

**DATED** \_\_\_\_\_ **20[ ]**

**THE LONDON BOROUGH OF LEWISHAM (1)**

**- and -**

**LEWISHAM HOMES (2)**

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**AGREEMENT FOR  
HOUSING MANAGEMENT AND OTHER SERVICES**

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**THIS AGREEMENT** is made the \_\_\_\_\_ day of \_\_\_\_\_ 20[ ]

**BETWEEN:**

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

and

(2) **LEWISHAM HOMES** whose registered office is situate at [ \_\_\_\_\_ ] (“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 2 of the Local Government Act 2000 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 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:-

**PART A - PARTNERSHIP IN DELIVERY BETWEEN THE ORGANISATION AND THE COUNCIL**

**1. THE DELIVERY PLAN**

- 1.1 The Organisation shall deliver the Delivery Plan which in its initial form is set out in Annex 1 and which as to its format for future years is set out in Annex 2.
- 1.2 The Delivery Plan:-
  - 1.2.1 sets all the outputs of the Organisation, the key performance requirements of the Services and includes the performance standards expected;
  - 1.2.2 includes the overall strategy of the Organisation and how the Organisation will deliver the key strategic goals of the Council and the community the Council represents;

1.2.3 details the financial and staffing resources required to enable the Organisation to deliver the Delivery Plan and perform the Services with skill, care and diligence.

## **2. COMMITMENT TO THE COMMUNITY**

2.1 The Services to be carried out by the Organisation are set out in the Delivery Plan and are part of an important relationship between the Council and the community it represents. The Council's Community Strategy contains the key objectives of this relationship. The Organisation has a duty to help deliver those objectives. The Organisation through the Delivery Plan and the Annual Performance Plan will ensure that all its policies and activities support the objectives of all relevant Council strategies ("the Strategies") including (but not exclusively) the Community Strategy and those other strategies which are entitled, relate to or are the equivalent of the following:-

- Housing;
- Economic Development;
- Anti Poverty;
- Social Inclusion;
- Crime & Disorder
- Neighbourhood Renewal;
- Tenant Empowerment;
- Home Energy Efficiency;
- New Deal for Communities;
- Child Support;
- Older People;
- Supporting People
- Health and Housing
- Sustainability
- Waste collection and recycling
- Young people
- Education
- Homelessness

2.2 For such purposes the Organisation shall:-

2.2.1 ensure all relevant employees are trained and understand the Strategies;

- 2.2.2 provide information to help the Council up date and develop the Strategies;
- 2.2.3 demonstrate in the Annual Performance Plan how resources will be used to meet the objectives of the Strategies.

### **3. EQUAL OPPORTUNITIES**

- 3.1 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.
- 3.2 The Organisation shall follow the best professional practice in relation to equal opportunities and in particular (but without limitation) shall comply with:-
  - 3.2.1 all relevant legislation as well as statutory and other official guidance and codes of practice;
  - 3.2.2 the Council's own equal opportunities policies as the same may be adopted and amended from time to time.
- 3.3 The Organisation shall initially comply with and adopt as its own the Council's Equal Opportunity Policy which is set out at Annex 5. The Organisation may amend the Equal Opportunity Policy from time to time (subject to the Council's approval which shall not be unreasonably withheld) in accordance with Clause 3.2 and shall ensure that the application of this policy includes how the Organisation:-
  - 3.3.1 employs and recruits employees;
  - 3.3.2 deals with board membership and other issues arising from its constitution;
  - 3.3.3 handles racial disputes and harassment;
  - 3.3.4 commissions contractors, consultants and agents;
  - 3.3.5 implements the Delivery Plan.
- 3.4 The Organisation shall provide such information as the Council may reasonably request for the purpose of assessing the Organisation's compliance with this Clause 3.

### **4. TENANT AND LEASEHOLDER INVOLVEMENT**

- 4.1 The Council has a partnership with its tenants and leaseholders and to further this relationship the Organisation will honour the Council's Tenant Compact so as to support and encourage tenant involvement. The initial form of the Council's Tenant Compact forms Annex 4 and the Delivery Plan will include sufficient resources to ensure that the objectives of the Council's Tenant Compact are met.
- 4.2 The Council and the Organisation will work together so as to ensure that the Council's Tenant Compact is amended from time to time so far as necessary to comply with all statutory requirements and other official guidance issued from time to time and follow best professional practice.



- 4.3 The Tenant Compact objectives will be reviewed and consulted upon from time to time and sufficient resources will be provided for in the Delivery Plan to deliver these objectives.
- 4.4 The Tenant Compact will include strategies for involving 'difficult to reach' groups and those tenants who do not normally get involved in the management of their homes.
- 4.5 A summary of the Annual Performance Plan will be provided to the Council Representative for approval and on receipt of approval will be forwarded to every household affected.

## **PART B – PERFORMANCE RESPONSIBILITIES OF THE COUNCIL**

### **5. DUTY OF BEST VALUE**

- 5.1 The Council has a duty of Best Value and must make arrangements to secure continuous improvement in the way in which its functions are exercised having regard to a combination of economy, efficiency and effectiveness. In discharging its responsibilities under this Agreement the Organisation must also make the same arrangements to secure continuous improvement in the way its objects are achieved and the Services are performed having regard to a combination of economy, efficiency and effectiveness.
- 5.2 The Council following the receipt of the Annual Performance Plan will consider whether the Council through the Organisation should continue to exercise a particular function or service and will consider the level and the way in which it should exercise that function or service. The Council will also consider its objectives and strategies in relation to that function. Any variations to this Agreement following such consideration shall be effected in accordance with Clause 63.
- 5.3 The Annual Performance Plan shall be agreed and the Best Value Reviews shall be carried out in accordance with Clauses 7 and 8 respectively. In the event of an extension to this Agreement and wherever the Council so reasonably requests the Organisation will carry out any best value reviews of the Organisation's housing management function which the Council is required by statute to carry out.

## **PART C – PERFORMANCE RESPONSIBILITIES OF THE ORGANISATION**

### **6. FUTURE DELIVERY PLANS**

- 6.1 The Organisation shall provide to the Council's Representative by 1 March 2006 an initial draft of the Annual Sections of the Delivery Plan for the first year following the Commencement Date in the Delivery Plan Format.
  - 6.1.1 The sections of the Delivery Plan comprising the financial plan, the performance plan and the resourcing plan will be received on this annual basis.
  - 6.1.2 The section of the Delivery Plan comprising the service delivery plan shall be reviewed concurrently with the other sections unless the Delivery Plan Format provides for more frequent reviews (in which event the parties shall carry out such review procedures as are stipulated in the Delivery Plan Format and the annual reviews provided for below in this Clause shall accommodate the result of intervening reviews).
  - 6.1.3 The section of the Delivery Plan comprising the capital programme will be reviewed so as to enable the Council
    - (a) to make its housing investment programme bid to the Government in July each year and

(b) to settle the revenue and capital programme, fix rents and determine the following year's schemes in January each year in response to the Housing Revenue Account subsidy announcement by the Government in the preceding December.

- 6.1.4 After the first year the Organisation shall provide to the Council by the 1<sup>st</sup> March in each calendar year a draft of the Annual Sections of the Delivery Plan for the year following the next anniversary of the Commencement Date in the Delivery Plan Format
- 6.2 The Delivery Plan will include an action plan setting out the Organisation's suggested measures that might be taken by the Organisation, the Council or other organisations further to improve the Services PROVIDED THAT against any measure which it considers might be taken by the Organisation itself, the Organisation shall set out whether the implementation of such measure would result in any upward or downward variation of the Delivery Plan if the measure were to be a variation under the provisions of Clause 63.
- 6.3 When submitting the draft of the Annual Sections of the Delivery Plan each year to the Council's Representative the Organisation shall make suggestions for possible improvements in or development of the Services. The Council will consider any such suggestions but it will be under no obligation to adopt any or all of them.
- 6.4.1 The Council shall give due and reasonable consideration to the draft Delivery Plan and shall within fifteen (15) Working Days (or such other period as may be agreed between the parties) of receipt of the Annual Sections of the draft Delivery Plan notify the Organisation as to whether such sections are agreed.
- 6.4.2 If not agreed, then the Council shall further notify the Organisation of any changes required to the draft Delivery Plan.
- 6.5 Senior officers of the Council and the relevant tenant representative body will meet with nominated Board Members of the Organisation and the Chief Executive of the Organisation within thirty (30) Working Days (or such other period as may be agreed between the parties) of the receipt by the Council of the Annual Sections of the said draft Delivery Plan (1) to review the draft Delivery Plan and (2) to review the previous year's performance against the targets set out in that year's Delivery Plan.
- 6.6 This meeting will form part of a series of meetings between senior officers of the Council the relevant tenant representative body nominated Board Members of the Organisation and the Chief Executive of the Organisation (the "Delivery Plan Meetings"). The Delivery Plan Meetings will take place once every three months (or more frequently if required by other provisions of this Agreement or otherwise reasonably requested by either the Council or the Organisation).
- 6.7 Where the Council is not satisfied with (1) the draft Delivery Plan or (2) the Organisation's performance following the review in Clause 6.5 the Council shall be entitled to issue instructions to the Organisation (1) of any changes required to the draft Delivery Plan or (2) to implement any measures which the Council may deem necessary to perform the current Delivery Plan. These performance measures will also be reflected so far as necessary in the draft Delivery Plan.
- 6.8 In the event that the Council and the Organisation shall not have agreed the draft Delivery Plan by the relevant anniversary of the Commencement Date the matter shall be resolved in accordance with the dispute resolution provisions in Clause 67 and pending the resolution the then current Delivery 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 Delivery Plan shall be adopted in accordance with the outcome of the dispute resolution process.

- 6.9 The Council will use the relevant part of the Delivery Plan in compiling the Council's own Housing Revenue Account business plan and in conducting any of its own best value reviews.
- 6.10 In the event that notwithstanding any measures taken pursuant to this Clause or to Clause 65.5.2(iv) the Organisation continues to fail to demonstrate that the Agreement and the Services represent best value the Council shall be entitled (acting reasonably) to terminate this Agreement.
- 6.11 There shall be one formal meeting each year to which the elected members of the Council, Board Members of the Organisation and nominees of the relevant tenant representative body shall be invited to discuss that year's Delivery Plan and review the Organisation's performance.

## **7. THE ANNUAL PERFORMANCE PLAN**

- 7.1 Throughout the Contract Period the parties shall work together to ensure that the Agreement and the Organisation's performance of the Services represents value for money and best value generally and achieves continuous improvement and efficiency gains for the benefit of the Council.
- 7.2 In addition to any requirements in the Delivery Plan Format the Organisation's Annual Performance Plan shall contain the following matters:-
- 7.2.1 an analysis of the Organisation's objectives in respect of the Services;
- 7.2.2 an analysis of the Services throughout the previous twelve months, focusing on those areas which were successful and unsuccessful;
- 7.2.3 an identification in the Organisation's view of the reason for the successes and failures referred to in Clause 7.2.2 recognising that (a) some of the matters may be due to the Organisation's performance of the Services (or that of its sub-contractors, employees or agents), (b) others may be due to the actions or omissions of the Council, other companies engaged by the Council and/or the Council's employees and (c) other matters may be due to external or other circumstances;
- 7.2.4 performance targets (based on Best Value Performance Indicators as a minimum) for the subsequent year compared with performance in the current year;
- 7.2.5 a timetable of planned ALMO Service Reviews and a summary of any previous ALMO Service Reviews;
- 7.2.6 any other matters specified by the Secretary of State under Section 6 of the Local Government Act 1999;
- 7.2.7 an action plan as described in Clause 6.2.
- 7.3 The submission of the Annual Performance Plan by the Organisation to the Council as part of the Delivery Plan shall be without prejudice to any monitoring or performance review which may be carried out by the Council under any of the other terms of the Agreement (including but not limited to Clause 7.5).

- 7.4 The Council will use the Annual Performance Plan in compiling the Council's own annual performance plan and in conducting any of its own best value reviews (whether relating wholly or partly to housing or cross-cutting or otherwise).
- 7.5 At any time following any failure by the Organisation properly to perform its obligations under Clauses 7 and 8 the Council shall be entitled to carry out itself (or to engage a third party to carry out) a review of the Services or any part thereof, including an ALMO Service Review. The Organisation shall offer all necessary assistance to the Council and any third party in the carrying out of such review and shall attend such meetings and provide such documents and information as may reasonably be necessary for this purpose.
- 7.6 The Organisation shall carry out any measure reasonably required by the Council or recommended by the Secretary of State or the Audit Commission in order to achieve best value and value for money. The Organisation shall co-operate with and assist fully the Council, the Secretary of State and the Audit Commission during any best value inspection.
- 7.7 Any disputes between the parties in relation to this Clause 7 may be referred by either party to the dispute resolution procedure in accordance with Clause 67.

## **8. ALMO SERVICE REVIEWS**

- 8.1 According to the timetable set out in the Annual Performance Plan and in addition to any requirements in the Delivery Plan Format the Organisation shall conduct ALMO Service Reviews which enable the Council to:-
- 8.1.1 analyse whether the Organisation should be providing the Services and the level at which the Services are provided;
- 8.1.2 analyse the Organisation's objectives in providing the Services;
- 8.1.3 assess the Organisation's performance in:
- (i) providing the Services by reference to any relevant best value performance indicators;
  - (ii) meeting any relevant best value performance standards (including standards which have been specified but do not yet apply);
  - (iii) meeting any relevant best value performance target.
- 8.1.4 consult with other best value authorities (as defined in Section 1 of the Local Government Act 1999) and all other appropriate stakeholders and interested parties about the provision of the Services;
- 8.1.5 assess the competitiveness of the Organisation's performance in providing the Services by comparison with similar service providers;
- 8.1.6 meet the Council's statutory obligations to review all functions over a 5 year cycle;
- 8.1.7 address any other matters specified by the Secretary of State under Section 5 of the Local Government Act 1999.
- 8.2 Without prejudice to the specific requirements of Clause 8.1 the Organisation shall assist the Council in conducting any and all of the Council's own best value reviews (whether

relating wholly or partly to housing or cross-cutting or otherwise) where it is reasonable for the Council to require the assistance of the Organisation.

## **9. PERFORMANCE INDICATORS**

9.1 Whenever reasonably requested to do so by the Council the Organisation shall provide to the Council such information and data as are necessary to establish whether or to what extent the Organisation's performances of the Services matches the Best Value Performance Indicators.

## **10. OFFICIAL RETURNS, HOUSING INSPECTIONS ETC**

10.1 The 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 and to comply with all relevant inspection regimes including but without limitation:

10.1.1 returns to the Department for Communities and Local Government and other Government Departments;

10.1.2 Housing Revenue Subsidy claim forms;

10.1.3 Housing Investment Programme submissions;

10.1.4 submissions or responses in respect of best value inspections (whether carried out by the Housing Inspectorate or otherwise);

10.1.5 Comprehensive Performance Assessments;

10.1.6 Office of Surveillance Commissioners.

10.2 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.

10.3 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.

## **PART D – STRATEGIC RESPONSIBILITIES OF THE ORGANISATION**

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

11.1 The Organisation will be a strategic partner of the Council and a significant user of the Council's services. The views of the Organisation as a stakeholder, a service user and service provider will be essential in the development of the Council's corporate strategies and reviews of services. 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.

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

- 12.1 The Organisation will at the request of the Council's Representative and in pursuit of Delivery 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.

## **PART E – STRATEGIC RESPONSIBILITIES OF THE COUNCIL**

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

- 13.1 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.
- 13.2 Subject to Clause 13.1 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.

### **14. CONSULTATION WITH TENANTS**

- 14.1 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
- 14.1.1 not to renew this Agreement pursuant to Clause 62; or
- 14.1.2 to change the status of the Organisation in which circumstances the consultation shall take the form of a ballot of secure and introductory tenants.
- 14.2 Where appropriate any consultation under this clause shall be carried out in the joint names of the Organisation and the Council.

## **PART F – RESPONSIBILITIES OF THE ORGANISATION**

### **15. FUNCTIONS DELEGATED**

- 15.1 The functions delegated by the Council for the purposes of this Agreement shall be those functions or activities identified in Annex 3 as the responsibility of the Organisation.

### **16. PROVIDING THE SERVICES**

- 16.1 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 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 and otherwise in compliance with:-

- 16.1.1 the Delivery Plan and in particular (but without limitation) the key performance requirements of the Services set out therein;
- 16.1.2 any current Best Value Performance Indicators which are relevant to the performance of the Services or any part thereof;
- 16.1.3 Council Guidelines and in particular (but without limitation) those relating to customer care;
- 16.1.4 any reasonable instructions issued to the Organisation by the Council Representative pursuant to or in connection with the Agreement;
- 16.1.5 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 15;
- 16.1.6 in a manner which shall preserve, promote and enhance and shall not prejudice the reputation and interests of the Council;
- 16.1.7 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;
- 16.1.8 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;
- 16.1.9 all legislation;
- 16.1.10 the Guidance.
- 16.2 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.
- 16.3 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.
- 16.4 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:-
  - 16.4.1 all offices and work places of the Organisation for the purpose of monitoring and inspecting work being performed in order to provide the Services;
  - 16.4.2 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;
  - 16.4.3 any personnel or agents of the Organisation for the purpose of interviewing such persons in connection with the provision of the Services;

- 16.4.4 for the purposes of complying with Clauses 16.4.1–16.4.3 all technology, resources, equipment, systems and procedures used or proposed to be used in connection with the provision of the Services.
- 16.5.1 The Organisation shall as far as is relevant at all times comply with the Council's Standing Orders and Financial Regulations as the same may from time to time be amended, varied or replaced and notified to the Organisation until such time as the Organisation shall have adopted its own Standing Orders and Financial Regulations with the consent of the Council which shall not be unreasonably withheld or delayed.
- 16.5.2 In the event the Organisation does adopt its own Standing Orders and Financial Regulations in accordance with Clause 16.5.1 it shall not make any significant changes to those Standing Orders or Financial Regulations so without the consent of the Council which shall not be unreasonably withheld or delayed.
- 16.6 If the Organisation is unable or fails to provide the Services or any part thereof in accordance with the requirements of Clause 16.1, 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 Delivery Plan. The Council's rights under this Clause 16.6 shall be without prejudice to any other rights or remedies which it may possess.
- 16.7 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.
- 16.8 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 16.8 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.
- 16.9 The Organisation shall throughout the Term maintain and implement such quality assurance systems and procedures as are appropriate to enable the Organisation to ensure that the Services are always provided to the Contract Standard and the Organisation shall afford the Council full access to such systems and procedures for audit or other purposes. In the event that the Organisation fails to comply with this Clause the Council shall be entitled to:-
- 16.9.1 establish its own quality management systems and procedures;
- 16.9.2 require the Organisation to use the same.
- 16.10 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.
- 16.11 In addition to the agreed procedures for office opening and availability of staff set out in the Delivery 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.

- 16.12 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.
- 16.13 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.
- 16.14 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.
- 16.15 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.
- 16.16 The Organisation shall not depart from its primary objects as set out in its Memorandum of Association and shall not carry out any of the said objects in areas where the Council does not own or manage stock without the prior written consent of the Council which will not be unreasonably withheld.

## **17. STATUTORY REQUIREMENTS**

- 17.1 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).
- 17.2 Nothing in this Agreement shall fetter or limit the Council's ability to discharge its statutory functions.
- 17.2.1 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.

## **18. VARIATIONS TO TENANCY AGREEMENTS**

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

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

- 19.1 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.

- 19.2 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 and in particular:-
- 19.2.1 the task or tasks such persons have to perform;
- 19.2.2 all relevant provisions of the Agreement;
- 19.2.3 all the Council's Guidelines in relation to customer care;
- 19.2.4 all relevant policies, rules, procedures, standards and Standing Orders, the Council's Constitution, its Procurement Code of Practice and Financial Regulations of the Council;
- 19.2.5 all relevant rules, procedures, statutory requirements and EU Directives concerning health and safety, including the Council's health and safety policy.
- 19.3 The Organisation shall, for the purposes of enabling the Council and the Council's Representative to satisfy themselves as to the Organisation's compliance with this Clause 19 maintain, at all times, accurate and up to date records of all of the personnel of the Organisation who are or who are likely to be involved in the provision of the Services, including their names, qualifications, and capacity in which they are engaged and attendance records and shall on written request from the Council provide these to the Council Representative.
- 19.4 The Council's Representative shall, upon giving notice in writing, have the power to require the Organisation (but not unreasonably or vexatiously) to remove from the provision of the Services or a specified part thereof any personnel of the Organisation specified in such notice, including the Organisation's Representative. The Organisation shall forthwith remove such personnel from the provision of the Services or the specified part thereof and shall immediately provide a replacement unless the Council determines otherwise.
- 19.5.1 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.
- 19.5.2 The Organisation shall disclose to the Council's Representative the names and addresses and sufficient information and as appropriate all convictions of its personnel engaged in and about the provision of the Services to enable the Council to make or require the Organisation to make proper checks. The Council may require such personnel to be removed from the provision of the Services or a specified part thereof.
- 19.6 The Council shall in no circumstances be liable either to the Organisation or to such personnel in respect of any cost, expenses, liability, loss or damage occasioned by any removal effected under Clauses 19.3 and 19.4. The Council shall indemnify the Organisation against damages, costs, charges and expenses arising from or incurred by reason of the Council's exercise of its right under clauses 19.3 and 19.4. The Organisation shall promptly notify the Council of any proceedings (including threatened proceedings) arising out of the exercise of the said right. The Organisation shall make no admissions in respect of such proceedings without the Council's written consent and the Organisation

shall allow the Council at its own expense to conduct and settle any such proceedings or negotiations. The Organisation shall give the Council all reasonable assistance in the conduct of such negotiations or proceedings.

- 19.7 At the expiry of the Term or upon earlier or part termination of this Agreement the Council shall be entitled but shall not be obliged (subject to the application of the Regulations) to offer employment to any person employed by the Organisation in the performance or supervision of the Services and in the event of such person accepting employment with the Council the Organisation shall forthwith release such person from all contracts of service

## **20. CONTROL AND SUPERVISION OF THE ORGANISATION'S PERSONNEL**

- 20.1 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. Such appointment or any further appointment shall be subject to the approval of the Council. The Organisation's Representative shall not be replaced without the prior written approval of the Council, such approval not to be unreasonably withheld. Any notice, information, instruction or other communication given to the Organisation's Representative shall be deemed to have been given to the Organisation.
- 20.2 The Organisation shall forthwith give notice in writing to the Council's Representative of the identity, address and telephone numbers of the person appointed as the Organisation's Representative and of any subsequent appointment.
- 20.3 The Organisation shall forthwith give notice in writing to the Council's Representative of the identity, address and telephone numbers of any person authorised to act for any period as deputy for the Organisation's Representative and when such deputy ceases to be so authorised.
- 20.4 The Organisation shall ensure that the Organisation's Representative, or a competent deputy, duly authorised by the Organisation to act on its behalf, is present at all work places of the Organisation, where work in connection with the Services is being carried out, and available to meet the Council's Representative at all reasonable times.
- 20.5 The Organisation shall provide and shall ensure that its personnel wear at all times, when engaged in the provision of the Services, such identification (including photographic identification) as may be specified by the Council, and shall ensure that when requested to do so any personnel of the Organisation shall disclose their identity and status as personnel of the Organisation.
- 20.6 The personnel of the Organisation engaged in or about the provision of the Services shall be under the control and direction of the supervisory personnel of the Organisation. However, the Organisation shall nevertheless ensure that the personnel of the Organisation whilst on Council premises comply with any necessary instructions and requests given to them by the relevant Council's premises manager.
- 20.7 The Organisation shall ensure that the personnel of the Organisation do not behave in a manner calculated or likely to be offensive to customers of the Services by virtue of their age, gender, colour, race, ethnicity, culture, religion, disability or sexual orientation, nor in a manner which is insensitive to the needs of customers with learning difficulties or customer suffering from emotional or behavioural disturbance or customers who do not have English as their first language.

## **21. USE OF ASSETS**

- 21.1 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.
- 21.2 The Organisation shall be responsible for the maintenance and (where necessary) replacement of all Assets.
- 21.3 All Assets employed by the Organisation in the performance of the Services at any time must be either owned or hired by the Organisation pursuant to a contract of simple hire (and not hire purchase) (the “Hire Contract”) the benefit of which contract must be capable of assignment by the Organisation to the Council or to an organisation nominated by the Council for the purpose of carrying out the Services (or any of them) so that the Services may be continued to be provided by a third party in the event of the termination of this Agreement for any reason.
- 21.4 The Organisation shall ensure that any such Hire Contract requires the owner of the relevant Assets to hire the Assets to the Council on the same terms as the Assets were hired to the Organisation save that the Council shall be entitled to permit the use of the Assets by any other body or person providing the Services (or any of them) or such other organisation providing the Services (or any of them) on behalf of the Council PROVIDED THAT the Council shall have served on the said owner after termination of this Agreement notice in writing requiring compliance with the said provision of the Hire Contract and upon the Council undertaking to pay all hire charges from the date of such notice.
- 21.5 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.
- 21.6 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.
- 21.7 All Assets and materials used by the Organisation shall conform to any applicable British Standard or equivalent EU standard and when so requested the Organisation shall provide the Council with evidence to prove that such Assets and materials so conform.
- 21.8 The Organisation shall permit the Council to inspect at any time on reasonable notice any Assets or materials used or proposed to be used by the Organisation in the provision of the Services and the Organisation shall facilitate such inspections.
- 21.9 The Organisation shall only keep such potentially dangerous or hazardous materials or equipment on the Premises as are necessary for the provision of the Services and are approved by the Council’s Representative (such approval not to be unreasonably withheld or delayed) and such materials or equipment shall at all times be kept under proper control and the Organisation shall ensure that all such materials and their usage and storage comply with all applicable laws
- 21.10 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.

- 21.11 Upon receipt of a notice under Clause 21.10 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.
- 21.12 The Organisation shall cause all Assets to bear such devices, insignia or words as the Council may reasonably approve and determine.

## **22. CONTRACTS TO BE ADMINISTERED**

- 22.1 The Organisation shall act on behalf of the Council in administering the Contracts and shall:-
- 22.1.1 comply with all reasonable requirements of the Council in respect of any or all of the Contracts;
- 22.1.2 monitor and review the performance of those carrying out the Contracts;
- 22.1.3 take all proper steps (but not including legal action or proceedings unless so required expressly in writing by the Council) to enforce the Contracts;
- 22.1.4 at the request of the Council supply all information including copies of any documents to the Council;
- 22.1.5 liaise with the Council in respect of any renewal or re-letting of any of the Contracts.

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

- 23.1 The Organisation shall not:-
- 23.1.1 assign the Agreement or any part thereof or the benefit or advantage of the Agreement or any part thereof;
- 23.1.2 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.
- 23.2 The Organisation shall ensure that any sub-contractor permitted to perform any part of the Services under Clause 23.1.2. shall be fully supplied with all necessary information about this Agreement (including any relevant instructions given by the Council's Representative to the Organisation).
- 23.3 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 such work and or services will not prevent the Organisation from complying with its obligations under this Agreement.

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

- 24.1 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 Fifth Schedule subject to such terms, conditions and stipulations as are set in the Fifth Schedule or as the Council may notify to the Organisation from time to time.
- 24.2 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.
- 24.3 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.
- 24.4 Without prejudice to Clause 24.9 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.
- 24.5 If and to the extent that the Organisation wishes to use any other computer systems and/or software in the provision of the Services and to the extent that interface with the Council's Computer Systems and/or Council's Software is necessary so to do the Organisation shall first obtain the written consent of the Council's Representative and if such consent is given it shall be a condition thereof that the Organisation shall:-
- 24.5.1 ensure that such other computer systems and/or software are compatible with the Council's Computer Systems and/or the Council's Software and further will have no adverse affects on the Council's other computer systems and/or software and/or procedures;
- 24.5.2 ensure that any computer software it uses is properly licensed;
- 24.5.3 comply with all relevant requirements of any supplier of the Council's Computer systems and/or the Council's Software.
- 24.6 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:-
- 24.6.1 all rights (including licences) in or arising from such changes shall become vested in the Council insofar as they relate to the Council's Computer Systems and/or Council's Software;
- 24.6.2 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 Delivery Plan.

- 24.7 If at any time the Council has reason so to do (including but not limited to actual or threatened interference with or damage to the Council's Computer Systems and/or the Council's Software) the Council shall be entitled to require that the Organisation cease to use the Council's Computer Systems and/or the Council's Software and disconnect or otherwise separate the Organisation's own computer systems and/or software from the Council's Computer Systems and/or Council's Software. The Council will not exercise this right without giving as much notice as practicable (save in cases of urgency) and any appropriate variation to the Delivery Plan shall be dealt with in accordance with Clause 63.3 to reflect the cost of providing its own computer systems and software.
- 24.8 The Organisation shall afford access to any of the computer systems, software, databases and operations used by it pursuant to this Agreement to the Council's Representative and any person (including auditors) nominated by them for all purposes connected with the subject-matter of this Agreement and the Council's own activities.
- 24.9 The Organisation shall comply with any security policy which may from time to time be issued by the Council relating to information technology, in whatever form and of whatever nature.
- 24.10 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.
- 24.11 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

## **25. DATA**

- 25.1 Subject to the provisions of Clauses 24 and 26 the Organisation shall be entitled to access such data and information as is stored on the Council's Computer Systems as set out in the Eighth Schedule which the Organisation may require in order to provide the Services.
- 25.2 In addition to any requirements set out in the Delivery Plan the Organisation will ensure that the Council's Data relating to the Services is kept up-to-date.
- 25.3 Without prejudice to Clauses 24.4 and 24.9 and subject to Clause 26 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.
- 25.4 The Organisation shall at all times ensure that where (following consent under Clause 24.5) the Organisation is using the Organisation's own computer systems:-
- 25.4.1 comprehensive security copies of any computerised Council Data are updated at the end of each Working Day in relation to that day and at least twice a week are stored in a secure location so as to enable the Organisation (or in the event of the default of the Organisation the Council or such other third party as the Council may appoint) to initiate and operate such alternative processing arrangements as may be necessary including (but without

limitation) in the event of a partial or complete failure of the Organisation's own computer systems;

25.4.2 adequate recovery arrangements exist to ensure that the Organisation can continue to comply without interruption with its remaining obligations under this Agreement in the event of a partial or complete failure of the Organisation's own computer systems or software.

## **26. DATA PROTECTION**

26.1 Without prejudice to Clause 25 and subject to Clause 24.9:-

26.1.1 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;

26.1.2 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 26.1.1;

26.1.3 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 26.1.1;

26.1.4 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.

26.2 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.

## **27. CONFIDENTIALITY**

27.1 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.

## **28. HEALTH AND SAFETY**

28.1 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 1992 (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.

## **29. INSURANCES**

29.1 Save as otherwise provided in the [Leases][Licences] the Council shall during the currency of this Agreement be responsible for insuring its premises against fire, explosion, storm



and damage on such terms and against such other risks as the Council shall from time to time determine.

- 29.2 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:-
- 29.2.1 to the Council and any employee of the Council;
- 29.2.2 to the employees of the Organisation;
- 29.2.3 to any other person in the sum of at least £5,000,000 in respect of any one occurrence or series of occurrences arising out of one event.
- 29.3 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.
- 29.4 Without prejudice to the generality of this Clause 29, it is hereby agreed and declared that the Organisation shall be liable for any loss or damage whatsoever and howsoever caused to the contents of the Premises and to the full value of such contents in the event of fire.
- 29.5 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.
- 29.6 The Organisation shall maintain all other insurances as may be necessary or prudent for the performance of the Agreement.
- 29.7 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.
- 29.8 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.
- 29.9 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.
- 29.10 In the event that the Organisation fails to comply with a requirement of the Council in accordance with Clause 29.9 the Council shall be entitled to take either or both of the following steps:-
- 29.10.1 effect such insurances itself and reflect the costs of so doing in the then current Delivery Plan;

29.10.2 commence termination or other action in accordance with Clause 65.

29.11 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.

### **30. HOUSING INSPECTION**

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

- (a) the operation of this Agreement and the work of the Organisation and
- (b) 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.

### **31. PROVISION OF INFORMATION**

31.1 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.

31.2 Subject to Clause 31.1 both parties shall consult as often as may be necessary with each other to ensure that the Services are provided and continue to be provided in a continuous and efficient manner and in accordance with the provisions of this Agreement.

31.3 The Organisation's Representative and the Council's Representative shall at a mutually convenient time and location attend the following meetings to be arranged from the Commencement Date:-

31.3.1 at least once a month to discuss operational issues;

31.3.2 at least once a month to discuss:-

- (i) the manner and extent of the Organisation's provision of the Services pursuant to this Agreement and the Delivery Plan;
- (ii) financial and budgetary issues;
- (iii) any other relevant issues which may arise from time to time

subject to the right of both parties reasonably to vary the number of such meetings by providing the other party with reasonable prior notice thereof.

31.4 The Organisation shall observe and comply with any reasonable and appropriate instructions or directions given or made by the Council's Representative so as to help ensure the proper performance of the Services in accordance with the Delivery Plan and all such instructions or directions shall be confirmed in writing by the Council's Representative

before the end of the Working Day which follows the issue of such instructions or directions.

- 31.5 The Organisation shall inform the Council's Representative immediately by telephone or email (and shall confirm in writing as soon as practicable following such call or email) of any or all of the following matters:-
- 31.5.1 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;
- 31.5.2 any acts or omissions by the Council or such other persons as are referred to in Clause 31.5.1 which prevent or hinder or are likely to prevent or hinder the Organisation from complying with its obligations under this Agreement;
- 31.5.3 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.
- 31.6 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.
- 31.7 The Organisation and the Council shall establish such mutual arrangements as may be necessary (whether by pager, mobile telephones, email or otherwise) to ensure that the liaison arrangements stipulated in this Agreement can be achieved.
- 31.8 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.

## **32. FRAUD**

- 32.1 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.
- 32.2 On receiving notification under Clause 32.1 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.
- 32.3 The Organisation shall afford all possible access and facilities to the Council's Representative and his nominees and agents when the Council's Representative carries out an investigation into any such fraudulent action or malpractice, whether the investigation arises following a notification under Clause 32.1 or as a result of the Council's Representative's own information.
- 32.4 The Council's Representative shall have the right (without prejudice to Clause 32.3) to require that the Organisation suspend from any further work on this Agreement any person suspected of fraudulent action or malpractice.
- 32.5 Without prejudice to any other rights the Council may have (including but not limited to termination under Clause 65) the Council's Representative shall be entitled to require that the Organisation suspend all or any stipulated further work under this Agreement if the

Council's Representative has reasonable grounds for believing that fraudulent activity or malpractice has taken place.

### **33. COMPLAINTS**

- 33.1 The Organisation shall at the request of the Council's Representative, in the places and in a form approved by the Council's Representative, 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.
- 33.2 The Organisation shall keep a written 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. The Organisation shall notify the Council's Representative forthwith in writing of all formal complaints received and of all steps taken in response thereto.
- 33.3 The Organisation shall initially comply with and adopt as its own the Council's complaints policy as the same may be amended from time to time. The Organisation may adapt the policy over time to comply with best practice and legislation subject to approval by the Council which shall not be unreasonably withheld or delayed. Any questions received by the Organisation from the Council's elected members shall be dealt with in accordance with the protocol in Annex 6.
- 33.4 Any costs incurred by the Council in responding to and dealing with any justified complaints about the Organisation's performance of the Services (including any matters raised with the Ombudsman) shall be reflected in a variation to the current Delivery Plan
- 33.5 The Organisation acknowledges that for the purposes of this Clause 33 the term "complaints" includes (without limitation) suggestions from a member of the public or an elected representative as to how the Services might or should be performed as well as personal or particular concerns about tenancies or Dwellings.
- 33.6 Where a local commissioner appointed by the Commission for Local Administration under the Local Government Act 1974 (the "Local Government Ombudsman") conducts an investigation arising out of or connection with the provision of the Services or any part of them, the Organisation shall:
- 33.6.1 provide any information requested by on behalf of Local Government Ombudsman in the time scale allocated;
- 33.6.2 attend any meetings with the Local Government Ombudsman or her\his representative or the Council and permit members of the Organisation's personnel so to attend;
- 33.6.3 promptly allow access to and investigation of any relevant documents and data and, if requested, provide copies;
- 33.6.4 permit the Local Government Ombudsman (or her\his representative) and\or the Council to interview face to face or over the telephone any members of the Organisation's personnel in connection with the investigation;
- 33.6.5 arrange for relevant members of the Organisation's personnel to appear as witnesses in any ensuing legal proceedings or internal proceedings of the Council;

- 33.6.6 co-operate fully and promptly in every way required by the Local Government Ombudsman during the course of the investigation; and
- 33.6.7 at the request of the Local Government Ombudsman or the Council, issue a suitable apology to the complainant.
- 33.7 For the avoidance of doubt, no additional payment shall be made to the Organisation for performing the requirements set out in Clause 32.1 above.
- 33.8 For the avoidance of doubt where any financial redress or other compensation is recommended by the Local Government Ombudsman in any investigation arising directly or indirectly out of the provision of the Services or any other action by the Organisation or the Organisation's personnel, then the Council shall be entitled to recover the cost of that financial redress or other compensation paid by it to the complainant pursuant on or after from the Organisation in accordance with Clause 33.
- 33.9 At the request of the Council, the Organisation shall co-operate fully with the Council's Monitoring Officer in the investigation of any complaint concerning any act or omission by the Organisation in carrying out its obligations under this Agreement which may amount to contravention of any entitlement or rule of law or maladministration. The Organisation shall bear the cost of any payment which the Council's Monitoring Officer, after carrying out an objective investigation into any complaint by a person, advises should be made on behalf of the Council to remedy that complaint if that officer considers the person has sustained injustice as a result of maladministration by the Organisation in connection with the provision of the Services.
- 33.10 Where the Local Government Ombudsman has made a recommendation or recommendations to the Council in respect of a complaint about the Organisation's performance of the Services, the Council shall be entitled to require the Organisation to implement such recommendation(s).
- 33.11 Where a complaint about the Organisation's performance of the Services is referred to the Local Government Ombudsman and the Local Government Ombudsman decides to investigate that complaint, the Council shall take over the handling of that complaint from the Organisation and the Organisation shall comply with its obligations under Clause 32.1.

#### **34. LEGAL INVESTIGATIONS**

- 34.1 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 Delivery Plan or deliver the Services in accordance with this Agreement.
- 34.2 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.
- 34.3 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.

#### **35. AUDITS**

- 35.1 The Organisation shall at all times (including following the termination of this Agreement) allow or procure for any auditor (including any Audit Commission employee) or for the Council's Representative (or nominee) for the purposes of an internal or external audit or inspection:-
- 35.1.1 immediate access to;
  - 35.1.2 permission to copy and remove any copies of;
  - 35.1.3 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.
- 35.2 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.
- 36. AGENCY**
- 36.1 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.
- 36.2 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.
- 36.3 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.
- 37. SECURITY**
- 37.1 The Organisation shall maintain and shall ensure that its personnel and all its visitors maintain the security of such of the Council's Premises which it is licensed or permitted to use under Clause 42 both when in use and when not in use.
- 37.2 The Organisation shall ensure that access to the Council's Premises which it is permitted to use under Clause 42 is restricted to its personnel and visitors engaged upon or in connection with the provision of the Services.
- 37.3 The Organisation shall comply with the Council's security regulations including any made for the purpose of the Data Protection Acts 1984 and 1998.
- 37.4 The Organisation shall provide to any of its personnel, who shall at any time have access to any relevant Council Premises, security passes in such form as the Council may from time to time determine and issue to the Organisation.
- 37.5 The Organisation shall be responsible for the safekeeping of any keys, passes and other means of access provided to the Organisation by the Council

**38. USE OF COUNCIL'S ASSETS**

- 38.1 The Council shall with effect from the Commencement Date make available to the Organisation the Council's vehicles, equipment and any other assets listed in the Second Schedule together with any other such assets as may be made available by the Council to the Organisation (hereinafter together called "the Council's Assets") for use in connection with the Services subject to the following provisions:-
- 38.2 the Organisation's obligations set out in Clauses 21.2, 21.5, 21.6, 21.7, 21.8 and 21.13 shall apply, mutatis mutandis, to the Council's Assets;
- 38.3 the Organisation will renew or replace any of the Council's Assets whenever necessary so as to ensure compliance with the Organisation's obligations under Clause 21 and all the provisions of Clause 21 shall thereupon apply to such renewals or replacements;
- 38.4 the Organisation shall be responsible for the security of such of the Council's Assets which it is permitted to use under this Clause 38 both when in use and when not in use;
- 38.5 upon the determination of this Agreement howsoever caused the Organisation shall forthwith return to the Council (or as otherwise directed by the Council) free from encumbrances the Council's Assets in good and serviceable repair and condition;
- 38.6 in respect of any of the Council's Assets which are leased the Organisation shall comply with the terms and conditions of such leases and at the expiry or earlier determination of such leases return the said Council's Assets to the lessor or otherwise as the Council shall direct.

**PART G – RESPONSIBILITIES AND RIGHTS OF THE COUNCIL****39. FAILURE TO PERFORM**

- 39.1 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.

**40. PROVISION OF INFORMATION**

- 40.1 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.

**41. ASSIGNMENT**

- 41.1 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.

**42. USE OF PREMISES**

- 42.1 The Council shall make available to the Organisation the Premises detailed in Part I of the Third Schedule on the terms and conditions set out in the form of Lease in the Seventh Schedule.

42.2 The Council shall no later than six months from the Commencement date grant and the Organisation shall take the Leases of the premises detailed in Part I of the Third Schedule so as to take effect on the Commencement Date.

#### **43. HOUSING INSPECTION**

43.1 The Council shall afford the Organisation all reasonable assistance in order to enable the Organisation to comply with its obligations under Clause 30.

#### **44. SERVICES SUPPLIED BY THE COUNCIL**

44.1 The Council shall supply the services described in the Ninth Schedule on the terms set out therein.

#### **45. INTELLECTUAL PROPERTY RIGHTS**

45.1 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.

45.2 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.

#### **46. RIGHT TO USE DOCUMENTS**

46.1 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.

46.2 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.

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

47.1 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.

47.2 Without prejudice to the provisions of Clause 47.1 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:-

47.2.1 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;

- 47.2.2 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;
- 47.2.3 to co-ordinate and supervise the operation of the provision of temporary accommodation described in Clause 47.2.1;
- 47.2.4 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;
- 47.2.5 whenever so requested by the Council to arrange for the provision of temporary accommodation for homeless persons and/or evacuees;
- 47.2.6 to manage the temporary accommodation secured pursuant to these provisions for so long as the emergency lasts;
- 47.2.7 to produce monthly accounts to the Council itemising its reasonable costs incurred in the provision of the services detailed in Clauses 47.2.1 - 47.2.6 such costs to be agreed between the parties (and thereupon treated as a variation of the Delivery Plan) and in default of such agreement the matter shall be referred to dispute resolution pursuant to the provisions of Clause 67.
- 47.3 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.
- 47.4 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 47.

#### **48. EXCLUSION OF LIABILITY**

- 48.1 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.
- 48.2 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.

#### **49. RIGHTS AND DUTIES RESERVED**

- 49.1 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.

**50. WAIVER**

- 50.1 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 This is somewhat odd (given the Council's 100% 'ownership') but may be worth including for the sake of contractual clarity 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.

**PART H – FINANCIAL ARRANGEMENTS AND OTHER MATTERS****51. FINANCIAL ARRANGEMENTS**

- 51.1 The Organisation shall comply with all the financial arrangements described in the Sixth Schedule

**52. RECOVERY OF RENT**

- 52.1 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.

**53. RIGHT TO USE SURPLUSES**

- 53.1 If the Organisation out-performs the Delivery Plan and if as a consequence the Council would benefit from sums for which it had not budgeted and the Council did not require the same to meet any obligations or commitments (whether to third parties or otherwise) [which are the subject of Council resolutions or incorporated in Council budgets] then to the extent permitted by and subject to any conditions set out in the Delivery Plan the Organisation shall be entitled to use such sums in accordance with any scheme for surpluses forming part of the Delivery Plan or such other scheme for surpluses as may be agreed by the Council (such agreement not to be unreasonably withheld or delayed).
- 53.2 The Council will consult with and properly consider any representations received from the Organisation before making any Council resolution or budget provision relating to the use of surpluses or anticipated surpluses as set out in Clause 53.1 above.

**54. INTEREST ON OVERDUE PAYMENTS**

- 54.1 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 Co-

Operative Bank plc 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.

**55. VALUE ADDED TAX**

- 55.1 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.

**PART I – EMPLOYMENT AND STAFFING**

**56. EMPLOYEES**

- 56.1 Details relating to existing Transferring Employees are set out in Part I of the Fourth Schedule. These details are believed to be correct at the date hereof but the Council does not give any guarantees or warranties in this respect nor that the Transferring Employees listed therein will be in a position to transfer on the Commencement Date, nor that their Clauses of employment will remain unchanged until then. The Council will provide details of any material changes which occur to the information contained in Part I of the Fourth Schedule prior to the Commencement Date and will provide to the Organisation upon written request such further factual (but not personal) information relating to the Transferring Employees reasonably required by the Organisation.
- 56.2 The Council shall endeavour to retain the services of each of the Transferring Employees to the intent that their respective contracts of employment shall be continued to the Commencement Date and then be transferred to the Organisation by virtue of the Regulations.
- 56.3 Without prejudice to Clause 56.5 the Council shall be responsible for all salaries and other emoluments including but without limitation holiday pay, tax and National Insurance payments allowances and contributions to retirement benefit schemes in respect of the Transferring Employees up to but not including the Commencement Date and all requisite apportionments shall be made.
- 56.4 The Organisation shall employ all the Transferring Employees on broadly comparable terms and conditions as to pension and death-in-service benefits and it is acknowledged by the Organisation that some of the Transferring Employees are members of the local government statutory superannuation scheme to which the Council belongs.
- 56.5 The Council shall indemnify and hold harmless the Organisation against each and every cost, claim, liability, expense or demand arising out of:-
- 56.5.1 anything done or omitted to be done prior to the Commencement Date by or on behalf of the Council in respect of any contract of employment or any collective agreement or any persons employed in the Undertaking which notwithstanding that it relates to employment prior to the Commencement Date is deemed by reason of transfer of the Undertaking pursuant to this Agreement to have been done or omitted to be done by or in relation to the Organisation in accordance with the Regulations;
- 56.5.2 the Council's failure to pay any of the Transferring Employees any sums properly due in respect of the period prior to the Commencement Date;

- 56.5.3 any claim by any trade union, staff association or staff body recognised by the Council in respect of all or any of the Transferring Employees arising out of the Council's failure prior to Commencement Date to comply with its legal obligation in relation to information and consultation to or with such trade unions or staff associations or bodies save insofar as any such failure results from a failure by the Organisation to provide information pursuant to Regulation 10(3) of the Regulations;
- 56.5.4 the introduction of the Single Status Agreement (otherwise known as the requirement of the National Joint Council for Local Government Services relating to the pay and working conditions of local government employees).
- 56.6 The Organisation shall indemnify and hold harmless the Council against each and every cost, claim, liability, expense or demand arising out of:-
- 56.6.1 any claim or allegation by a Transferring Employee that in consequence of the transfer of the Undertaking to the Organisation there has been or will be a substantial change in such Transferring Employee's working conditions to his or her detriment;
- 56.6.2 any act or omission of the Organisation in relation to any Transferring Employee occurring on or after the Commencement Date and any claim for redundancy payments or protective awards and any liability for wrongful dismissal or unfair dismissal or otherwise in connection with the transfer of the employment of the Transferring Employees to the Organisation;
- 56.6.3 any claim made against the Council under Regulation 10 of the Regulations which results from a failure by the Organisation to supply information to the Council pursuant to the said Regulation;
- 56.6.4 any failure by the Organisation to provide broadly comparable retirement or death-in-service benefits for or in respect of any Transferring Employees to which such persons would have been entitled Immediately before the Commencement Date.
- 56.7 The Council has for the benefit of certain of the Transferring Employees entered into contract hire and maintenance agreements for certain vehicles as set out in Part II of the Fourth Schedule and has entered into agreements with the Transferring Employees there identified in relation to the use thereof. The Council shall endeavour to assign or procure the assignment of and the Organisation shall take any contract hire and maintenance agreement for all such vehicles with effect from the Commencement Date PROVIDED THAT:-
- 56.7.1 in any case where the Council is unable to assign such agreements or procure new agreements on behalf of the Organisation and until the completion of such assignments or new agreements the Council shall (a) hold the relevant contracts on trust for the Organisation and (b) join with the Organisation in any proceedings reasonably brought by the Organisation to enforce such contracts;
- 56.7.2 the Organisation shall within twenty (21) Working Days of receiving any certificate from the Council that any sum or sums may be payable following the Commencement Date pay such sum or sums as the Council shall direct;
- 56.7.3 the Organisation shall pay to the Council (or account for) an amount or amounts equal to that proportion of any rental and insurance payments previously made by the Council under the said vehicle agreements which relates to the period on or after the Commencement Date as soon as practicable following notification of such amount or amounts by the Council.

- 56.8 The Council has entered into agreements for Car Loans with certain of the employees mentioned in Part I of the Fourth Schedule (“the Borrowers”) whereby the Council has lent to each Borrower the sums set out in Part III of that Schedule. The Council will on the Commencement Date assign the right to receive payment of all monies due under the Car Loans to the Organisation and the Organisation shall as soon as practical following the Commencement Date pay to the Council (or account for) the total of sums outstanding as shown in Part III of the Fourth Schedule including the specified interest thereon.
- 56.9 The Organisation shall:-
- 56.9.1 prior to the Commencement Date establish such staffing arrangements as may be appropriate to ensure the due and proper performance of the Services;
- 56.9.2 provide details of the said staffing arrangements to the Council's Representative.
- 56.10 The Organisation may not make significant amendments to the said staffing structure during the Term without the prior written approval of the Council's Representative (which shall not be unreasonably withheld if the Council's Representative is satisfied that such amendments will assist in the due and proper performance of the Services).
- 56.11 The Organisation shall notify the Council's Representative in writing of any amendments in the said staffing structure during the Term whether or not they fall within the provisions of Clause 56.10.
- 56.12 If so requested by the Council's Representative, the Organisation shall prior to the Commencement Date provide to the Council such information as is required to enable the Council to comply with its obligations under Regulation 10 of the Regulations including but without limitation details of (a) the legal, economic and social implications of the transfer of the Undertaking for the Transferring Employees and other affected employees, (b) the measures which the Organisation envisages will be taken in connection with these Transferring Employees and (c) the reasons for such measures.
- 56.13 The Organisation should comply with the provisions of the Workforce Matters Code.
- 56.14 The Organisation shall employ all new employees on terms and conditions broadly comparable with those of Transferring Employees.
- 56.15 The Council will in relation to those Transferring Employees and any new employees of the Organisation who 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 the Transferring Employees and any such new employees are not Underfunded. (For the avoidance of doubt Underfunded means the amount by which the assets of the Local Government Pension Scheme in respect of the Transferring Employees and any such new employees are less than the anticipated liabilities of the Local Government Pension Scheme in respect of the said Transferring Employees and any such new employees).
- 56.16 Until such payments under Clause 56.15 are made the Council agrees to indemnify the Organisation against all costs, proceedings, liabilities and claims of whatever nature in respect of the Transferring Employees and any such new employees membership of the Local Government Pension Scheme.
- 56.17 The Organisation shall promptly notify the Council whenever:

- 56.17.1 an employee of the Organisation who is aged 50 or more is retiring by reason of redundancy or in the interests of efficiency; or
- 56.17.2 an employee of the Organisation is retiring voluntarily with the consent of the Organisation on or after age 50 and before age 60; or
- 56.17.3 an employee of the Organisation is retiring on the grounds of permanent ill health or permanent infirmity of mind or body; or
- 56.17.4 the deferred benefit of an employee of the Organisation is brought into payment with the consent of the Organisation on or after age 50 and before age 60; or
- 56.17.5 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.
- 56.18 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.

## **57. INFORMATION ABOUT EMPLOYEES**

- 57.1 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 Regulations.

## **58. RIGHT TO REPRESENTATION**

- 58.1 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).

## **PART J – MONITORING AND MANAGEMENT**

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

- 59.1 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 Delivery Plan performed.

### **60. COUNCIL'S REPRESENTATIVE**

- 60.1 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.

- 60.2 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 Delivery Plan and the Organisation shall comply therewith. If any such instruction is a variation within Clause 63 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 60.2 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 67.
- 60.3 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.

## **PART K – TMOs**

### **61. TENANT MANAGEMENT ORGANISATIONS**

- 61.1 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.
- 61.2 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:-
- 61.2.1 provision of information and records about the Services;
- 61.2.2 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;
- 61.2.3 attendance at meetings of such tenants;
- 61.2.4 such other help or advice as the Council may require to enable the Council to fulfil its statutory obligations.
- 61.3 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 61.1 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):-
- 61.3.1 transferring data, records, statistics, files and other information in a format and manner prescribed by the Council;
- 61.3.2 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;

- 61.3.3 transferring necessary equipment and materials as may reasonably be stipulated by the Council's Representative;
- 61.3.4 establishing working arrangements with the Tenant Management Organisation;
- 61.3.5 providing any other assistance reasonably needed to enable such transfer to take place.
- 61.4 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 63 (giving three (3) months notice to the Organisation) and where such a variation is made the amendment to the Delivery Plan in accordance with Clause 63.3 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 65.4 shall apply).
- 61.5 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 63.
- 61.6 In the event that a Tenant Management Organisation to which responsibility for managing the Services has been transferred in accordance with this Clause 61 ceases to provide all or any part of those Services for all or any of the Dwellings the Council shall be entitled to vary further this Agreement in accordance with Clause 63 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 Delivery Plan in accordance with Clause 63.3.
- 61.7 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.
- 61.8 The Organisation shall in complying with its obligations under this Clause 61 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.

## **PART L – TERM**

### **62. DURATION AND RENEWAL**

- 62.1 This Agreement shall expire on the day prior to the tenth anniversary of the Commencement Date 22 January 2007 unless extended by the Council pursuant to the following provisions of this Clause and subject to earlier termination as provided herein.
- 62.2 The Council shall be entitled (but without any obligation whatsoever) to extend the Term for one or more further periods of five years Agreement 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 62.1
- 62.3 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

## **PART M – VARIATIONS AND TERMINATION**



**63. VARIATIONS**

- 63.1 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.
- 63.2 Reasonable notice for the purpose of Clause 63.1 shall be deemed to be either:-
- 63.2.1 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 46 It may not necessarily be appropriate for all these responsibilities.
- 63.2.2 one month's notice in any other case.
- 63.3 Where a Variation is effected a variation shall be made in relation to the current Delivery 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.
- 63.4 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 (including a Transferring Employee) engaged in the provision of the Services the Organisation shall as soon as practicable:-
- 63.4.1 identify the relevant employee or employees;
- 63.4.2 quantify and substantiate the costs which the Organisation is likely to incur by reason of the said redundancy or redundancies; and
- 63.4.3 notify the Council of the same and on receipt of such notification the Council shall, having consulted (where necessary) with the Organisation, either:-
- 63.4.4 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 Delivery Plan in accordance with Clause 63.3; or (if the Council so determines)
- 63.4.5 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 Delivery 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.
- 63.5 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 63.4.

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

63.7 In the event of a dispute in relation to any Variation pursuant to this Clause 63 the matter shall be referred to the dispute resolution procedure pursuant to Clause 67.

#### **64. ALTERATIONS**

64.1 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 61) a variation shall be made to the Delivery Plan pursuant to Clause 63.3 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.

64.2 A "substantial change" for the purposes of Clause 64.1 shall mean any increase or decrease of 5% or more in the number of Dwellings either:-

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

64.2.2 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.

64.3 The Organisation shall provide to the Council such information as the Council may require for the purposes of Clause 64.1.

64.4 It is hereby agreed that no Variation shall be made pursuant to Clause 63.3 as a result of an Alteration if there is a compensating reduction or reorganisation of any part of the Services.

64.5 If the Organisation disputes a Variation pursuant to Clause 63.3 arising from an Alteration it shall be entitled to refer the matter to the dispute resolution procedure pursuant to Clause 67.

#### **65. TERMINATION**

65.1 If the Organisation or where applicable any director or any senior manager thereof:-

65.1.1 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;

65.1.2 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;

65.1.3 has any director or senior manager of it convicted of dishonesty;

65.1.4 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;

65.1.5 has an application made under the Insolvency Act 1986 to the Court for the appointment of an administrator or an administrative receiver;

- 65.1.6 has a winding-up order made or (except for the purpose of amalgamation or reconstruction) a resolution for voluntary winding-up passed;
- 65.1.7 has a provisional liquidator, receiver, or manager of its business or undertaking duly appointed;
- 65.1.8 has an administrator or an administrative receiver (as defined in the Insolvency Act 1986) appointed;
- 65.1.9 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;
- 65.1.10 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 65.3.
- 65.2 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 65.4 the Council shall be entitled (if it so wishes) to exercise the rights described in Clause
- 65.3. In the event of any one or more of the circumstances described in Clauses 65.1 and 65.2 then subject to Clause 65.4 the Council may take any or all of the following actions:-
- 65.3.1 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;
- 65.3.2 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;
- 65.3.3 determine the whole of this Agreement and in the event of action pursuant to Clauses 65.3.1 and
- 65.3.2 a corresponding variation to the Delivery Plan shall be made in accordance with Clause 63.3.
- 65.4 The Council shall act in accordance with Clause 65.5 if the Organisation or where applicable any director or any senior manger thereof:-
- 65.4.1 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
- 65.4.2 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.
- 65.5 Remedial Plan

65.5.1 In the event of the occurrence of one or more of the circumstances described in Clause 65.4 (“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.

65.5.2 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 6.11 identify what action the Organisation proposes to take to demonstrate that the Organisation is providing or will provide best value;
- (v) in relation to the circumstances in Clause 16.6 identify what action the Organisation proposes to take to provide the Services in accordance with the requirements of Clause 16.1.

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

65.5.4 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 67.

65.5.5 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 65.5.4 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 65.3.

65.6 If the Agreement is terminated in whole or in part as provided in Clauses 65.3 the Council shall:-

65.6.1 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;

- 65.6.2 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.
- 65.7 If the Council exercises its rights under Clause 65.3 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:-
- 65.7.1 forthwith cease to perform any of the Services;
- 65.7.2 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 52;
- 65.7.3 hand over this Agreement to the Council without detriment to the interest of the Council's tenants or other customers of the Council.
- 65.8 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 65.1 and 65.2 and then only for so long as (in the Council's reasonable opinion) the relevant circumstances subsist.
- 65.9.1 On termination or expiry of the Agreement:
- 65.9.2 the parties shall co-operate and agree an exit plan ("Exit Plan"); and
- 65.9.3 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.
- 65.10.1 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.
- 65.10.2 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
- 65.11 .1 On the termination or expiry of the Agreement, the Organisation shall:
- (i) vacate and deliver up the Council's Premises to the Council in the condition required by the leases;

- (ii) deliver up the Council's Equipment and the Council's Computer Systems loaned or licensed to the Organisation, to the Council; and
- (iii) 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.

65.11.2 In the event that the Organisation fails to comply with its obligations under Clause 65.11.1.1 the Council shall be entitled to enter upon and repossess the Council's Premises.

65.11.3 If the Organisation fails to comply with its obligations under Clause 65.11.1.2 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

## **66. VARIATION OF CONTRACT**

66.1 Subject to Clause 63, 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

## **67. DISPUTE RESOLUTION**

67.1 Save as provided in Clause 6.9 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 67.7, in the first instance use their reasonable endeavours to resolve it amicably between them in accordance with the procedure set out below:-

67.1.1 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;

67.1.2 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;

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

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

67.1.4.1 A spirit of mutual trust and co-operation;

- (ii) Both parties shall bear their own costs;
- (iii) Any unanimous decision shall be implemented.

67.2 Disputes remaining unresolved after following the procedure set out in Clause 67.1 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.

- 67.3 The Expert appointed under Clause 67.2 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.
- 67.4 Any award of costs under Clause 67.3 shall be reflected in a variation to the current Delivery Plan.
- 67.5 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.
- 67.6 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.
- 67.7 Fast Track Procedure
- 67.7.1 Where the circumstance of a dispute:-
- 67.7.1.1 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
- 67.7.1.2 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.

## **PART N – NOTICES AND OTHER MATTERS**

### **68. NOTICES**

- 68.1 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.
- 68.2 Notices served under Clause 68.1 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.

### **69. SEVERANCE**

- 69.1 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.

**70. PARTNERSHIPS**

70.1 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.

**71. SURVIVAL OF THIS CONTRACT**

71.1 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.

71.2 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.

**72. LAW**

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

**73. CONCURRENT REMEDIES**

73.1 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.

**74. ENTIRE AGREEMENT**

74.1 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.

**75. RIGHTS OF THIRD PARTIES**

75.1 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.

**PART O – PARTIAL STOCK PROVISIONS****76. NOMINATION RIGHTS AND AGREEMENTS**

76.1 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.



**77. VARIATIONS TO TENANCY CONDITIONS**

- 77.1 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.

**78. INFORMATION IN TENANTS' HANDBOOK**

- 78.1 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.

**79. INFORMATION FOR PROSPECTIVE TENANTS**

- 79.1 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.

**80. TRANSFERS AND MUTUAL EXCHANGES**

- 80.1 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.

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

- 81.1 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.

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

- 82.1 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.

**PART P – TERMS USED****83. DEFINITIONS AND INTERPRETATION**

- 83.1 The definitions are as follows:-

**“Agreement”**

means this Agreement (including the Schedules and Annexes) and any variations in accordance with Clause 63.

**“ALMO Service Review”**

means the review of the Services provided by the Organisation to be produced by the Organisation and which is described in Clause 8.

**“Annual Performance Plan”**

means the performance plan forming part of the Delivery Plan which is to be produced annually by the Organisation and which is described in Clause 7.

**“Annual Sections of the Delivery Plan”**

means those sections of the Delivery Plan which in accordance with Clause 6 are prepared on an annual basis.

**“Best Value”**

and “best value” both mean best value as defined in the Local Government Act 1999

**“Best Value Performance Indicators”**

means the best value performance indicators and standards specified by the Secretary of State under Section 4 Local Government Act 1998; Audit Commission performance indicators and other information required by the Audit Commission under Sections 4446 Audit Commission Act 1998 and the local performance indicators developed by the Council, details of such local performance indicators shall have been communicated in writing by the Council to the Organisation.

**“Car Loans”**

means the car loans referred to at Part IV of the Fourth Schedule and includes any renewals or substitutions thereof.

**“Commencement Date”**

means the date of this agreement.

**“Contract Period”**

means the period beginning on the Commencement Date and continuing for [five/ten] years unless (a) terminated sooner in accordance with Clause 65 or in accordance with common law or statute or (b) terminated or extended in accordance with Clause 62.

**“Contract Standard”**

means the standard to which the Services are to be provided as defined in Clause 16.

**“Contracts”**

means the contracts for goods and/or services relating to the Undertaking detailed in the First Schedule and any replacements thereof or additions thereto as notified by the Council to the Organisation.

**“Council Guidelines”**

means relevant rules, procedures, guidelines, policies, codes of practice, Standing Orders and Financial Regulations and standards of the Council currently applying or as notified to the Organisation by the Council or the Council’s Representative from time to time, as any of the same may from time to time be amended by the Council and notified to the Organisation.

**“Council’s Assets”**

means the equipment and vehicles of the Council relating to the Undertaking and listed in the Second Schedule together with any other (a) equipment as may be agreed between the Organisation and the Council in writing and/or (b) vehicles as may be transferred by the Council to the Organisation by way of sale or transfer of Vehicle Lease or otherwise.

**“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 60.

“Council’s Software”

means any computer software owned by or licensed to the Council relating to or used in connection with the Services.

“Delivery 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) the first anniversary of the Commencement Date shall be the initial Delivery Plan forming Annex 1 and in respect of subsequent years of the Agreement means the Delivery Plan to be submitted by the Organisation pursuant to Clause 6 and any variations of such document made pursuant to Clause 63.

“Delivery Plan Format”

is the format stipulated by the Council for the Delivery Plan for the Services to be provided by the Organisation and forming Annex 2.

“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 67.

“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.

“Lease”

means the lease to be granted pursuant to Clause 42 in substantially the form set out in the Seventh Schedule.

**“Management Fee”**

means the fee received by the Organisation from the Council for providing the Services and for rent collection accordance with Clause 52 as more particularly described in the Sixth Schedule.

**“Organisation’s Representative”**

means the person who is to represent the Organisation appointed pursuant to Clause 20.

**“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.

**“RPI”**

means the United Kingdom General Index of Retail Prices (All Items) or in the event that the basis of calculation of such Index shall change or if such Index ceases to be published (as to which the Council’s reasonable decision shall be conclusive) such other published index of retail prices or the value of money as the Council and the Organisation may agree PROVIDED THAT in the event that such agreement cannot be reached within twenty-one (21) Working Days of a decision by the Council the RPI shall be referred to dispute resolution in accordance with the provisions of Clause 67.

**“Services”**

means the services to be provided by the Organisation in accordance with the Agreement and includes any variations thereto made pursuant to Clause 63.

**“Standing Orders and Financial Regulations”**

means the Council’s rules and procedures set out in its constitution adopted from time to time under the Local Government Act 2000 to the extent these apply to the Organisation in accordance with Clause 16.5.

**“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 62 subject to earlier termination or subsequent extension as herein provided.

**“Transferring Employees”**

means the employees occupying the posts listed in Part I of the Fourth Schedule [together with any replacement employees for any whose contracts terminate before the Commencement Date]

“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

“Vehicle Lease”

means any vehicle leasing or hire contract in respect of any vehicle leased or hired by the Council.

“Workforce Matters Code”

means the Code of Practice on Workforce Matters in Local Authority Service Contracts annexed to the Office of the Deputy Prime Minister’s circulation 03/2003 “Local Government Act 1999: Part 1 Best Value and Performance Improvement” as amended from time to time]

“Working Day”

means any day between the hours of [8.45]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.

- 83.2 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 37.2) unless the context otherwise requires.
- 83.3 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.
- 83.4 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.
- 83.5 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 corporations
- 83.6 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
- 83.7 In this Agreement headings are included for ease of reference only and shall not affect this Agreement or the interpretation thereof

IN WITNESS whereof these presents have been executed as a Deed and delivered the day and year first 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:- )

**THE FIRST SCHEDULE**  
**CONTRACTS TO BE ADMINISTERED**

Contract	Contract Period	Commencement Date	Value (per annum)	Contractor
----------	-----------------	----------------------	----------------------	------------

**THE SECOND SCHEDULE**  
**COUNCIL'S ASSETS**

**THE THIRD SCHEDULE  
PREMISES AND OTHER PROPERTY INFORMATION**



**THE FOURTH SCHEDULE**  
**TRANSFERRING EMPLOYEES ETC**  
**PART I - TRANSFERRING EMPLOYEES**

**PART II**  
**CAR LEASES**

**PART III**  
**CAR LOANS**

**THE FIFTH SCHEDULE**

**COMPUTER SYSTEMS AND SOFTWARE CURRENTLY USED BY THE COUNCIL**

THE SIXTH SCHEDULE

FINANCIAL ARRANGEMENTS<sup>60</sup>

(Clause 51)

The transfer of monies to the Organisation

[These arrangements depend on the financial services arrangements - a book transfer only, superintended by Council staff contracted to the ALMO, or more than that?]

The calculation of the Organisation's fee

[These arrangements depend on

(a)

the relationship between the fee and the rental income – see Clause 52

(b)

the extent of the fee-paid services – do they cover only revenue-financed work or are capital programmes paid for in this way? The key question is “Who writes the (large) contract cheques?”

Whatever is decided it must be VAT efficient – i.e. the Council must be able to recover the VAT charged by the ALMO]

60 The financial plan which forms part of the Delivery Plan will deal with the procedures and practicalities. The two issues outlined in this Schedule are deemed sufficiently important to be included here. Both have statutory and contractual implications.

**THE SEVENTH SCHEDULE  
FORM OF LEASE/LICENCE FOR PREMISES**

**DATED 2006**

THE MAYOR AND BURGESSES OF THE  
**LONDON BOROUGH OF LEWISHAM**

**To**

**LEWISHAM HOMES**

LEASE OF LAND AT,

Legal Services Department  
Town Hall  
Catford Road  
Catford  
London SE6 4RU  
Ref: JM/PROP/6350/1

Leases; Almo -

THIS LEASE is made the

BETWEEN:

- (1) The Mayor and Burgesses of the London Borough of Lewisham of Town Hall, Catford Road, Catford , London SE6 4RU (“the Landlord”) and
- (2) Lewisham Homes being a company registered in England and Wales the registered office of which is at [Town Hall, Catford Road, Catford , London SE6 4RU] [Co. Reg. No.                   ] (“the Tenant”)

NOW THIS DEED WITNESSES as follows:

## 1. **DEFINITIONS AND INTERPRETATION**

For all purposes of this Lease the terms defined in this clause have the meanings specified:

### 1.1 **“The Conduits”**

“The Conduits” means the pipes, sewers, drains, mains, ducts, conduits, gutters, watercourses, wires, cables, channels, flues and all other conducting media – including any fixings, louvers, cowls, covers and any other ancillary apparatus – that are in, on, over or under the Premises

### 1.2 **“The Contractual Term” and “the Term”**

“The Contractual Term” and “the Term” means the period from the date hereof to [30 September 2011] subject to earlier termination in accordance with clause 7.8 EARLY TERMINATION

### 1.3 **“Development”**

References to “development” are references to development as defined by the Town and Country Planning Act 1990 Section 55

### 1.4 **“Gender and number”**

Words importing one gender include all other genders, words importing the singular include the plural and vice versa

**1.5 “Headings”**

The clause, paragraph and schedule headings do not form part of this document and are not to be taken into account in its construction or interpretation

**1.6 “The Industrial Covenants”**

“The Industrial Covenants” means the covenants set out in schedule 3 THE INDUSTRIAL COVENANTS

**1.7 “The Insurance Rent”**

“The Insurance Rent” means the total amount that the Landlord from time to time pays

- 1.7.1 by way of premium for insuring the Premises, including insuring for loss of Rent, in accordance with his obligations contained in this Lease,
- 1.7.2 by way of premium for insuring in such amount and on such terms as the Landlord considers appropriate against all liability of the Landlord to third parties arising out of or in connection with any matter including or relating to the Premises; and
- 1.7.3 for insurance valuations

**1.8 “The Insured Risks”**

“The Insured Risks” means the risks of loss or damage by fire, storm, tempest, earthquake, lightning, explosion, riot, civil commotion, malicious damage, terrorism, impact by vehicles and by aircraft and articles dropped from aircraft other than military aircraft – flood damage and bursting and overflowing of water pipes and tanks – landslip, subsidence and heave – public liability and occupiers liability - and such other risks, whether or not in the nature of the foregoing, as the Landlord acting reasonably from time to time decides to insure against

**1.9 “Interest”**

References to “interest” are references to interest payable during the period from the date on which the payment is due to the date of payment, both before and after any judgement, at the Interest Rate then prevailing or, should the base rate referred to in clause 1.10 “THE INTEREST RATE” cease to exist, at another rate of interest closely comparable with the Interest Rate to be agreed between the parties or in default of agreement to be determined by the Surveyor, acting as an expert and not as an arbitrator



**1.10 “The Interest Rate”**

“The Interest Rate” means the rate of 2% per year above the base lending rate of Co-Operative Bank Plc or such other bank being a member of the Committee of London and Scottish Bankers as the Landlord may from time to time nominate in writing

**1.11 Interpretation of “consent” and “approved”**

References to “consent of the Landlord” or words to similar effect are references to a prior written consent signed by or on behalf of the Landlord and references to the need for anything to be “approved by the Landlord” or words to similar effect are references to the need for a prior written approval by or on behalf of the Landlord

**1.12 Interpretation of “the Landlord”**

The expression “the Landlord” includes the person or persons from time to time entitled to possession of the Premises when this Lease comes to an end

**1.13 Interpretation of “the last year of the Term” and “the end of the Term”**

References to “the last year of the term” are references to the actual last year of the Term howsoever it determines, and references to the “end of the Term” are references to the end of the Term whensoever and howsoever it determines

**1.14 Interpretation of “the Tenant”**

“The Tenant” includes any person who is for the time being bound by the tenant covenants of this Lease

**1.15 Interpretation of “this Lease”**

Unless expressly stated to the contrary, the expression “this Lease” includes any document supplemental to or collateral with this document or entered into in accordance with this document

**1.16 Joint and several liability**

Where any party to this Lease for the time being comprises two or more persons, obligations expressed or implied to be made by or with that party are deemed to be made by or with the persons comprising that party jointly and severally

**1.17 “Losses”**

References to “losses” are references to liabilities, damages or losses, awards of damages or compensation, penalties, costs, disbursements and expenses arising from any claim, demand, action or proceedings

**1.18 “The 1954 Act”**

“The 1954 Act” means the Landlord and Tenant Act 1954 and all statutes, regulations and orders included by virtue of clause 1.28 REFERENCES TO STATUTES

**1.19 “The 1995 Act”**

“The 1995 Act” means the Landlord and Tenant (Covenants) Act 1995 and all statutes, regulations and orders included by virtue of clause 1.28 REFERENCES TO STATUTES

**1.20 “The Management Agreement”**

“The Management Agreement” is the agreement entered into on the date of this Lease between the Landlord (1) and the Tenant (2) whereby the Tenant contracts with the Landlord to manage all of the Landlord’s housing stock on behalf of the Landlord for the duration of the Management Agreement and in accordance with its terms

**1.21 Obligation not to permit or suffer**

Any covenant by the Tenant not to do anything includes an obligation not to permit or suffer that thing to be done by another person

**1.22 “The Permitted Use”**

“The Permitted Use” means use of the Premises as offices for the purpose of performing the Management Agreement

**1.23 “The Plan”**

“The Plan” means the plan annexed to this Lease

**1.24 “The Planning Acts”**

“The Planning Acts” means the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Area) Act 1990, the Planning (Consequential Provisions) Act

1990, the Planning (Hazardous Substances) Act 1990, the Planning and Compensation Act 1991 and all statutes, regulations and orders included by virtue of clause 1.28

## REFERENCES TO STATUTES

### 1.25 “The Premises”

#### 1.25.1 Definition of “the Premises”

“The Premises” means all that land and building known as \_\_\_\_\_ London shown for the purposes of identification only shaded pink on the Plan

#### 1.25.2 Interpretation of “the Premises”

The expression “the Premises” includes-

- 1.25.2.1 all buildings, erections, structures, fixtures and fittings and appurtenances on the Premises from time to time
- 1.25.2.2 all additions, alterations and improvements carried out during the Term, and
- 1.25.2.3 the Conduits,

but excludes any fixtures installed by the Tenant that can be removed from the Premises without defacing the Premises. Unless the contrary is expressly stated, the Premises includes any part or parts of the Premises

### 1.26 References to clauses and schedules

Any reference in this document to a clause, subclause, paragraph, subparagraph or schedule without further designation is to be construed as a reference to the clause, subclause, paragraph, subparagraph or schedule of this document so numbered

### 1.27 References to rights of access

References to any right of the Landlord to have access to the Premises are to be construed as extending to all persons authorised in writing by the Landlord including agents, professional advisers, contractors, workmen and others

### 1.28 References to statutes

Unless expressly stated to the contrary, any reference to a specific statute includes any statutory extension or modification, amendment or re-enactment of that statute and any regulations or orders made under it, and any general reference to a statute includes any regulations or orders made under that statute

**1.29 “The Rent”**

“The Rent” means the sum of ..... POUNDS (£.....) per annum. “The Rent” does not include the Insurance Rent, but the term “the Rents” and “the rents” means both the Rent and the Insurance Rent

**1.30 “The Rent Commencement Date”**

“The Rent Commencement Date” means the date of this Lease

**1.31 “The Surveyor”**

“The Surveyor” means any person or firm appointed by the Landlord to act as its surveyor. The Surveyor may be an employee of the Landlord. The expression “the Surveyor” includes any employee of the Landlord, or the person or firm appointed by the Landlord to collect the Rents

**1.32 Terms from the 1995 Act**

Where the expressions “landlord covenants” and “tenant covenants” are used in this Lease they are to have the same meaning as is given by the 1995 Act section 28(1)

**1.33 “VAT”**

“VAT” means value added tax or any other tax of a similar nature and unless otherwise expressly stated all references to rents or other sums payable by the Tenant are exclusive of VAT

**2. DEMISE**

The Landlord demises the Premises to the Tenant together with the rights specified in schedule 1 THE RIGHTS GRANTED but excepting and reserving to the Landlord the rights specified in schedule 2 THE RIGHTS RESERVED, to hold the Premises to the Tenant for the Contractual Term, subject to all rights, easements, privileges, restrictions, covenants and stipulations of whatever nature affecting the Premises, yielding and paying to the Landlord-

2.1 the Rent, without any deduction or set-off, by equal quarterly payments in advance on the usual quarter days in every year and proportionately for any period of less than a

year, the first such payment, being a proportionate sum in respect of the period from and including the Rent Commencement Date to and including the day before the quarter day next after the Rent Commencement Date, to be paid on the date of this document, and

2.2 by way of further rent, the Insurance Rent, payable on demand in accordance with clause 5.4 PAYMENT OF THE INSURANCE RENT

### **3. THE TENANT'S COVENANTS**

The Tenant covenants with the Landlord to observe the requirements of this clause 3

#### **3.1 Rent**

##### **3.1.1 Payment of Rents**

The Tenant must pay the Rents on the days and in the manner set out in this Lease, and must not exercise or seek to exercise any right or claim to withhold rent, or any right or claim to legal or equitable set-off

##### **3.1.2 Payment by banker's order**

If so required in writing by the Landlord, the Tenant must pay the Rents by banker's order or credit transfer to any bank and account in the United Kingdom that the Landlord nominates from time to time

#### **3.2 Outgoings and VAT**

The Tenant must pay, and must indemnify the Landlord against –

3.2.1 all rates, taxes, assessments, duties, charges, impositions and outgoings that are now or may at any time during the Term be charged, assessed or imposed on the Premises or on the owner or occupier of them excluding any payable by the Landlord occasioned by receipt of the Rents or by any disposition of or dealing with this Lease or ownership of any interest reversionary to the interest created by it

3.2.2 all VAT that may from time to time be charged on the Rents or other sums payable by the Tenant under this Lease, and

3.2.3 all VAT incurred in relation to any costs that the Tenant is obliged to pay or in respect of which he is required to indemnify the Landlord under the terms of this Lease, save where such VAT is recoverable or available for set-off by the Landlord as input tax

### 3.3 **Cost of services consumed**

The Tenant must pay to the suppliers, and indemnify the Landlord against, all charges for electricity, water, gas, telecommunications and other services consumed or used at or in relation to the Premises, including meter rents and standing charges, and must comply with the lawful requirements and regulations of their respective suppliers

### 3.4 **Repair, cleaning and decoration**

#### 3.4.1 **Repair of the Premises**

The Tenant must repair the Premises and keep them in good condition and repair, except for damage caused by one or more of the Insured Risks save to the extent that the insurance money is irrecoverable due to any act or default of the Tenant or anyone at the Premises expressly or by implication with his authority and under his control

#### 3.4.2 **Replacement of Landlord's fixtures**

The Tenant must replace any Landlord's fixtures and fittings in the Premises that are beyond repair at any time during or at the end of the Term

#### 3.4.3 **Cleaning and tidying**

The Tenant must keep the Premises clean and tidy and clear of all rubbish

#### 3.4.4 **The Open Land**

##### 3.4.4.1 **Care of the Open Land**

The Tenant must keep any part of the Premises that is not built on ("the Open Land") adequately surfaced, in good condition and free from weeds and must keep all landscaped areas properly cultivated

##### 3.4.4.2 **Storage on the Open Land**

The Tenant must not store anything on the Open Land or bring anything onto it that is or might become untidy, unclean, unsightly or in any way detrimental to the Premises or the area generally

##### 3.4.4.3 **Rubbish on the Open Land**

The Tenant must not deposit any waste, rubbish or refuse on the Open Land or place any receptacle for them, on it

##### 3.4.4.4 **Vehicles on the Open Land**

The Tenant must not keep or store any vehicle, caravan or moveable dwelling on the Open Land

#### **3.4.5 Care of abutting land**

The Tenant must not cause any land, roads or pavements abutting the Premises to be untidy or dirty and in particular, but without prejudice to the generality of the foregoing, must not deposit refuse or other materials on them

#### **3.4.6 Decoration**

The Tenant must redecorate the outside and inside of the Premises, as often as is necessary in the reasonable opinion of the Surveyor, in order to maintain a high standard of decorative finish and attractiveness and in the last year of the Term

#### **3.4.7 Shared Facilities**

Where the use of any of the Conduits or any boundary structures or other thing is common to the Premises and other property, the Tenant must be responsible for, and indemnify the Landlord against, all sums due from the owner, tenant or occupier of the Premises in relation to those Conduits, boundary structures, or other things and must undertake all work in relation to them that is his responsibility

### **3.5 Waste and alterations**

#### **3.5.1 Waste, additions and alterations**

The Tenant must not commit any waste, make any addition to the Premises, unite the Premises with any adjoining premises, or make any alteration to the Premises save as permitted by the provisions of this clause 3.5

#### **3.5.2 Pre-Conditions for alterations**

The Tenant must not make any alterations to the Premises unless he first-

3.5.2.1 obtains and complies with the necessary consents of the competent authorities and pays their charges for them,

3.5.2.2 makes an application to the Landlord for consent, supported by drawings and where appropriate a specification in duplicate prepared by an architect, or a member of some other appropriate profession, who must supervise the work throughout to completion,

- 3.5.2.3 pays the fees of the Landlord and their respective professional advisers
- 3.5.2.4 enters into any covenants the Landlord requires as to the execution and reinstatement of the alterations, and
- 3.5.2.5 obtains the consent of the Landlord, whose consent may not be unreasonably withheld or delayed

In the case of any works of a substantial nature, the Landlord may require the Tenant to provide, before starting the works, adequate security in the form of a deposit of money or the provision of a bond as assurance to the Landlord that any works he permits from time to time will be fully completed

### 3.5.3 **Removal of alterations**

At the end of the Term, if so requested by the Landlord, the Tenant must remove any additional buildings, additions, alterations or improvements made to the Premises and must make good any part of the Premises that is damaged by their removal

### 3.5.4 **Connection to the Conduits**

The Tenant must not make any connection with the Conduits except in accordance with plans and specifications approved by the Landlord, whose approval may not be unreasonably withheld or delayed, and subject to consent to make the connection having previously been obtained from the competent authority, undertaker or supplier

## 3.6 **Aerials, signs and advertisements**

### 3.6.1 **Masts and wires**

The Tenant must not erect any pole or mast or install any cable or wire on the Premises, whether in connection with telecommunications or otherwise

### 3.6.2 **Advertisements**

The Tenant must not, without the consent of the Landlord, fix to or exhibit on the outside of the Premises, or fix to or exhibit through any window of the Premises, or display anywhere on the Premises, any placard, sign, notice, fascia board or advertisement

## 3.7 **Statutory obligations**

### 3.7.1. **General Provision**



The Tenant must comply in all respects with the requirements of any statutes applicable to the Premises or the trade or business for the time being carried on there, and any other obligations so applicable imposed by law or by any byelaws

### 3.7.2 Particular obligations

#### 3.7.2.1 **Works required by statute, department or authority**

Without prejudice to the generality of clause 3.7.1, the Tenant must execute all works and provide and maintain all arrangements on or in respect of the Premises or the use to which they are being put that are required in order to comply with the requirements of any statute already or in the future to be passed, or the requirements of any government department, local authority or other public or competent authority or court of competent jurisdiction, regardless of whether the requirements are imposed on the owner, the occupier, or any other person

#### 3.7.2.2 **Acts causing losses**

Without prejudice to the generality of clause 3.7.1, the Tenant must not do in or near the Premises anything by reason of which the Landlord may incur any losses under any statute

#### 3.7.2.3 **Construction (Design and Management) Regulations**

Without prejudice to the generality of clause 3.7.1, the Tenant must comply with the provisions of the Construction (Design and Management) Regulations 1993 (“the CDM Regulations”), be the only client, as defined in the provisions of the CDM Regulations, fulfil, in relation to all and any works, all the obligations of the client as set out in or reasonably to be inferred from the CDM Regulations, and make a declaration to that effect to the Health and Safety Executive in accordance with the Approved Code of Practice published from time to time by the Health and Safety Executive in relation to the CDM Regulations. The provisions of clause 5.7.3 (concerning fire fighting equipment) are to have effect in any circumstances to which these obligations apply

#### 3.7.2.4 **Delivery of health and safety files**

At the end of the Term, the Tenant must forthwith deliver to the Landlord any and all health and safety files relating to the Premises in accordance with the CDM Regulations

### **3.8 Entry to inspect and notice to repair**

#### **3.8.1 Entry and Notice**

The Tenant must permit the Landlord on reasonable notice during normal business hours except in emergency

3.8.1.1 to enter the Premises to ascertain whether or not the covenants and conditions of this Lease have been observed and performed

3.8.1.2 to view the state of repair and condition of the Premises, and to open up floors and other parts of the Premises where that is necessary in order to do so, and

3.8.1.3 to give to the Tenant, or notwithstanding clause 7.6 NOTICES leave on the Premises, a notice specifying the works required to remedy any breach of the Tenant's obligations in this Lease ("a notice to repair")

provided that any opening-up must be made good by and at the cost of the Landlord if it reveals no breach of the terms of this Lease

#### **3.8.2 Works to be carried out**

The Tenant must carry out the works specified in a notice to repair immediately, including making good any opening up that revealed a breach of the terms of this Lease

#### **3.8.3 Landlord's power in default**

If within two months of the service of a notice to repair the Tenant has not started to execute the work referred to in that notice, or is not proceeding diligently with it, or if the Tenant fails to finish the work within four months, or if in the Landlord's reasonable opinion the Tenant is unlikely to finish the work within that period, the Tenant must permit the Landlord to enter the Premises to execute the outstanding work, and must within 14 days of a written demand pay to the Landlord the cost of so doing and all expenses incurred by the Landlord, including legal costs and surveyor's fees

### 3.9 **Alienation**

The Tenant must not hold the Premises on trust for another. The Tenant must not part with possession of the Premises or any part of them or permit another to occupy them or any part of them. The Tenant must not assign, sublet or charge part only of the Premises. The Tenant must not assign, sublet or charge the whole of the Premises.

### 3.10 **Nuisances and residential restrictions**

#### 3.10.1 **Nuisance**

The Tenant must not do anything on the Premises, or allow anything to remain on them that may be or become or cause a nuisance, annoyance, disturbance, inconvenience, injury or damage to the Landlord or his tenants or to the owners or occupiers of adjacent or neighbouring premises

#### 3.10.2 **Auctions, trades and immoral purposes**

The Tenant must not use the Premises for any auction sale or car boot sale, any dangerous, noxious, noisy or offensive trade, business, manufacture or occupation, or any illegal or immoral act or purpose

### 3.11 **Costs of applications, notices and recovery of arrears**

The Tenant must pay to the Landlord all costs, fees, charges, disbursements and expenses – including, without prejudice to the generality of the above, those payable to counsel, solicitors, surveyors and bailiffs – incurred by the Landlord in relation to or incidental to-

3.11.1 every application made by the Tenant for a consent or licence required by the provisions of this Lease, whether it is granted, refused or offered subject to any qualification or condition, or the application is withdrawn

3.11.2 the contemplation, preparation and service of a notice under the Law of Property Act 1925 section 146, or the contemplation or taking of proceedings under sections 146 or 147 of that Act, even if forfeiture is avoided otherwise than by relief granted by the court,

3.11.3 the recovery or attempted recovery of arrears of Rent or other sums due under this Lease, and

3.11.4 any steps taken in contemplation of or in direct connection with the preparation and service of a schedule of dilapidations during or after the end of the Term

### **3.12 Planning and development**

#### **3.12.1 Compliance with the Planning Acts**

The Tenant must observe and comply with the provisions and requirements of the Planning Acts affecting the Premises and their use, and must indemnify the Landlord, and keep him indemnified, both during the Term and following the end of the it, against all losses in respect of any contravention of those Acts

#### **3.12.2 Consent for applications**

The Tenant must not make any application for planning permission without the consent of the Landlord

#### **3.12.3 Permissions and notices**

The Tenant must obtain any planning permissions and serve any notices that may be required to carry out any development on or at the Premises

#### **3.12.4 Charges and levies**

Subject only to any statutory direction to the contrary, the Tenant must pay and satisfy any charge or levy that may subsequently be imposed under the Planning Acts in respect of the carrying out or maintenance of any development on or at the Premises

#### **3.12.5 Pre-conditions for development**

Notwithstanding any consent that may be granted by the Landlord under this Lease, the Tenant must not carry out any development on or at the Premises until all necessary notices under the Planning Acts have been served and copies produced to the Landlord, all necessary permissions under the Planning Acts have been obtained and produced to the Landlord, and the Landlord has acknowledged that every necessary planning permission is acceptable to him. The Landlord may refuse to acknowledge his acceptance of a planning permission on the grounds that any condition contained in it or anything omitted from it or the period referred to in it

would be, or be likely to be, prejudicial to the Landlord or to his reversionary interest in the Premises whether during or following the end of the Term

### **3.12.6 Completion of development**

Where a condition of any planning permission granted for development begun before the end of the Term requires works to be carried out to the Premises by a date after the end of the Term, the Tenant must, unless the Landlord directs otherwise, finish those works before the end of the Term

### **3.12.7 Security for compliance with conditions**

In any case where a planning permission is granted subject to conditions, and if the Landlord reasonably so requires, the Tenant must provide sufficient security for his compliance with the conditions and must not implement the planning permission until the security has been provided

### **3.12.8 Appeal against refusal or conditions**

If reasonably required by the Landlord to do so, but at his own cost, the Tenant must appeal against any refusal of planning permission or the imposition of any conditions on a planning permission relating to the Premises following an application for planning permission by the Tenant.

### **3.13 Plans, documents and information**

If so requested, the Tenant must produce to the Landlord or the Surveyor any plans, documents and other evidence the Landlord requires to satisfy himself that the provisions of this Lease have been complied with

### **3.14 Indemnities**

The Tenant must keep the Landlord fully indemnified against all losses arising directly or indirectly out of any act, omission or negligence of the Tenant, or any persons at the Premises expressly or impliedly with his authority and under his control, or any breach or non-observance by the Tenant of the covenants, conditions or other provisions of this Lease or any of the matters to which this demise is subject

### **3.15 Reletting boards and viewing**

At any time during the last six months of the Contractual Term and at any time thereafter, and whenever the Rents or any part of them are in arrear and unpaid for longer than 14 days, the Tenant must permit the Landlord to enter the Premises and fix and retain anywhere on them a board advertising them for reletting. The Tenant must permit viewing of the Premises at reasonable times of the day

### **3.16 Obstruction and encroachment**

#### **3.16.1 Obstruction of windows**

The Tenant must not stop up, darken or obstruct any window or light belonging to the Premises

#### **3.16.2 Encroachment**

The Tenant must take all steps to prevent the construction of any new window, light, opening, doorway, path, passage, pipe or the making of any encroachment or the acquisition of any easement in relation to the Premises and must notify the Landlord immediately if any such thing is constructed, encroachment is made or easement acquired, or if any attempt is made to encroach or acquire an easement. At the request of the Landlord the Tenant must adopt such means as are required to prevent the making of any encroachment or the acquisition of any easement

### **3.17 Yielding up**

At the end of the Term the Tenant must yield up the Premises with vacant possession, decorated and repaired in accordance with and in the condition required by the provisions of this Lease, give up all keys of the Premises to the Landlord, remove tenant's fixtures and fittings if requested to do so by the Landlord, and remove all signs erected by the Tenant in, on or near the Premises, immediately making good any damage caused by their removal

### **3.18 Interest on arrears**

The Tenant must pay interest on any of the Rents or other sums due under this Lease that are not paid within 14 days of the date due, whether formally demanded or not, the interest to be recoverable as Rent. Nothing in this clause entitles the Tenant to withhold or delay any payment of the Rent or any other sum due under this Lease or affects the rights of the Landlord in relation to any non-payment

### **3.19 Statutory notices**

The Tenant must give full particulars to the Landlord of any notice, direction, order or proposal relating to the Premises, made given or issued to the Tenant by any government department or

local, public, regulatory or other authority or court within 7 days of receipt, and if so requested by the Landlord must produce it to the Landlord. The Tenant must without delay take all necessary steps to comply with the notice, direction or order. At the request of the Landlord, but at his own cost, the Tenant must make or join with the Landlord in making any objection or representation the Landlord deems expedient against or in respect of any notice, direction, order or proposal

### **3.20 Keyholders**

The Tenant must ensure that at all times the Landlord has written notice of the name, home address and home telephone number of at least two keyholders of the Premises

### **3.21 Viewing on sale of reversion**

The Tenant must at any time during the Term permit prospective purchasers of the Landlord's reversion or agents instructed in connection with the sale of the reversion to view the Premises without interruption provided they have the prior written authority of the Landlord or his agents

### **3.22 Defective premises**

The Tenant must give notice to the Landlord of any defect in the Premises that might give rise to an obligation on the Landlord to do or refrain from doing anything in order to comply with the provisions of this Lease or the duty of care imposed on the Landlord, whether pursuant to the Defective Premises Act 1972 or otherwise, and must at all times display and maintain any notices the Landlord from time to time requires him to display at the Premises

### **3.23 Exercise of the Landlord's rights**

The Tenant must permit the Landlord to exercise any of the rights granted to him by virtue of the provisions of this Lease at all times during the Term without interruption or interference

### **3.24 The Industrial Covenants**

The Tenant must observe and perform the Industrial Covenants

### **3.25 Consent to the Landlord's release**

The Tenant must not unreasonably withhold consent to a request made by the Landlord under the 1995 Act section 8 for a release from all or any of the landlord covenants of this Lease

## **4. QUIET ENJOYMENT**

The Landlord covenants with the Tenant that, the Tenant observing and performing the tenant covenants contained in this Lease, shall peaceably and quietly hold and enjoy the Premises

without any interruption or disturbance from or by the Landlord or any person claiming under or in trust for him

## 5. **INSURANCE**

### 5.1 **Warranty as to conviction**

The Tenant warrants that before the execution of this document he has disclosed to the Landlord in writing any conviction, judgement or finding of any court or tribunal relating to the Tenant, or any director, other officer or major shareholder of the Tenant, of such a nature as to be likely to affect the decision of any insurer or underwriter to grant or to continue insurance of any of the Insured Risks

### 5.2 **Covenant to insure**

The Landlord covenants with the Tenant to insure the Premises unless the insurance is vitiated by any act of the Tenant or by anyone at the Premises expressly or by implication with his authority and under his control

### 5.3 **Details of the insurance**

5.3.1 Insurance is to be effected in such insurance office, or with such underwriters, and through such agency as the Landlord from time to time decides

5.3.2 Insurance must be effected for the following amounts-

5.3.2.1 the sum that the Landlord is from time to time advised is the full cost of rebuilding and reinstating the Premises, including VAT, architects, surveyors, engineers, solicitors and all other professional persons' fees, the fees payable on any applications for planning permission or other permits or consents that may be required in relation to rebuilding or reinstating the Premises, the cost of preparation of the site including shoring-up, debris removal, demolition, site clearance and any works that may be required by statute, and incidental expenses, and

5.3.2.2 loss of the Rent for 3 years or such longer period as the Landlord from time to time requires for planning and carrying out the rebuilding or reinstatement

5.3.3 Insurance must be effected against damage or destruction by any of the Insured Risks to the extent that such insurance may ordinarily be arranged for properties such as the Premises, subject to such excesses, exclusions or limitations as the insurer requires

### 5.4 **Payment of the Insurance Rent**

The Tenant covenants to pay the Insurance Rent for the period commencing on the Rent Commencement Date and ending on the day before the next policy renewal date on the date of



this Lease, and subsequently to pay the Insurance Rent on demand and, if so demanded, in advance of the policy renewal date

## 5.5 **Suspension of the Rent**

- 5.5.1 If and whenever the Premises or any part of them are damaged or destroyed by one or more of the Insured Risks so that the Premises or any part of them are unfit for occupation or use, and payment of the insurance money is not wholly or partly refused because of any act or default of the Tenant or anyone at the Premises expressly or by implication with his authority and under his control then the provisions of clause 5.5.2 are to have effect
- 5.5.2 In the circumstances mentioned in clause 5.5.1 the Rent, or a fair proportion of it according to the nature and the extent of the damage sustained, is to cease to be payable until the Premises, or the affected part, have been rebuilt or reinstated so as to render the Premises, or the affected part, fit for occupation and use, or until the end of 3 years from the destruction or damage, whichever period is the shorter, the proportion of the Rent suspended and the period of the suspension to be determined by the Surveyor acting as an expert and not as an arbitrator

## 5.6 **Reinstatement and termination**

- 5.6.1 If and whenever the Premises or any part of them are damaged or destroyed by one or more of the Insured Risks and payment of the insurance money is not wholly or partly refused because of any act or default of the Tenant or anyone at the Premises expressly or by implication with his authority and under his control, the Landlord must use reasonable endeavours to obtain the planning permissions or other permits and consents (“permissions”) that are required under the Planning Acts or otherwise to enable him to rebuild and reinstate the Premises
- 5.6.2 Subject to the provisions of clause 5.6.3 and, if any permissions are required, after they have been obtained, the Landlord must as soon as reasonably practicable apply all money received in respect of the insurance, except sums in respect of loss of the Rent, in rebuilding or reinstating the Premises
- 5.6.3 The Landlord need not rebuild or reinstate the Premises if and for so long as rebuilding or reinstatement is prevented because-
- 5.6.3.1 the Landlord, despite using reasonable endeavours, cannot obtain any necessary permission,
- 5.6.3.2 any permission is granted subject to a lawful condition with which in all the circumstances it is unreasonable to expect the Landlord to comply,

5.6.3.3 there is some defect or deficiency in the site on which the rebuilding or reinstatement is to take place that means it can only be undertaken at a cost that is unreasonable in all the circumstances,

5.6.3.4 the Landlord is unable to obtain access to the site to rebuild or reinstate,

5.6.3.5 the rebuilding or reinstating is prevented by war, act of God, government action, strike or lock-out, or

because of the occurrence of any other circumstances beyond the Landlord's control

5.6.4 If, at the end of the period of 3 years commencing on the date of the damage or destruction, the Premises are still not fit for the Tenant's occupation and use, either the Landlord or the Tenant may by notice served at any time within 6 months of the end of that period ("a notice to terminate following failure to reinstate") implement the provision of clause 5.6.5

5.6.5 On service of a notice to terminate following failure to reinstate, the Term is to cease absolutely – but without prejudice to any rights or remedies that may have accrued –and all money received in respect of the insurance effected by the Landlord pursuant to this Lease is to belong to the Landlord absolutely

#### 5.7 **Tenant's further insurance covenants**

The Tenant covenants with the Landlord to observe and perform the requirements of this clause

#### 5.7

5.7.1 The Tenant must comply with all the requirements and recommendations of the insurers

5.7.2 The Tenant must not do or omit anything that could cause any insurance policy on or in relation to the Premises to become wholly or partly void or voidable, or do or omit anything by which additional insurance premiums may become payable unless he has previously notified the Landlord and has agreed to pay the increased premium

5.7.3 The Tenant must keep the Premises supplied with such fire fighting equipment as the insurers and the fire authority require and must maintain the equipment to their satisfaction and in efficient working order. At least once in every year the Tenant must cause any sprinkler system and other fire fighting equipment to be inspected by a competent person

5.7.4 The Tenant must not store on the Premises or bring onto them anything of a specially combustible, inflammable or explosive nature, and must comply with the requirements and recommendations of the fire authority as to fire precautions relating to the Premises

5.7.5 The Tenant must not obstruct the access to any fire equipment or the means of escape from the Premises or lock any fire door while the Premises are occupied

- 5.7.6 The Tenant must give immediate notice to the Landlord of any event that might affect any insurance policy on or relating to the Premises, and any event against which the Landlord may have insured under this Lease
- 5.7.7 The Tenant must give immediate notice to the Landlord of any conviction, judgement or finding of any court or tribunal relating to the Tenant, or any director other officer or major shareholder of the Tenant, of such a nature as to be likely to affect the decision of any insurer or underwriter to grant or to continue any such insurance
- 5.7.8 If at any time the Tenant is entitled to the benefit of any insurance of the Premises that is not effected or maintained in pursuance of any obligation contained in this Lease, the Tenant must apply all money received by virtue of that insurance in making good the loss or damage in respect of which the money is received
- 5.7.9 If at any time the Premises or any part of them are damaged or destroyed by one or more of the Insured Risks and the insurance money under the policy of insurance effected by the Landlord pursuant to his obligations contained in this Lease is wholly or partly irrecoverable because of any act or default of the Tenant or of anyone at the Premises expressly or by implication with his authority and under his control, the Tenant must immediately, at the option of the Landlord, either rebuild and reinstate the Premises or the part of them destroyed or damaged to the reasonable satisfaction and under the supervision of the Surveyor – in which case, on completion of the rebuilding and reinstatement, the Landlord must pay to the Tenant the amount that the Landlord has actually received under the insurance policy in respect of the destruction or damage (if any) – or pay to the Landlord on demand with interest the amount of the insurance money so irrecoverable – in which case the provisions of clauses 5.5 SUSPENSION OF THE RENT and 5.6 REINSTATEMENT AND TERMINATION are to apply

#### 5.8 **Landlord's further insurance covenants**

The Landlord covenants with the Tenant to observe and perform the requirements set out in this clause 5.8 in relation to the insurance policy effected by the Landlord pursuant to his obligations contained in this Lease

5.8.1 The Landlord must produce to the Tenant on demand reasonable evidence of the terms of the policy and the fact that the last premium has been paid

5.8.2 The Landlord must notify the Tenant of any material change in the risks covered by the policy from time to time

#### 6. **FORFEITURE**

If and whenever during the Term-

- 6.1 the Rents, or any of them or any part of them, or any VAT payable on them, are outstanding for 14 days after becoming due, whether formally demanded or not, or
- 6.2 the Tenant breaches any covenant or other term of this Lease, or
- 6.3 the Tenant, being an individual, becomes bankrupt, or
- 6.4 the Tenant, being a company, enters into liquidation whether compulsory or voluntary – but not if the liquidation is for amalgamation or reconstruction of a solvent company – or has a receiver appointed, or
- 6.5 the Tenant enters into an arrangement for the benefit of his creditors, or
- 6.6 the Tenant has any distress or execution levied on his goods, or
- 6.7 the Management Agreement is terminated by either the Landlord or the Tenant

and where the Tenant is more than one person, if and whenever any of the events referred to in this clause happens to any one or more of them, the Landlord may at any time re-enter the Premises or any part of them in the name of the whole – even if any previous right of re-entry has been waived – and thereupon the Term is to cease absolutely but without prejudice to any rights or remedies that may have accrued to the Landlord against the Tenant or to the Tenant against the Landlord in respect of any breach of covenant or other term of this Lease, including the breach in respect of which the re-entry is made

## 7. MISCELLANEOUS

### 7.1 Exclusion of warranty as to use

Nothing in this Lease or in any consent granted by the Landlord under this Lease is to imply or warrant that the Premises may lawfully be used under the Planning Acts for the Permitted Use

### 7.2 Representations

The Tenant acknowledges that this Lease has not been entered into in reliance wholly or partly on any statement or representation made by or on behalf of the Landlord, except any such statement or representation expressly set out in this Lease or made by the Landlord's solicitors in any written response to enquiries raised by the Tenant's solicitors in connection with the grant of this Lease

### 7.3 Documents under hand

While the Landlord is a limited company or other corporation, any licence, consent approval or notice required to be given by the Landlord is to be sufficiently given if given under the hand of a director, the secretary or other duly authorised officer of the Landlord or by the Surveyor on behalf of the Landlord

### 7.4 Tenant's property

If, after the Tenant has vacated the Premises at the end of the Term, any property of his remains in or on the Premises and he fails to remove it within 14 days after a written request from the Landlord to do so, or if the Landlord is unable to make such a request to the Tenant, within 14 days from the first attempt to make it, then the Landlord may, as the agent of the Tenant, sell that property. The Tenant must indemnify the Landlord against any liability incurred by the Landlord to any third party whose property is sold by him in the mistaken belief held in good faith – which is to be presumed unless the contrary is proved – that the property belonged to the Tenant. If, having made reasonable efforts to do so, the Landlord is unable to locate the Tenant, then the Landlord may retain the proceeds of sale absolutely unless the Tenant claims them within 6 months of the date upon which he vacated the Premises. The Tenant must indemnify the Landlord against any damage occasioned to the Premises and any losses caused by or related to the presence of the property in or on the Premises

#### **7.5 Compensation on vacating excluded**

Any statutory right of the Tenant to claim compensation from the Landlord on vacating the Premises is excluded to the extent that the law allows

#### **7.6 Notices**

##### **7.6.1 Form and service of notices**

A notice under this Lease must be in writing and, unless the receiving party or his authorised agent acknowledges receipt, is valid if, and only if-

7.6.1.1 it is given by hand, sent in the ordinary course of post, or sent by fax, and

7.6.1.2 it is served-

(a) where the receiving party is a company incorporated within Great Britain, at the registered office, or

(b) where the receiving party is the Tenant, at the Premises, and

(c) where the receiving party is the Landlord, at the Landlord's address shown in this Lease or at any address specified in a notice given by the Landlord to the Tenant

##### **7.6.2 Deemed delivery**

7.6.2.1 Unless it is returned through the Royal Mail undelivered, a notice sent in the ordinary course of post is to be treated as served on the second working day after posting whenever and whether or not it is received

7.6.2.2 A notice sent by fax is to be treated as served on the day upon which it is sent, or the next working day where the fax is sent after 1600 hours or on a

day that is not a working day, whenever and whether or not it or the confirmatory copy is received

7.6.2.3 References to a “working day” are references to a day when the United Kingdom clearing banks are open for business in the City of London

### 7.6.3 **Joint recipients**

If the receiving party consists of more than one person, a notice to one of them is notice to all

### 7.7 **New or Old lease**

This lease is a new tenancy for the purposes of the 1995 Act section 1

### 7.8 **Early termination**

7.8.1 This Lease shall immediately cease and determine if at any time the Management Agreement is terminated in accordance with its terms or if the Tenant has ceased to use the Premises for the Permitted Use for a continuous period of 3 months as part of an agreed and permanent cessation in the provision of services from the Premises

7.8.2 Upon a termination pursuant to clause 7.8.1 the Tenant shall yield up the Premises in accordance with the requirements of this Lease but such termination shall be without prejudice to any liability of either party against the other in respect of any antecedent breach of covenant that may have accrued

### 7.9 **Option to renew**

7.9.1 If the Landlord and the Tenant agree to extend the term of the Management Agreement and if the Tenant wishes to take a further lease of the Premises from the end of the Contractual Term and at any time after [30 September 2010] gives to the Landlord not less than 6 months prior written notice of that wish, then, provided the Tenant has paid the Rents and substantially performed and observed the covenants contained in this Lease up to the end of the Contractual Term, the Landlord must at the cost of the Tenant grant to the Tenant a further lease of the Premises for a term commencing on and including the day following the last day of the Contractual Term and terminating on the last day of the term of the extended Management Agreement on the same terms and conditions as this Lease except as to this option for a further lease.

7.9.2 The rent reserved by the further lease is to be an amount equal to the Rent payable under this Lease.

7.9.3 *This option is to be of no effect if the Tenant fails to register it as a land charge under the Land Charges Act 1972 within 28 days from the date of this Lease/ This option is to be of*

*no effect if the Tenant fails to protect it by notice in the register of the Landlord's title under the Land Registration Act 2002 within 28 days from the date of this Lease*

**7.10 Exclusion of the 1954 Act ss 24-28**

7.10.1 The Tenant confirms that before the date of this Lease [before it became contractually bound to enter into the tenancy created by this Lease]:

7.10.1.1 The Landlord served on the Tenant a notice dated 200 in relation to the tenancy created by this Lease ("the Notice") in a form complying with the requirements of Schedule 1 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 ("the Order")

7.10.1.2 The Tenant or a person duly authorised by the Tenant in relation to the Notice made a [Statutory] Declaration ("the [Statutory] Declaration") dated 200 in a form complying with the requirements of Schedule 2 of the Order

7.10.2 The Tenant further confirms that where the [Statutory] Declaration was made by a person other than the Tenant the declarant was duly authorised by the Tenant to make the [Statutory] Declaration on the Tenant's behalf

7.10.3 The Landlord and the Tenant agree to exclude the provisions of sections 24-28 (inclusive) of the 1954 Act in relation to the tenancy created by this Lease

**7.11 Agreement for lease**

It is certified that there is no agreement for lease to which this Lease gives effect

IN WITNESS whereof the Landlord has caused its corporate seal to be hereunto affixed and the Tenant has set its hand and seal the day and year first before written

**SCHEDULE 1: THE RIGHTS GRANTED**

None

**SCHEDULE 2: THE RIGHTS RESERVED**

**1. Passage and running through the Conduits**

The right to the free and uninterrupted passage and running of all services through the appropriate Conduits and through any structures of a similar use or nature that may at any time be constructed in, on over or under the Premises as permitted by paragraph 2

## 2. **Right to construct conduits**

The right to construct and to maintain and repair at the Premises, pipes, sewers, drains, mains, ducts, conduits, gutters, watercourses, wires, cables, channels, flues and other necessary conducting media for the provision of services or supplies to any adjoining property of the Landlord, including any fixings, louvers, cowls and any other ancillary apparatus, making good all damage caused in the exercise of this right

## 3. **Access**

### 3.1 **Access to inspect**

The right to enter, or in emergency to break into and enter, the Premises at reasonable times and on reasonable notice except in emergency –

3.1.1 to inspect the condition and state of repair of the Premises

3.1.2 to inspect, clean, connect to, remove, replace with others, alter or execute any works whatever to or in connection with the conduits, easements, services or supplies referred to in paragraphs 1 and 2

3.1.3 to carry out work of any kind to any adjoining property of the Landlord or any other buildings that cannot conveniently be carried out without access to the Premises and,

3.1.4 to exercise any of the rights granted to the Landlord in this Lease

## 4. **Right to erect new building**

Full right and liberty at any time to build, rebuild, alter or raise the height of any building on any adjoining property of the Landlord in such manner as the Landlord thinks fit, even if doing so obstructs, affects or interferes with the amenity of the Premises or the passage of light and air to the Premises

## **SCHEDULE 3: THE INDUSTRIAL COVENANTS**

### 1 **Use**

#### 1.1 **Permitted Use only**

The Tenant must use the Premises for the Permitted Use only

#### 1.2 **Cesser of business**

The Tenant must not cease carrying on business in the Premises or leave the Premises continuously unoccupied for more than 2 months without notifying the Landlord, and providing such caretaking or security arrangements for the protection of the Premises as the Landlord reasonably requires



## **2 Environmental protection**

### **2.1 Discharge of dangerous substances**

#### **2.1.1 Damage to the Conduits and environment**

The Tenant must not permit any oil or grease or any deleterious, objectionable, dangerous, poisonous or explosive matter or substance to be discharged into any of the Conduits, and must take all reasonable measures to ensure that any effluent discharged into the Conduits does not harm the environment, or corrode or otherwise harm the Conduits or cause obstruction or deposit in them

#### **2.1.2 Poisons and pollutants**

The Tenant must not permit the discharge into any of the Conduits of any fluid of a poisonous or noxious nature or of a kind likely to sicken or injure fish or that does in fact destroy them, or likely to contaminate or pollute the water of any stream or river

### **2.2 Spillages and contamination**

The Tenant must take all practicable precautions to ensure that no noxious substances are spilled or deposited on the Premises and that contamination does not occur

### **2.3 Indemnity for damage and pollution**

The Tenant must indemnify the Landlord, and keep him indemnified against any losses in respect of damage to, or pollution of the environment or damage to property or harm to human health caused by the Premises or any substance on them whether in liquid or solid form or in the form of gas or vapour

## **3 Roof and floor loading**

### **3.1 Heavy items**

The Tenant must not bring into or permit to remain in any building on the Premises any safes, machinery, goods or other articles that will or may strain or damage the building or any part of it

### **3.2 Protection of the roof**

The Tenant must not, without the consent of the Landlord, suspend any weight from the portal frames, stanchions or roof purlins of any building on the Premises or use them for the storage of goods or place any weight on them

## **4 Machinery**

### **4.1 Maintenance of machinery**

The Tenant must keep all plant, apparatus and machinery including any boilers and furnaces on the Premises (“the Machinery”) properly maintained and in good working order, and for that purpose must employ reputable contractors (“the Contractors”) to carry out regular periodic inspection and maintenance of the Machinery

**4.2 Renewal of parts**

The Tenant must renew all working and other parts of the Machinery as and when necessary or when recommended by the Contractors

**4.3 Damage from the Machinery**

The Tenant must avoid damage to the Premises by vibration or otherwise

**5 Signs**

The Tenant must at all times display and maintain at a point on the Premises to be specified in writing by the Landlord, a suitable sign, of a size and kind first approved by the Landlord, showing the Tenant's trading name and business

**ANNEXURES**

1. 1954 Act Notice
2. 1954 Act [Statutory] declaration

**Executed as a Deed by the affixing of the Corporate Seal of the Mayor and Burgesses of the London Borough of Lewisham hereunto in the presence of:**

**Mayor**

**Borough Solicitor and Secretary**

**Signed as a Deed by the said Lewisham Homes acting by two Directors or a Director and the Company Secretary:**

Director

Director/Co. Sec.

**THE EIGHTH SCHEDULE**  
**USE OF COUNCIL'S COMPUTERS**

**THE NINTH SCHEDULE**  
**SERVICES SUPPLIED BY COUNCIL**

**ANNEX 1**  
**THE INITIAL DELIVERY PLAN**

**ANNEX 2**  
**THE DELIVERY PLAN FORMAT**

**ANNEX 6**

**PROTOCOL RELATING TO ENQUIRIES BY ELECTED MEMBERS**

This **PROTOCOL** is **BETWEEN**

**LEWISHAM HOMES Ltd** (“the Organisation”); and

**The LONDON BOROUGH OF LEWISAM** (“the Council”)

1. Introduction

1.1 Clause 33.3 of the Management Agreement contains a provision stating that any enquiries received by the Organisation from Members of Parliament, from Members of the Council or Officers shall be dealt with in accordance with the Protocol set out in Annex 6.

1.2 This Protocol sets out broad guidelines for contacts between the Organisation and the Council.

2. Objectives

2.1 The Organisation and the Council are committed to ensuring that the interests and well-being of the Council’s Tenants are paramount.

2.2 The Council recognises that the Organisation has primacy of purpose in ensuring that the Delivery Plan, the Key Performance Indicators of the service and the key strategic policies of the Council (such as Services, Delivery Plan and strategic policies and legislative requirements as described in the Management Agreement) are preformed and adhered to; and

2.3 The Organisation recognises that the Council has legitimate monitoring and partnership rights within the Management Agreement in respect of the Council’s tenants and that the Council’s elected members will continue to exercise their constituency functions on behalf of the Organisation’s current and future tenants.

3. Maintaining Contact

- 3.1 Telephone enquiries: The Organisation during its normal business hours will make available a named individual or individuals to answer or deal with telephone enquiries raised by the Council's elected members or officers in respect of issues affecting the Organisation's current or future tenants arising out of the Organisation's responsibilities and to respond as appropriate and as soon as practicable and in any event no later than 10 working days from receipt.
- 3.2 Written or electronic enquiries: The Organisation will endeavour to answer reasonable written or e-mailed enquiries from the Council's elected members or officers within 10 working days of receipt of such enquiries and will afford access to the tenant's files provided that the tenant in question has given their express written consent. In any event the Organisation will acknowledge receipt of the enquiry within 3 working days
- 3.3 The Organisation will make available to the Council for distribution to its elected members copies of its regular tenants' newsletters, annual reports and its tenants' handbook and the Council will make available to the Organisation for distribution to its Board of Directors copies of the Council's Communication Strategy and other policies or strategies affecting the Organisation and its functions from time to time.
- 3.4 Each year the Organisation and the Council will organise a joint event to brief each other (amongst other things) as to the housing and other issues of concern to each party and the progress of the Company in honouring its' commitment in the Management Agreement. Such event could involve (at the Organisation's discretion) an open invitation to the Organisation's Annual General Meeting and any presentation thereafter.
- 3.5 For the avoidance of doubt this Protocol is without prejudice to any other partnership arrangements, meetings or other information exchange required by the Management Agreement.



DRAFT @23.10.06

Appendix 2  
ANNEX  
4  
TENANT COMPACT  
(Clause 4)

DRAFT @23.10.06

## Appendix 2

ANNEX  
5  
EQUAL OPPORTUNITY POLICY  
(Clause 3.3)