pension fund and the remaining two payments by the end of the next two Contract Years respectively or by the day preceding the date of expiry or termination of this Agreement, if earlier.
- 49.5 The Organisation shall be responsible for all remuneration, benefits, entitlements and outgoing in respect of the Relevant Employees and any other person who is or will be employed or engaged by the Organisation in connection with the provision of any of the Services, including without limitation all wages, holiday pay, bonuses, commission, payment of PAYE, national insurance contributions, pension contributions and otherwise, from and including the Commencement Date.
- 49.6 The Organisation shall indemnify and keep indemnified in full the Council, and after expiry or earlier termination of the Agreement and any future Contractor ("Future Services Contractor ") against:
- 49.6.1 ~~(a)~~ all Direct Losses incurred by the Council or any Future Organisation in connection with or as a result of any claim or demand against the Council or any Future Contractor by any person who is or has been employed or engaged by the Organisation in connection with the provision of any of the Services where such claim arises as a result of any act, fault or omission of the Organisation after the Commencement Date;

49.6.2 ~~(b)~~ — all Direct Losses incurred by the Council or any Future Contractor in connection with or as a result of a breach by the Organisation of its obligations under clause above; and

49.6.3 ~~(c)~~ — all Direct Losses incurred by the Council or any Future Contractor in connection with or as a result of any claim by any trade union or staff association or employee representative (whether or not recognised by the Organisation in respect of all or any of the Relevant Employees) arising from or connected with any failure by the Organisation to comply with any legal obligation to such trade union, staff associated or other employee representative whether under Regulation 13 or 14 of TUPE, under the Directive or otherwise and, whether any such claim arises or has its origin before or after the date of the Commencement Date.

49.7 The Authority shall be entitled to assign the benefit of this indemnity to any Future Contractor.

## **50. INFORMATION ABOUT EMPLOYEES**

50.1 The Organisation shall within six months before the expiry of this Agreement or within such other period as the Council may specify in the event of an earlier termination of this Agreement either in whole or in part and upon a continuing basis provide such information as the Council may require about the terms and conditions of employment of any employees employed by the Organisation in connection with the provision of the Services so as to enable the Council and any third party to assess the implications (if any) of the Local Government Pension Scheme and TUPE Regulations.

## **51. RIGHT TO REPRESENTATION**

51.1 Without prejudice to its obligations under the Regulations, the Organisation shall take all appropriate steps consistent with good employer practice to ensure that its employees have appropriate representation (whether through trade unions or otherwise).

## **52. MEETINGS BETWEEN COUNCIL AND ORGANISATION**

52.1 Without prejudice to the specific provisions of this Agreement, the Council and the Organisation shall meet at such level and with such frequency as may be reasonably necessary to ensure that this Agreement is honoured and the Business Plan performed. A schedule of meetings shall be maintained by the Organisation and shared regularly with the Council. Meetings shall cover but not be limited to

- service charges
- rents
- asset acquisitions and disposals
- charges for other services
- policies
- strategies
  - financial plans
  - financial forecasts

52.2 Any meeting held in furtherance of Clause 52.1 shall be held in accordance with the Meeting Protocol set out in the Seventh Schedule and shall be formally minuted by either the Council or the Organisation with draft minutes being circulated to all attendees within 7 days of the meeting. The draft minutes shall be taken as agreed unless clarification or correction is requested within 14 days of the meeting in which case the minute taker shall be responsible for obtaining agreement to any required changes from the parties.

52.3 The minutes of each meeting held under this Clause 52 shall include a full record of all decisions taken and the basis of the authority of the decision makers.

### **53. COUNCIL'S REPRESENTATIVE**

53.1 The Council's Representative shall be the person nominated in writing by the Council from time to time to act in the name of the Council for the purposes of the Agreement.

53.2 The Council's Representative shall have power to issue reasonable and appropriate instructions to the Organisation to help ensure the proper provision and performance of the Services in accordance with the Business Plan and the Organisation shall comply therewith. If any such instruction is a variation within Clause 56 it shall be subject to the terms thereof PROVIDED THAT any delay resulting does not affect the provision of the Services or the discharge of the Council's statutory duties the Organisation shall be entitled to object to any instructions of the Council's Representative given under this Clause 53.2 which would have the effect of significantly varying the fundamental nature of the Services and the delivery thereof and such objection shall be referred to the dispute resolution procedure pursuant to Clause 60.

53.3 From time to time the Council's Representative may appoint one or more representatives to act for him generally or for specified purposes or periods. Immediately any such appointment is made, the Council's Representative shall give written notice thereof to the Organisation.

### **54. TENANT MANAGEMENT ORGANISATIONS**

54.1 In the event that in accordance with regulations made under Section 27AB of the Housing Act 1985 any tenants propose to form a Tenant Management Organisation (as defined in Section 27AB(8) of the said Act) the Council shall be legally responsible for dealing with all aspects of such proposal.

54.2 The Council may pursuant to such a proposal instruct the Organisation to provide such assistance as may be required to the Council and any tenants making such proposal which assistance shall include:-

54.2.1 provision of information and records about the Services;

54.2.2 providing such reports or other documentation as the Council may reasonably require in a manner and timescale prescribed by the Council for consideration by the tenants or the Council;

54.2.3 attendance at meetings of such tenants;

54.2.4 such other help or advice as the Council may require to enable the Council to fulfil its statutory obligations.

- 54.3 At such time as a decision is made that a transfer of management responsibility for all or part of the Services is to take place in accordance with the provisions set out in Clause 54.1 the Council may issue further instructions to the Organisation requiring the Organisation to make arrangements to transfer responsibility for the Services and the Dwellings so affected to the Tenant Management Organisation in such manner and within such timescale as the Council may prescribe and the Organisation shall comply with such instructions which may include (but not be limited to):-
- 54.3.1 transferring data, records, statistics, files and other information in a format and manner prescribed by the Council;
  - 54.3.2 transferring to the Tenant Management Organisation in accordance with the Regulations any staff transfer wholly or mainly engaged in the provision of services to the Tenant Management Organisation;
  - 54.3.3 transferring necessary equipment and materials as may reasonably be stipulated by the Council's Representative;
  - 54.3.4 establishing working arrangements with the Tenant Management Organisation;
  - 54.3.5 providing any other assistance reasonably needed to enable such transfer to take place.
- 54.4 At such time as a transfer of management responsibility to a Tenant Management Organisation takes place the Council shall be entitled to vary this Agreement in accordance with Clause 56 (giving three (3) months notice to the Organisation) and where such a variation is made the amendment to the Business Plan in accordance with Clause 56.3 shall reflect the cost of providing such Services as remain to be carried out under this Agreement and if no such Services remain this Agreement shall terminate (and Clause 58.4 shall apply).
- 54.5 The Organisation will assume all those responsibilities of the Council which are set out in any management agreement made between the Council and any Tenant Management Organisation whether such agreement exists at the date of this Agreement or arises during the currency of it and the Council shall be entitled to vary this Agreement to reflect such agreement in accordance with Clause 56.
- 54.6 In the event that a Tenant Management Organisation to which responsibility for managing ~~services which include but do not exceed the~~ the Services ~~referred to in this Agreement has been transferred in accordance with this Clause 54~~ ceases to provide all or any part of those ~~s~~Services for all or any of the ~~Dwellings the Council's~~ dwellings shall be entitled to vary further this Agreement in accordance with Clause 56 so as to require the Organisation to provide such ceased Services and where such a variation is effected a variation may also be made in relation to the current Business Plan in accordance with Clause 56.3.
- 54.7 The provisions of this Clause shall apply, mutatis mutandis, to the transfer of additional management responsibilities to an existing Tenant Management Organisation as well as any other Tenant Management Organisations.
- 54.8 The Organisation shall in complying with its obligations under this Clause 54.5 ensure that to the extent permitted by any existing agreement(s) with any Tenant Management Organisation the obligations to provide the Services at the level and standards required by the Agreement or otherwise prescribed by the Council are unaffected.

## 55. DURATION AND RENEWAL

- 55.1 This Agreement shall expire on the day prior to the tenth anniversary of the Commencement Date ~~{ } unless extended by the Council pursuant to the following provisions of this Clause and subject to earlier termination as provided herein.~~
- 55.2 The Council shall be entitled (but without any obligation whatsoever) to extend the Term of this Agreement for one or more further periods of five years by giving notice to this effect to the Organisation no later than six calendar months before the date on which the Agreement would otherwise expire pursuant to Clause 55.1.
- 55.3 The Council shall be entitled (but without any obligation whatsoever) to terminate this Agreement by giving notice to this effect to the Organisation no later than six calendar months before the fifth anniversary of the Commencement Date.

## **56. VARIATIONS**

- 56.1 The Council may from time to time either unilaterally or in response to representations from the Organisation require changes (hereinafter referred to as "Variations" and each a "Variation") to be made to the Services and accordingly may upon giving reasonable written notice thereof to the Organisation add to delete from or otherwise amend in any way the provisions of this Agreement and the Organisation shall be bound by any such Variations.
- 56.2 Reasonable notice for the purpose of Clause 56.1 shall be deemed to be either:-
- 56.2.1 three months' notice for changes which the Council has determined will require consultation under Section 105 of the Housing Act 1985 or which it reasonably considers will result in more or fewer staff being required by the Organisation or significantly more cost being incurred by the Organisation; or one month's notice in any other case.
- 56.3 Where a Variation is effected a variation shall be made in relation to the current Business Plan as soon as practicable by the Council and the Organisation (both acting reasonably) by reference to any increase or reduction in the Organisation's responsibilities and any likely increase or reduction in cost to the Organisation occasioned by such variation.
- 56.4 In the event that a Variation is effected by the Council which is not made in response to representations from the Organisation and which is likely to result in the redundancy of one or more of the Organisation's employees engaged in the provision of the Services the Organisation shall as soon as practicable:-
- 56.4.1 identify the relevant employee or employees;
- 56.4.2 quantify and substantiate the costs which the Organisation is likely to incur by reason of the said redundancy or redundancies; and
- 56.4.3 notify the Council of the same and on receipt of such notification the Council shall, having consulted (where necessary) with the Organisation, either:-
- 56.4.4 take account of the potential redundancy costs to be incurred by the Organisation as a result of the Variation in determining the variation to the Business Plan in accordance with Clause 56.3; or (if the Council so determines)



56.4.5 meet the amount of the statutory redundancy entitlement of the relevant employee or employees PROVIDED THAT the Organisation shall have used its best endeavours to limit redundancy costs AND PROVIDED FURTHER THAT the Council shall not be obliged to agree to a variation to the Business Plan which reflects the cost of more than the Council's minimum obligation in respect of redundancy payments under the Employment Rights Act 1996, the Local Government (Compensation for Redundancy and Premature Retirement) Regulations 1995, the Redundancy Payments (Local Government) (Modification) (Amendment) Orders 1995 and 1996 and the Local Government (Compensation for Redundancy) (Amendment) Regulations 1996.

56.5 The Organisation shall provide to the Council such information as the Council may require to enable it to reach a determination in accordance with Clause

56.6 It is hereby agreed that no change to the Business Plan will be made in respect of the Variation if there is a compensating reduction or re-organisation of any part of the Services.

56.7 In the event of a dispute in relation to any Variation pursuant to this Clause 56 the matter shall be referred to the dispute resolution procedure pursuant to Clause 60.

## **57. ALTERATIONS**

57.1 Where and whenever the number of Dwellings undergoes a substantial change (hereinafter referred to as an "Alteration") during the Term for any reason (save pursuant to Clause 54) a variation shall be made to the Business Plan pursuant to Clause 56.3 and such variation shall take account of any increase or reduction in the Organisation's responsibilities and any likely increase or reduction in cost to the Organisation resulting from such Alteration.

57.2 A "substantial change" for the purposes of Clause 57.1 shall mean any increase or decrease of 5% or more in the number of Dwellings either:-

57.3 being managed by the Organisation immediately after the Commencement Date; or

57.4 remaining to be managed by the Organisation following any one or more such substantial changes and for the avoidance of doubt a substantial change shall be deemed to have arisen as soon as the said increase or decrease occurs whether as a consequence of one event or a series of events.

57.5 The Organisation shall provide to the Council such information as the Council may require for the purposes of Clause 57.1.

57.6 It is hereby agreed that no Variation shall be made pursuant to Clause 56.3 as a result of an Alteration if there is a compensating reduction or reorganisation of any part of the Services.

57.7 If the Organisation disputes a Variation pursuant to Clause 56.3 arising from an Alteration it shall be entitled to refer the matter to the dispute resolution procedure pursuant to Clause 60.

## **58. TERMINATION**

58.1 Without prejudice to the Council's right to terminate the Agreement under clause 55.3 If the Organisation or where applicable any director or any senior manager thereof:-

58.1.1 commits a material breach of any of the Organisation's obligations under the Agreement or commits a breach of any of the Organisation's obligations under the Agreement which is not capable of being remedied;

- 58.1.2 changes the Organisation's structure or staffing in a way which in the opinion of the Council adversely affects the ability of the Organisation to discharge its obligations under the Agreement to the Contract Standard;
  - 58.1.3 has any director or senior manager of it convicted of dishonesty;
  - 58.1.4 becomes bankrupt, or makes a composition or arrangement with its creditors, or has a proposal for voluntary arrangements for a composition of debts, or any scheme or arrangement approved in accordance with the Insolvency Act 1986;
  - 58.1.5 has an application made under the Insolvency Act 1986 to the Court for the appointment of an administrator or an administrative receiver;
  - 58.1.6 has a winding-up order made or (except for the purpose of amalgamation or reconstruction) a resolution for voluntary winding-up passed;
  - 58.1.7 has a provisional liquidator, receiver, or manager of its business or undertaking duly appointed;
  - 58.1.8 has an administrator or an administrative receiver (as defined in the Insolvency Act 1986) appointed;
  - 58.1.9 has possession taken by or on behalf of the holders of any debenture secured by a floating charge, or any property comprised in, or subject to, the floating charge;
  - 58.1.10 is in circumstances which entitle the court or a creditor to appoint, or have appointed, a receiver, a manager, an administrator or an administrative receiver, or which entitle the court to make a winding-up order then in any such circumstances the Council may (if it so decides) exercise the rights described in Clause 58.3.
- 58.2 If there is or has been any act, omission or failure by the Organisation, its employees, sub-contractors or agents in the performance of the Organisation's obligations under this Agreement which in the opinion of the Council delays, interrupts or prevents the performance of the Services required under this Agreement in accordance with the terms of the Agreement and any standard specified herein then subject to Clause 58.4 the Council shall be entitled (if it so wishes) to exercise the rights described in Clause
- 58.3 In the event of any one or more of the circumstances described in Clauses 58.1 and 58.2 then subject to Clause 58.4 the Council may take any or all of the following actions:-
- 58.3.1 either provide itself or procure the provision of the whole or the relevant part of the Services until such time as (if at all) the Organisation shall demonstrate to the satisfaction of the Council that the whole or such part of the Services will be once more provided by the Organisation in accordance with the provisions hereof;
  - 58.3.2 without determining the whole of this Agreement terminate forthwith the relevant part of the Services only and thereafter itself provide or procure a third party to provide such part of the Services;
  - 58.3.3 determine the whole of this Agreement and in the event of action pursuant to Clauses 58.3.1 and 58.3.2 a corresponding variation to the Business Plan shall be made in accordance with Clause 56.3.
- 58.4 The Council shall act in accordance with Clause 58.5 if the Organisation or where applicable any director or any senior manager thereof:-

58.4.1 in the reasonable opinion of the Council commits any breach of any of the Organisation's obligations under the Agreement which is a non-material breach of the Agreement capable of being remedied; or

58.4.2 fails to carry out the Services or any of them with due skill and care or inadequately or otherwise than in accordance with the provisions of this Agreement.

#### 58.5 Remedial Plan

58.5.1 In the event of the occurrence of one or more of the circumstances described in Clause 58.4 ("the Event") the Council shall require the Organisation to produce a remedial plan ("the Remedial Plan") within 20 Working Days or such other shorter period as the Council may reasonably require of the occurrence of the Event.

58.5.2 The Remedial Plan shall:

- (i) contain an analysis by the Organisation of the reasons why the Event occurred;
- (ii) set out what steps the Organisation proposes to take to deal with the Event and/or establish appropriate improvement targets and timeframes;
- (iii) set out what steps the Organisation proposes to take to avoid a recurrence of the Event;
  
- (iv) in relation to the circumstances in Clause 13.7 identify what action the Organisation proposes to take to provide the Services in accordance with the requirements of Clause 13.1.

The Council shall notify the Organisation within 20 Working Days of receipt of the Remedial Plan whether it is agreed or rejected.

58.5.3 If the Council rejects a Remedial Plan proposed by the Organisation the Council shall give reasons. In these circumstances the Organisation shall within a further 10 Working Days propose a revised Remedial Plan taking account of the Council's reason for rejection and any amendments proposed by the Council. The Council will then decide whether to accept or reject the revised Remedial Plan and in the absence of agreement between the parties the matter shall be determined in accordance with Clause 60.

58.5.4 If

- (i) the Event leading to the production of the Remedial Plan recurs within 3 months of the implementation of the Remedial Plan; or
- (ii) the Services do not improve in accordance with any agreed improvement target confirmed in the Remedial Plan, or
- (iii) the Council has rejected a Remedial Plan in accordance with Clause 58.5.3 and no suitable Remedial Plan is subsequently submitted and approved by the Council; the Council will be entitled to exercise the rights described in Clause 58.3.

58.6 If the Agreement is terminated in whole or in part as provided in Clauses 58.3 the Council shall:-

- 58.6.1 be entitled to reoccupy any premises and repossess any other physical resources or assets licensed, loaned, or hired to the Organisation and to exercise a lien over any of the physical resources or any other thing belonging to the Organisation and shall have full and unfettered licence over all documents for use in connection with the Services;
- 58.6.2 be entitled to employ and pay other persons to provide and complete the provision of the Services or any part thereof and to use all such Organisation's physical resources or other things, and all such documents for the purpose thereof.
- 58.7 If the Council exercises its rights under Clause 58.3 to terminate the whole or any part of the Agreement then in relation to the whole or any such part the Organisation shall, unless the Council requests otherwise:-
- 58.7.1 forthwith cease to perform any of the Services;
- 58.7.2 immediately hold all rent and other sums collected or obtained under this Agreement on trust for the Council notwithstanding any right of retention under Clause 45;
- 58.7.3 hand over this Agreement to the Council without detriment to the interest of the Council's tenants or other customers of the Council.
- 58.8 The Council undertakes to exercise its power to appoint and remove board members pursuant to the Articles of Association of the Organisation only in any of the circumstances described in Clauses 58.1 and 58.2 and then only for so long as (in the Council's reasonable opinion) the relevant circumstances subsist.
- 58.9 On termination or expiry of the Agreement:
- 58.9.1 the parties shall co-operate and agree an exit plan ("Exit Plan"); and
- 58.9.2 the Organisation shall comply with the provisions of the Exit Plan and shall promptly provide such assistance and comply with such timetable as the Council may reasonably require for the purposes of ensuring an orderly and efficient transfer of responsibility for provision of the Services to the Council or other organisation.
- 58.10 The Organisation shall within five (5) Working Days of receipt of a Termination Notice or ten (10) Working Days prior to expiry of the Contract Period provide to the Council a comprehensive report (which shall be up to date at the date of submission) relating to the provision of the Services including (without limitation) details of any backlogs, work in progress and other information as may be reasonably required by the Council to enable the Council or such other body as it may appoint to plan properly for the transfer of responsibility for provision of the Services.
- 58.11 The Organisation shall on the expiry or termination of the Agreement forthwith deliver up to or transfer to the Council (or such other person as the Council may direct) all Service Data, documents and other data (including computerised data in compatible form on to such computer system as the Council may request) in the possession or control of the Organisation which relate to the performance, monitoring and management of the Services as may be reasonably required by the Council as a result of the transfer of responsibility of the Services. Until such delivery or transfer takes place, the Organisation, upon being so requested by the Council, shall afford the Council's Representative or such other persons authorised by the Council's Representative access to the Service Data, documents and other data for the purposes of undertaking or arranging for the undertaking of the Services
- 58.12 On the termination or expiry of the Agreement, the Organisation shall:

- 58.12.1 vacate and deliver up the Council's Premises to the Council in the condition required by the leases;
- 58.12.2 deliver up the Council's Equipment and the Council's Computer Systems loaned or licensed to the Organisation, to the Council; and
- 58.12.3 cease to be entitled to occupy the Council's Premises or to use the Council's Equipment and Council's Computer Systems unless permitted in writing to do so by the Council's representative for the sole purpose of completing any outstanding provision of the Services.

58.13 In the event that the Organisation fails to comply with its obligations under Clause 58.12.162.11.1.1 the Council shall be entitled to enter upon and repossess the Council's Premises.

58.14 If the Organisation fails to comply with its obligations under Clause 58.12.2 the Council shall be entitled (and is hereby licensed by the Organisation to do so) to enter upon any of the Organisation's premises where the Council's Equipment and Council's Computer Systems are located and seize any such equipment and systems which has not been returned.

## 59. VARIATION OF CONTRACT

59.1 Subject to Clause 56, no deletion from, addition to, or variation of this Agreement shall be valid or of any effect unless agreed in writing and signed by the parties.

## 60. DISPUTE RESOLUTION

60.1 Save as provided in Clause 6.4 in the event of any dispute between the Council and the Organisation arising out of or in connection with this Agreement the parties shall, subject to Clause 60.7, in the first instance use their reasonable endeavours to resolve it amicably between them in accordance with the procedure set out below:-

60.1.1 Stage 1: Representatives of the parties in dispute (being the officers having day to day responsibility of the area which is the subject of the dispute) shall meet within 3 Business Days. If they are unable to agree a unanimous resolution at such meeting or if there shall be no appropriate officers of each of the parties available to attend such meeting then move to Stage 2;

60.1.2 Stage 2: The Council's Representative and the Organisation's Representative shall meet within 3 Business Days. If they are unable to agree a unanimous resolution at such meeting or if both representatives are not available to attend such a meeting then move to Stage 3;

60.1.3 Stage 3: The Chief Executive of the Council and of the Organisation respectively or their nominated deputies shall meet within 3 Business Days.

60.1.4 In seeking to resolve any dispute considered under Stage 1, Stage 2 or Stage 3 the parties shall apply the following principles:

- (i) A spirit of mutual trust and co-operation;
- (ii) Both parties shall bear their own costs;
- (iii) Any unanimous decision shall be implemented.

60.2 Disputes remaining unresolved after following the procedure set out in Clause 60.1 shall be referred to an expert to be agreed upon by the parties or in default of such agreement to be nominated by the President for the time being of the Chartered Institute of Housing or a person appointed by such President.

60.3 The Expert appointed under Clause 60.2 shall be entitled to make such decision or award as the Expert thinks just and equitable having regard to all the circumstances then existing and the costs of such Expert shall follow the event or in the case of neither party succeeding such cost shall be apportioned between the parties by the Expert in such proportions as the Expert in his or her absolute discretion thinks fit.

60.4 Any award of costs under Clause 60.3 shall be reflected in a variation to the current Business Plan.

60.5 Any award or decision of the Expert under this Clause shall be final and binding on both parties save in the event of fraud or a mistake in law or material fact.

60.6 Until such time as a dispute between the Organisation and the Council is resolved the Organisation shall continue to perform the Services in accordance with this Agreement.

60.7 Fast Track Procedure

60.7.1 Where the circumstance of a dispute:-

60.7.1.1 are such that it must be settled by a given date in order to enable a party to meet a deadline imposed by a body with legitimate executive, legislative or judicial authority over it and the deadline or period is such as to preclude use of the full dispute resolution procedure; or

60.7.1.2 are such that a party reasonably considers that there are other material reasons why the dispute must be settled within a given period or by a given date and the deadline or period is such as to preclude use of the full dispute resolution procedure then either party may invoke the Fast Track Procedure. A party invoking the Fast Track Procedure may omit Stage 2 and/or Stage 3 and proceed from Stage 1 direct to Stage 4.

## **61. NOTICES**

61.1 Any demand, notice, or other communication required to be given hereunder shall be in writing and shall be sufficiently served if served personally on the addressee, or if sent by prepaid first class recorded delivery post, by telex, electronic mail or facsimile transmission to the registered office or last known address of the party to be served therewith and if so sent shall, subject to proof to the contrary, be deemed to have been received by the addressee on the second Working Day after the date of posting or on successful transmission, as the case may be.

61.2 Notices served under Clause 61.1 shall be sent by first class recorded delivery mail (or equivalent). All other notices shall be sent by such means as the sending party deems appropriate.

## **62. SEVERANCE**

62.1 If any provision of this Agreement shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity or unenforceability shall in no way impair or affect any other provision all of which shall remain in full force and effect.

### **63. PARTNERSHIPS**

63.1 Nothing in this Agreement shall be construed as establishing or implying any partnership or joint venture between the parties hereto and save as expressly provided nothing in this Agreement shall be deemed to make the Organisation the agent of the Council or authorise the Organisation (a) to incur any expenses on behalf of the Council (b) to enter into any engagement or make any representation or warranty on behalf of the Council or (c) to commit or bind the Council in any way whatsoever without in each case obtaining the Council's Representative's prior written consent.

### **64. SURVIVAL OF THIS CONTRACT**

64.1 Insofar as any of the rights and powers of the Council provided for in this Agreement shall or may be exercised or exercisable after the termination or expiry of this Agreement the provisions of this Agreement conferring such rights and powers shall survive and remain in full force and effect notwithstanding such termination or expiry.

64.2 Insofar as any of the obligations of the Organisation provided for in this Agreement remain to be discharged after the termination or expiry of this Agreement the provisions of this Agreement imposing such obligations shall survive and remain in full force and effect notwithstanding such termination or expiry.

### **65. LAW**

65.1 This Agreement shall be governed by and construed according to English Law.

### **66. CONCURRENT REMEDIES**

66.1 No right or remedy herein conferred upon or reserved to either party by this Agreement is exclusive of any other right or remedy provided herein or by law or equity and each such right or remedy shall be cumulative of every other right or remedy and may be enforced concurrently therewith or from time to time and shall be without prejudice to any pre-existing liabilities or obligations of the other party under this Agreement.

### **67. ENTIRE AGREEMENT**

67.1 This Agreement constitutes the entire agreement between the parties as to the subject matter hereof and supersedes all previous agreements and understandings (if any) between the parties with respect thereto.

### **68. RIGHTS OF THIRD PARTIES**

68.1 Save where otherwise expressly or impliedly stated no express third party right and no purported third party right is conferred by this Agreement or any contract deed or instrument entered into under or in connection herewith pursuant to the Contracts (Rights of Third Parties) Act 1999.

### **69. NOMINATION RIGHTS AND AGREEMENTS**

69.1 The Organisation shall afford the Council all appropriate assistance and co-operation to enable the Council to achieve consistency and fairness in the Council's allocations and nominations policies and procedures throughout the Council's administrative area.

### **70. VARIATIONS TO TENANCY CONDITIONS**

70.1 The Organisation shall implement any variations to the Council's Tenancy Conditions required by the Council and help the Council to comply with any requirements of the Housing Act 1985 in respect of such variations.

**71. INFORMATION IN TENANTS' HANDBOOK**

71.1 The Organisation shall assist the Council in providing existing tenants with information about Council tenancies or other aspects of the Council's housing functions throughout the Council's administrative area whether through the tenants handbook or otherwise.

**72. INFORMATION FOR PROSPECTIVE TENANTS**

72.1 The Organisation shall afford prospective Council tenants with such information about tenancies within the Organisation's operational area and elsewhere within the Council's administrative area as may be appropriate or as the Council may reasonably stipulate.

**73. TRANSFERS AND MUTUAL EXCHANGES**

73.1 The Organisation shall adopt such policies and procedures in respect of transfers and mutual exchanges as shall facilitate movement within the Council's administrative area on such terms as the Organisation reasonably determines to be appropriate or otherwise as the Council reasonably stipulates.

**74. CONSULTATION WITH OTHER HOUSING SERVICE PROVIDERS**

74.1 The Organisation shall consult with other housing service providers within the Council's administrative area so as to achieve so far as practicable such goals of fair and consistent treatment for existing and prospective tenants as the Council shall determine.

**75. COMPARISON EXERCISES WITH OTHER HOUSING SERVICE PROVIDERS**

75.1 The Organisation shall participate in such benchmarking and other comparison exercises with other housing service providers within the Council's administrative area as the Council shall reasonably require.



**IN WITNESS** whereof these presents have been executed as a **Deed** and

Delivered the day and year before within.

**THE COMMON SEAL** of **The London Borough of Lewisham** was hereunto affixed in the presence of:-

**THE COMMON SEAL** of **Lewisham Homes Limited** was hereunto affixed in the presence of:-

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