

Dated 4 May 2012

- (1) London Borough of Lambeth
- (2) Regenter Myatts Field North Limited

Project Agreement

in relation to the Myatts Field North Estate Housing HRA PFI Project

Eversheds LLP
1 Royal Standard Place
Nottingham
NG1 6FZ

T 0845 497 9797
F 0845 497 7477
DX 10031 Nottingham 1
www.eversheds.com

CONTENTS

Clause		Page
1	DEFINITIONS AND INTERPRETATION.....	2
2	EXCLUSION OF LEGISLATION.....	102
3	COMMENCEMENT AND DURATION.....	102
4	COLLATERAL WARRANTIES	102
5	GENERAL WARRANTIES AND INDEMNITIES	103
6	AUTHORITY WARRANTIES.....	107
7	CO-OPERATION.....	109
8	NATURE OF LAND INTERESTS.....	110
9	ACQUIRING INTERESTS COVERED BY THE CPO.....	113
10	VACANT POSSESSION CONDITION.....	117
11	CONSULTATION AND PROTOCOLS.....	118
12	THE SERVICE WORKS	119
13	THE DEVELOPMENT WORKS	121
14	WORKS STIPULATIONS	124
15	REPRESENTATIVES	124
16	SITE MEETINGS.....	125
17	FURTHER DESIGN.....	125
18	CHANGES TO THE WORKS	127
19	EXTENSIONS OF TIME.....	127
20	CDM REGULATIONS	131
21	THE PROJECT SITE	132
22	MONITORING AND INSPECTION.....	141
23	CERTIFICATION OF AVAILABILITY.....	145
25	SERVICES OBLIGATIONS.....	151
26	CONDITION OF THE PROPERTIES.....	153
27	HAZARDOUS SUBSTANCES	155
28	EMERGENCIES	156
29	PERFORMANCE MONITORING	157
30	MARKET TESTING.....	159
31	HOUSING PROVISIONS	162
32	TRANSFER OF EMPLOYEES	177
33	PENSIONS	189
34	EMPLOYEES - GENERAL	189
35	INFORMATION TECHNOLOGY.....	195
36	PAYMENT PROVISIONS.....	196
37	INDEXATION.....	201
38	BEST VALUE	201
39	DIRECT AGREEMENT	206
40	TERMINATION OF THIS AGREEMENT	206
41	TERMINATION FOR PERSISTENT BREACH BY THE CONTRACTOR.....	211
42	TERMINATION ON FORCE MAJEURE.....	212
43	CONSEQUENCES OF TERMINATION	214

44	SURVEYS ON TERMINATION AND RETENTION FUND	215
45	COMPENSATION ON TERMINATION FOR FORCE MAJEURE.....	219
46	COMPENSATION ON TERMINATION FOR CONTRACTOR DEFAULT	221
47	COMPENSATION ON TERMINATION FOR AUTHORITY DEFAULT/VOLUNTARY TERMINATION	227
48	COMPENSATION ON CORRUPT GIFTS, FRAUD AND REFINANCING BREACHES.....	229
51	MISCELLANEOUS COMPENSATION PROVISIONS.....	232
52	METHOD OF PAYMENT	233
53	LIAISON.....	236
54	RELIEF EVENTS	236
55	CHANGE IN LAW.....	238
56	AUTHORITY AND CONTRACTOR CHANGES.....	241
57	AUTHORITY STEP-IN	241
58	FREEDOM OF INFORMATION AND CONFIDENTIALITY	244
59	INDEMNITIES GUARANTEES AND CONTRACTUAL CLAIMS.....	250
60	INSURANCE	252
61	REINSTATEMENT AND CHANGE OF REQUIREMENT AFTER INSURED EVENT	255
62	ECONOMIC TEST	258
63	RISKS THAT BECOME UNINSURABLE	259
64	DISPUTE RESOLUTION	263
65	ORDERING OF GOODS AND SERVICES	269
66	INTELLECTUAL PROPERTY.....	269
67	ASSIGNMENT AND SUB-CONTRACTING	272
68	CORPORATE STRUCTURES	274
69	FINANCIAL ADJUSTMENTS	276
70	AUDIT ACCESS.....	279
71	NO AGENCY	279
72	ENTIRE AGREEMENT	279
73	NOTICES	280
74	SEVERABILITY.....	281
75	WAIVER	281
76	PUBLIC RELATIONS AND PUBLICITY	282
77	ADVERTISEMENTS	282
78	CONTRACTOR'S RECORDS	282
79	DATA PROTECTION	285
80	INTEREST ON LATE PAYMENT	286
81	CO-OPERATION	286
82	LOCAL GOVERNMENT (CONTRACTS) ACT 1997	287
83	GOVERNING LAW AND JURISDICTION	287
84	REFINANCING	288
85	SOLE REMEDY AND COMMON LAW RIGHTS.....	294
86	RIGHTS AND REMEDIES	294
87	NO FETTER OF STATUTORY FUNCTIONS.....	295
88	COUNTERPARTS	295

Schedules

1	Output Specification	296
2	Contractor's Proposals	475
3	Change in Law - Contractor's Share.....	477
4	Payment Mechanism	478
5	Collateral Warranties.....	479
6	Review Procedure	480
7	Prohibited Materials	486
8	Liaison Procedure	488
9	Warranted Data.....	492
	Part 1: Authority Warranted Data – Housing Information.....	492
	Part 2: Authority Warranted Replies to Enquiries	495
	Part 3: Employee Information.....	498
	Part 4: Contractor Warranted Data.....	499
10	Relevant Discharge Terms.....	500
11	Insurances	501
	Part 1: Policies to be taken out by the Contractor and maintained during the design and construction phase.	502
	Part 2: Policies to be taken out by the Contractor and maintained during the Service Period.....	510
	Part 3: Endorsements.....	519
	Part 4: Broker's Letter of Undertaking.....	522
	Part 5: Definitions.....	527
12	Authority's Policies.....	529
13	Initial Financing Agreements	530
14	Project Documents.....	531
15	Change in the Number of Dwelling by Tenure	532
16	Housing Management Functions.....	535
17	Planned Completion Programme and Planned Services Commencement Date	537
18	Works Procedures.....	542
19	Commercially Sensitive Information	558
	Part 1	558
	Part 2	559
20	Insurance Premium Risk Sharing.....	561
21	Equality Requirements.....	570
22	Access Protocol	573
23	Tenant Waiver Protocol.....	582
24	Decant Protocol.....	587
	Part 1: Short Term Decant Protocol	589
	Part 2: Rehousing Tenants Protocol	594
	Part 3: Temporary Decant Protocol.....	597
25	Home Ownership Protocol	644
26	Disrepair Transitional Arrangements Protocol.....	648
27	Allocations and Nominations Protocol.....	657
28	ICT Protocol.....	658

29	Tenant and Third Party Damage Protocol.....	672
30	The list of Dwellings	675
31	Form of Tenancy Agreement	676
32	Form of Leasehold Leases	677
33	Tenants, Leaseholders and Freeholders.....	678
34	Section 125 Notices	679
35	Notices of Intention	680
	Part 1 – Notices of Intention to Seek Possession	680
	Part 2 – Court Orders	680
36	Dwellings without valid CP12 Certificates	681
37	Details of Outstanding Litigation	682
38	Development Works.....	683
39	Development Works Leases.....	686
40	Authority's Share of Proceeds of the Development Works	693
41	Like for Like Properties	694
	Part 1 -- List of Outstanding Interests.....	694
	Part 2 -- Cost of Acquisition	695
42	Grant of Housing Management Office and Site 16D Leases.....	698
43	Change Protocol	700
	Part 1 - General Provisions.....	700
	Part 2 - Low Value Changes	712
	Part 3 - Medium Value Changes	715
	Part 4 - High Value Changes.....	721
	Part 5 - Contractor Change	735
Appendices		
1	Catalogue Of Low Value Change	738
2	Pricing Information	739
	Part 1 - Construction Unit Rates.....	739
	Part 2 - Lifecycle Maintenance Unit Rates	739
	Part 3 - Fees and Profit Margins.....	739
	Part 4 - Contractor Management Costs.....	739
	Part 5 - Project Management Fee	739
3	Low Value Change Request	740
4	Confirmation Notice	741

List of Documents in the Agreed Form

1. Building Contract
2. CNDT Model
3. Development Works Delivery Plan
4. Development Works Lease
5. Energy Services Contract
6. Housing Management Agreement
7. Independent Certifier's Deed of Appointment
8. Project Site Plans
9. Responsive Repairs and Cyclical Maintenance and Renewal Contract
10. Building Contractor Collateral Warranty
11. Responsive Repairs and Cyclical Maintenance and Renewal Collateral Warranty
12. Housing Management Contractor Collateral Warranty
13. Architects Collateral Warranty
14. Structural Engineers Collateral Warranty
15. Mechanical and Electrical Engineers Collateral Warranty
16. Energy Services Contractor Collateral Warranties
17. Development Contractor's Collateral Warranty
18. Service Works Retail Units Lease
19. Like for Like Property Lease
20. Contractor's Contractual Method Statements
21. Construction and Refurbishment Programme
22. Cyclical Maintenance and Replacement Programme
23. Planned Maintenance Programme
24. Authority's Data Protection Protocol
25. Authority's Environmental Charter
26. Authority's Sustainable Construction Policy
27. Authority's Sustainable Timber Purchasing Policy
28. Authority's Equal Opportunities Statement

29. Authority's Corporate Health and Safety Policy
30. Authority's Privacy policy
31. Authority's Corporate Complaints Policy
32. Authority's Freedom of Information Policy
33. Third Party Site to Site Code of Connection Policy
34. Third Party Code of Connection Standard
35. Using Systems and Data Policy for all Users
36. ICT Services: Service Standards
37. List of Dwellings
38. Standard form of Tenancy Agreement
39. Standard form of Leasehold Lease
40. List of Tenants
41. List of Leaseholders and Freeholders
42. List of Rent and Service Charge Arrears
43. List of Notices to Seek Possession
44. List of Court Orders
45. List of Dwellings without a valid CP12 Certificate
46. Details of Outstanding Litigation
47. Repairs Audit
48. Grant Notice
49. Lease of Site 16D
50. Lease of the Housing Management Office
51. CCTV Specification
52. Warranted List of Dwellings
53. Appropriation Plan
54. Open Space Plan
55. List of Notices to Treat

BETWEEN

- (1) London Borough of Lambeth of Lambeth Town Hall, Brixton Hill, London SW2 1RW (the "Authority"); and
- (2) Regenter Myatts Field North Limited (company registered number 07489177) whose registered office is at Allington House, 150 Victoria Street, London, SW1E 5LB (the "Contractor").

BACKGROUND

- (A) By virtue of section 1 of the Housing Act 1985 (the "1985 Act") the Authority is designated as a local housing authority.
- (B) By virtue of section 9(1) and section 9(2) of the 1985 Act the Authority as a local housing authority is empowered to provide Housing Accommodation (as defined in section 56 of the 1985 Act) by inter alia erecting Houses (as defined in section 56 of the 1985 Act) and also to alter, enlarge, repair or improve a House so provided.
- (C) By virtue of section 10(1) of the 1985 Act, the Authority may fit out, furnish and supply a House provided by it pursuant to section 9 of the 1985 Act with all requisite furniture, fittings and conveniences.
- (D) By virtue of section 21 of the 1985 Act the general management, regulation and control of local authority housing is vested in and shall be exercised by the Authority.
- (E) By virtue of section 2 of the Local Government Act 2000 the Authority may do all that which it considers is likely to promote or improve the economic, social and environmental well-being of its area.
- (F) By virtue of section 111 of the Local Government Act 1972 the Authority is empowered to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions.
- (G) The Authority is empowered to procure the construction and/or refurbishment of the Dwellings and Blocks (as defined in this Agreement) and the provision of associated services pursuant to Section 1 of the Local Government (Contracts) Act 1997.
- (H) In accordance with the United Kingdom Government's Private Finance Initiative by an advertisement dated 4 July 2006 and referenced 2006/S 129-138328 in the Official Journal of the European Communities the Authority sought bids from appropriately qualified contractors for the provision, refurbishment, management

and maintenance of the Dwellings, Communal Areas, Exterior Common Areas and/or the Blocks.

- (I) Through a competitive tender process the Contractor has indicated its willingness, and has been selected by the Authority, to provide and/or refurbish the Dwellings, Communal Areas, Exterior Common Areas and/or Blocks and to manage and maintain the Dwellings, Communal Areas, Exterior Common Areas and/or Blocks in accordance with the terms and conditions of this Agreement.
- (J) The Secretary of State has given his approval to the entering into of this Agreement under Section 27 of the 1985 Act and this Agreement is a "Management Agreement" for the purposes of that section.
- (K) The parties intend that this Agreement be a certified agreement for the purposes of the Local Government (Contracts) Act 1997 and the Relevant Discharge Terms are set out in **Schedule 10**.
- (L) The Contractor consents to the issue of a certificate under Section 3 of the Local Government (Contracts) Act 1997.
- (M) The Authority is a Best Value authority under the Local Government Act 1999 and the functions in respect of which the Authority wishes to procure the management and maintenance of the Project Site are Best Value functions.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

1985 Act	the Housing Act 1985;
1999 Act	the Local Government Act 1999;
Abandon	wholly or substantially wilfully ceases to carry out the Service Works contemplated by the Construction and Refurbishment Programme for twenty (20) consecutive Business Days or during sixty (60) Business Days (whether consecutive or not) in any Contract Year and/or wilfully ceases to provide substantially all the Services for fifteen (15) consecutive Business Days or during thirty (30) Business Days (whether consecutive or not) in any Contract

Year, except when relieved of the obligation to do so by the express provisions of this Agreement;

Access Protocol the access protocol set out at **Schedule 22**;

Access Refusal Event has the meaning given to it in paragraph 1 of the Access Protocol;

Access Refusal and Tenant Waiver Waiting List the waiting list to be maintained by the Contractor of the Dwellings subject to an Access Refusal Event, Decant Refusal Event or Tenant Waiver Event in accordance with the Access Protocol, Decant Protocol, Tenant Waiver Protocol;

Account Bank Norddeutsche Landesbank Girozentrale;

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

- (a) this amount is less than or equal to the Additional Permitted Borrowings Limit; and
- (b) in respect of any Additional Permitted Borrowing the Agent is not in material breach of its obligations under clause 11.5.3 of the Direct Agreement as it applies to such Additional Permitted Borrowing

and provided further that any such excess amount of principal which is

- (i) invested as part of any Qualifying Variation; or
- (ii) outstanding from time to time as a result of any

drawing under the Senior Financing Agreements as entered into at the date of this Agreement, disregarding any subsequent amendment; or

- (iii) outstanding from time to time as a result of any amendment to the Senior Financing Agreements in respect of which the Authority has agreed that its liabilities on a termination may be increased pursuant to **clause 50.3** (Changes to Financing Agreements);

shall not be counted as Additional Permitted Borrowing;

Additional Permitted Borrowings an amount equal to:
Limit

- (c) ten percent (10%) of the Original Senior Commitment, for any Additional Permitted Borrowing subsisting in the period from the date of Financial Close to the date on which the amount outstanding under the Senior Financing Agreements is reduced to fifty percent (50%) or less of the Original Senior Commitment;

and thereafter

- (d) the higher of:
 - (i) five percent (5%) of the Original Senior Commitment; and
 - (ii) the amount of any Additional Permitted Borrowing outstanding on the last day of the period referred to in

(a);

Adjoining Property

any land and/or property adjoining or in the neighbourhood of the Project Site and each and every part thereof including all conduits, roads, footpaths, walls, fences, buildings and other erections and all service media and other apparatus on, under or within such land and/or property;

Adjudicator

has the meaning given to it in **clause 64.3** (Adjudication);

Adjusted Estimated Fair Value of the Contract

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

- (a) where relevant, any Post Termination Service Amounts paid to the Contractor (if a positive number);
- (b) the Tender Costs; and
- (c) amounts that the Authority is entitled to set off or deduct under **clause 36.8** (Rights of Set Off),

plus an amount equal to the aggregate of:

- (i) all credit balances on any bank accounts held by or on behalf of the Contractor on the date that the Estimated Fair Value of this Agreement is calculated;
- (ii) any insurance proceeds and other amounts owing to the Contractor (and which the Contractor is entitled to retain) to the extent not included in (i). above; and
- (iii) the Post Termination Service Amounts (if a negative number),

to the extent that:

1. (i), (ii) and (iii) have not been directly taken into account in calculating the Estimated Fair Value of the Contract; and

2. the Authority has received such amounts in accordance with this Agreement or such amounts are standing to the credit of the Joint Insurance Account;

Adjusted Gross Monthly Unitary Charge The Gross Monthly Unitary Charge after indexation, calculated in accordance with **paragraph** Error! Reference source not found. of **Schedule 4** (Payment Mechanism)

Adjusted Highest Compliant Tender Price the Highest Compliant Tender Price less the aggregate of:

- (a) any Post Termination Service Amounts paid to the Contractor to date;
- (b) the Tender Costs; and
- (c) amounts that the Authority is entitled to set off or deduct under **clause 36.8** (Rights of Set Off),

plus an amount equal to the aggregate of:

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

to the extent that

1. (i), (ii) and (iii) have not been directly taken into account in that Compliant Tender; and

2. the Authority has received such amounts in accordance with this Agreement;

Advance Payment

any payment which the Authority is lawfully required to make in respect of the CPO Land under the provisions of sections 52 and 52A of the Land Compensation Act 1973;

Adverse Rights

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

Affected Party

has the meaning given to it in the definition of Force Majeure Event in this **clause 1.1** (Definitions);

Affiliate

in relation to any person, any Holding Company or any subsidiary of that person or any subsidiary of such Holding Company, save that for the purposes of determining whether one entity is an Affiliate of another any transfer of shares by way of security or to a nominee of the transferor shall be disregarded;

Agent

Norddeutsche Landesbank Girozentrale in its capacity as agent for the Senior Lender under the Senior Financing Agreements;

Aggregate Performance Deduction (APD)

the performance deduction for the Contract Month calculated in accordance with **paragraph** Error! Reference source not found. of **Schedule 4** (Payment Mechanism);

Agreed Form

in relation to any document, the form of the document agreed between the parties and initialled by or on behalf of the parties for the

	purpose of identification;
Agreement	this agreement (including its Schedules and Appendices);
Allocations and Nominations Protocol	the Allocations and Nominations Protocol as set out at Schedule 27 ;
Allocations Policy	the Authority's Housing Allocation Scheme (Allocations Policy) 2008 including any replacement policy;
Ancillary Intellectual Property Rights	any and all Intellectual Property Rights which are not Generated Intellectual Property Rights including without limitation any Intellectual Property Rights created prior to the date of this Agreement by the Contractor;
Annual Allowance	the amounts set aside by the Contractor in each Contract Year for the Trees Survey and Tree Works plus any outstanding balances carried forward into the next Contract Year in accordance with paragraph 3.8.8.14 of Schedule 1 (Output Specification);
Annual Arrears Reduction Target	for each Contract Year within the Arrears Reduction Period the lower of: <ul style="list-style-type: none"> (a) £20,000; and (b) 20% of the Total Arrears Reduction Target <p>provided that, if any such Contract Year is less than a year in duration, the target shall be reduced in proportion to the length of that Contract Year;</p>
Annual Key Performance Indicators	those of the Key Performance Indicators that are measured yearly;
Annual Performance Deduction	the Deduction which may be made in accordance with Part IV of Schedule 4 (Payment Mechanism) for Sub-standard Performance in respect of the Performance Standards which are to be measured annually

	as set out in column 13 of Annex III of the Output Specification;
Annual Parks Delivery Charge	the amount shown in the cell captioned "Annual Parks Delivery Charge" in worksheet entitled "Project Agreement Outputs" in the Base Case;
Annual Service Report	has the meaning given to it in Clause 37.3 (Annual Service Report);
Annual Service Report Date	28 February in each Contract Year;
Annual Trees Survey	has the meaning given to it in paragraph 3.8.8.5 of Schedule 1 (Output Specification);
APB Distribution	for the period during which the Additional Permitted Borrowing subsists, an amount equal to the aggregate of all Distributions made during that period up to an amount equal to the principal of the Additional Permitted Borrowing on the first day of that period;
Approved Purposes	has the meaning given to it in clause 66.1 (Project Data);
Approved RDD Item	an item of Reviewable Design Data which has been returned or deemed to have been returned marked "no comment" or "proceed subject to amendment" under the Review Procedure;
Arboriculturalist	Arbortech or such other properly qualified and experienced arboriculturalist as may be approved in writing by the Authority (such approval not to be unreasonably withheld or delayed);
Arrears Reduction Duration	<p>If the Starting Arrears is;</p> <p>(a) less than or equal to £190,000, five (5) Contract Years; or</p> <p>(b) is greater than £190,000, the number of Contract Years which is equal to the balance of the Starting Arrears divided</p>

by £20,000 and if that figure is not an integer, rounding up the quotient to the next higher integer;

Arrears Reduction Period	the period commencing on the Services Commencement Date and ending at the end of the Arrears Reduction Duration provided that if the first Contract Year is less than six (6) months in duration, the first Contract Year shall be disregarded and the period shall commence at the beginning of the second Contract Year;
Asbestos Survey	a survey forming part of the Disclosed Data procured by the Authority dated 22 January 2007 in relation to a sample of properties the same or similar to each of the archetype properties which comprise the Dwellings, Blocks and Communal Areas identifying actual or potential asbestos in any such sample properties;
Asbestos Surveyor	Hyder Consulting (UK) Limited (registered number 02212959) of 29 Bressenden Place, Hooley Lane, London, SW1E 5DZ;
Assets	<p>all assets and rights to enable the Authority or a successor contractor to own, operate and maintain the Project in accordance with this Agreement including:</p> <ul style="list-style-type: none">(a) any land or buildings;(b) any equipment;(c) any books and records (including operating and maintenance manuals, health and safety manuals and other know how);(d) any spare parts, tools and other assets (together with any warranties in respect of assets being transferred);(e) any revenues and any other

contractual rights; and

- (f) any Intellectual Property Rights subject to and in accordance with **clause 66** (Intellectual Property).

but excluding any assets and rights in respect of which the Authority is full legal and beneficial owner and any land or buildings which are the subject of a Development Works Lease or an Energy Lease;

Assigned Employees has the meaning given to that term in **clause 32.15** (Retendering);

Associated Company in respect of a relevant company, a company which is a Subsidiary, a Holding Company or a company that is a Subsidiary of the ultimate Holding Company of that relevant company, and in the case of the Contractor shall include Holdco and each of the Shareholders, save that for the purposes of determining whether one entity is an Associated Company of another any transfer of shares by way of security or to a nominee of the transferor shall be disregarded;

Authority Alternative Accommodation Deduction the higher of an Unavailability deduction for a relevant Dwelling and the costs and expenses properly incurred by the Authority in providing Suitable Alternative Accommodation in accordance with **paragraph** Error! Reference source not found. of **Schedule 4** (Payment Mechanism);

Authority Change has the meaning given to it in the Change Protocol;

Authority Change Notice has the meaning given to it in the Change Protocol;

Authority Default one of the following events:

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

by the Authority or other Relevant Authority;

- (b) a failure by the Authority to make payment of any amount of money exceeding one month's Unitary Charge (indexed) that is due and payable by the Authority under this Agreement within twenty (20) Business Days of service of a formal written demand by the Contractor, where the amount fell due and payable two (2) (or more) months prior to the date of service of the written demand;
- (c) a breach by the Authority of its obligations under this Agreement which substantially frustrates or renders it impossible for the Contractor to perform its obligations under this Agreement for a continuous period of two months; or
- (d) a breach by the Authority of **clause 67.1** (Restrictions on Transfer of the Agreement by the Authority) occurs;

Authority Default Termination Sum the amount payable in accordance with **clause 47** (Compensation on Termination for Authority Default/Voluntary Termination);

Authority External Costs the reasonable and proper costs incurred by the Authority after the date of this Agreement to third parties (including professional advice) for goods or services relating to the CPO or otherwise securing vacant possession;

Authority Property has the meaning given to it in **clause 59.1** (Contractor's Indemnity);

Authority Related Party any officer, agent, employee of the Authority acting in the course of his office or employment including any sub-contractors supplied by the Authority in relation to the Services;

Authority's Policies	the policies of the Authority referred to in Schedule 12 (Authority's Policies);
Authority's Protocols	<p>the protocols set out in the Schedules to this Agreement being:</p> <ul style="list-style-type: none"> (a) Access Protocol as contained in Schedule 22; (b) Tenant Waiver Protocol as contained in Schedule 23; (c) Decant Protocol as contained in Schedule 24; (d) Home Ownership Protocol as contained in Schedule 1; (e) Disrepair Transitional Arrangements Protocol as contained in Schedule 26; (f) Allocations and Nominations Protocol as contained in Schedule 27; (g) ICT Protocol as contained Schedule 28; and (h) Tenant and Third Party Damage Protocol as contained in Schedule 29;
Authority's Representative	the representative appointed by the Authority pursuant to clause 15.4 (Authority's Representative);
Authority's Tenant Management Organisation	the Myatts North Tenant Management Organisation Limited;
Authority Warranted Data	the data and/or information relating to Housing Information warranted by the Authority to the Contractor in Part 1 of Schedule 9 (Warranted Data);
Available	<ul style="list-style-type: none"> (a) in relation to any Dwelling before the date of issue of a Certificate of Availability (Full Standard) for that Dwelling that the Property Management Standards for a Dwelling

at the Availability Standard (Initial) are satisfied; or

- (b) upon or after the date of issue of a Certificate of Availability (Full Standard) that the Property Management Standards for a Dwelling at the Availability Standard (Full) are satisfied.

and “Unavailable”, “Availability” and “Unavailability” shall be construed accordingly and “Unavailability” shall include events of Repeated Unavailability and Consequential Unavailability;

Available Rented Dwelling	a Dwelling which on the date of the commencement of a Tenancy Agreement will be Available;
Availability Certification Requirements	the availability certification requirements set out in annex I of Schedule 1 (Output Specification);
Availability Standards	the availability standards set out in part 6 and annex II of Schedule 1 (Output Specification);
Availability Standards (Full)	when the context so admits individually or together the Availability Standards Rented (Full), the Availability Standards Leasehold (Full), the Availability Standards Community Centre (Full) and the Availability Standards Park (Full);
Availability Standards (Initial)	when the context so admits both or together the Availability Standards Rented (Initial) and the Availability Standards Leasehold (Initial);
Availability Standards Community Centre (Full)	the standards applicable to the Community Centre set out in part 6 and annex II of Schedule 1 (Output Specification);
Availability Standards Leasehold (Full)	the full standards applicable to Leasehold Dwellings set out part 6 and annex II of Schedule 1 (Output Specification);

Availability Standards Leasehold (Initial)	the initial standards applicable to Leasehold Dwellings set out in the Availability Certification Requirement with "Y" against them in the column headed "Initial Standard" of the table set out at annex II of Schedule 1 (Output Specification);
Availability Standards Park (Full)	the standards applicable to the Park set out in part 6 and annex II of Schedule 1 (Output Specification);
Availability Standards Rented (Full)	the full standards applicable to Rented Dwellings set out in part 6 and annex II of Schedule 1 (Output Specification);
Availability Standards Rented (Initial)	the initial standards applicable to Rented Dwellings set out in the Availability Certification Requirements with "Y" against them in the column headed "Initial Tenanted Standard" of the table set out at annex II of Schedule 1 (Output Specification);
Base Case	the financial model agreed between the parties prior to the date of this Agreement (as updated from time to time in accordance with the terms of this Agreement) for the purpose of, amongst other things, calculating the Unitary Charge;
Base Senior Debt Termination Amount	<p>Subject to clause 50.3 (Changes to Financing Agreements):</p> <p>(a) all amounts outstanding at the Termination Date, including interest and Default Interest accrued as at that date, from the Contractor to the Senior Lenders in respect of Permitted Borrowing (other than in respect of Additional Permitted Borrowing); and</p> <p>(b) all amounts including costs of early termination of interest rate hedging arrangements and other breakage costs, payable by the Contractor to the Senior Lenders as a result of a prepayment in respect of Permitted Borrowing (other than in respect of</p>

Additional Permitted Borrowing) or, in the case of early termination of interest rate hedging arrangements only, as a result of termination of this Agreement, subject to the Contractor and the Senior Lenders mitigating all such costs to the extent reasonably possible

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

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

- (iv) all other amounts received by the Senior Lenders on or after the Termination Date and before the date on which any compensation is payable by the Authority to the Contractor as a result of enforcing any other rights they may have;

Best Value Change in Law

a Change in Law which comprises:

- (a) an order made by the Secretary of State in the exercise of powers conferred upon him by Section 4 of the 1999 Act the substance of which amounts to a change in a performance standard or a change in the definition of or details of a performance indicator (as opposed to a change in the description of a performance indicator);
- (b) a direction made by the Audit Commission in the exercise of powers conferred upon it by Sections 44 and 46 of the Audit Commission Act 1998 which in substance is similar to an order referred to in (a) above; or
- (c) Guidance issued by the Secretary of State or Audit Commission or other competent authority in respect of (a) or (b) above;

Best Value Duty

the duty imposed on the Authority by Section 3 of the 1999 Act in relation to, inter alia, any one (1) or more of the Services;

Best Value Inspector

an officer, agent or employee of the Audit Commission or other Relevant Authority empowered to inspect and/or assess the Authority's compliance with the Best Value Duty in accordance with Sections 10 and 11 of the 1999 Act and Part 8 of the Local

	Government and Public Involvement in Health Act 2007 (Local Services: Inspection and Audit) and “ Best Value Inspection ” shall be interpreted accordingly;
Blight Notice	a notice served under the provisions of section 150 of the TCP Act;
Block	a building comprising one or more Dwellings and any Common Parts;
Building Contract	the building contract in the Agreed Form between the Contractor and the Building Contractor relating to the Service Works;
Building Contract Dispute	has the meaning given to it in clause 64.15 (Similar Disputes);
Building Contractor	Higgins Construction Plc (company registered number 00684617) of One Langston Road, Loughton, Essex, IG10 3SD, or such other building contractor as the Contractor may, subject to clause 7 (Project Documents), appoint to carry out the Service Works excluding the Refurbishment Works;
Building Sub-Contractor	any building sub-contractor and any other sub-contractor appointed by the Building Contractor to undertake part of the Service Works excluding the Refurbishment Works;
Business Days	a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London;
Capital Expenditure	any expenditure which falls to be treated as capital expenditure in accordance with generally accepted accounting principles in the United Kingdom from time to time;
CDM Regulations	the Construction (Design and Management) Regulations 2007 (SI 2007/320);
Certificate of Availability	a Certificate of Availability Public Realm and Infrastructure Works (Full Standard), Certificate of Availability Community Centre

	(Full Standard), Certificate of Availability Park (Full Standard), a Certificate of Availability Rented (Full Standard) or a Certificate of Availability Leasehold (Full Standard) as the case may be;
Certificate of Availability Public Realm and Infrastructure Works (Full Standard)	a certificate issued by the Independent Certifier in accordance with the Independent Certifier's Deed of Appointment stating the satisfaction of the requirements for the Public Realm and Infrastructure works as set out in Schedule 1 (Output Specification);
Certificate of Availability Community Centre (Full Standard)	a certificate issued by the Independent Certifier in accordance with the Independent Certifier's Deed of Appointment stating the satisfaction, in relation to the Community Centre, of the Availability Certification Requirements for the Availability Standards Community Centre (Full);
Certificate of Availability (Full Standard)	where the context so admits both or together the Certificate of Availability Rented (Full Standard) and Certificate of Availability Leasehold (Full Standard);
Certificate of Availability Park (Full Standard)	a certificate issued by the Independent Certifier in accordance with the Independent Certifier's Deed of Appointment stating the satisfaction, in relation to the Park, of the Availability Certification Requirements for the Availability Standards Park (Full);
Certificate of Availability Rented (Full Standard)	a certificate issued by the Independent Certifier in accordance with the Independent Certifier's Deed of Appointment stating the satisfaction, in relation to any Rented Dwelling referred to in the certificate, of the Availability Certification Requirements for the Availability Standards Rented (Full) with the Availability Standards Rented (Full) applying from the first day of the month following certification;
Certificate of Availability Rented	a certificate issued by the Independent Certifier in accordance with the Independent Certifier's

(Initial Standard)	Deed of Appointment stating the satisfaction, in relation to any Rented Dwelling referred to in that certificate, of the Availability Certification Requirements for the Availability Standards Rented (Initial);
Certificate of Availability Leasehold (Full Standard)	a certificate issued by the Independent Certifier in accordance with the Independent Certifier's Deed of Appointment stating the satisfaction, in relation to any Leasehold Dwelling referred to in the certificate, of the Availability Certification Requirements for the Availability Leasehold Standards (Full) with the Availability Standards Leasehold (Full) applying from the first day of the month following certification;
Certification Requirements	the requirements which must be satisfied for a contract to be a certified contract for the purposes of the Local Government (Contracts) Act 1997;
Change	has the meaning given to it in Part 1 of Schedule 43 (Change Protocol);
Change in Costs	<p>in respect of any Relevant Event, the effect of that Relevant Event (whether of a one-off or recurring nature, and whether positive or negative) upon the actual or anticipated costs, losses or liabilities of the Contractor and/or any Sub-Contractors (without double counting), including, as relevant, the following:</p> <ul style="list-style-type: none"> (a) the reasonable costs of complying with the requirements of clauses 19 (Extensions of Time), 55 (Change in Law) 56 (Authority Step-In) and/or 69 (Financial Adjustments) and/or the Change Protocol, including the reasonable costs of preparation of design and estimates; (b) the costs of continued employment of, or making redundant, staff who are no longer required;

- (c) the costs of employing additional staff;
- (d) reasonable professional fees;
- (e) the costs to the Contractor of financing any Relevant Event (and the consequences thereof) including commitment fees and capital costs interest and hedging costs, lost interest on any of the Contractor's own capital employed and any finance required pending receipt of a lump sum payment or adjustments to the Unitary Charge;
- (f) the effects of costs on implementation of any insurance reinstatement in accordance with this Agreement, including any adverse effect on the insurance proceeds payable to the Contractor (whether arising from physical damage insurance or business interruption insurance (or their equivalent)) in respect of that insurance reinstatement and any extension of the period of implementation of the insurance reinstatement;
- (g) operating costs, or life cycle, maintenance or replacement costs;
- (h) Capital Expenditure (or, in the case of a Relevant Event which is a Qualifying Change in Law, Capital Expenditure for which the Authority is responsible);
- (i) the costs required to ensure continued compliance with the Finance Agreements;
- (j) any deductible or increase in the level of deductible, or any increase in premium under or in respect of any insurance policy; and

	(k) liability to third parties and sub-contractors, including reasonable legal expenses on an indemnity basis;
Change in Law	<p>the coming into effect after the date of this Agreement of:</p> <p>(a) Legislation, other than any Legislation which on the date of this Agreement has been published:</p> <p>(i) in a draft Bill as part of a Government Departmental Consultation Paper;</p> <p>(ii) in a Bill;</p> <p>(iii) in a draft statutory instrument; or</p> <p>(iv) as a proposal in the Official Journal of the European Communities;</p> <p>(b) any Guidance; or</p> <p>(c) any applicable judgment of a relevant court of law which changes a binding precedent;</p>
Change in Ownership	<p>(a) any sale, transfer or disposal of any legal, beneficial or equitable interest in any or all of the shares in the Contractor or Holdco (including the control over the exercise of voting rights conferred on those shares of the control over the right to appoint or remove directors); and/or</p> <p>(b) any other arrangements that have or may have or which result in the same effect as paragraph (a) above of this definition of change of ownership;</p>
Change in Revenue	in respect of any Relevant Event, the effect of that Relevant Event (whether of a one-off or

	recurring nature, and whether positive or negative) upon the actual or anticipated income of the Contractor and/or any Sub-Contractor (without double counting);
Change Protocol	that procedure set out in Schedule 43 (Change Protocol);
Changes to Number of Dwellings by Tenure or CNDT	of Statutory CNDT and/or a Voluntary CNDT;
Claimant	a person entitled to the payment of compensation as a consequence of the making and/or implementation of the CPO and/or the carrying out of the Project who is not an Owner;
CNDT Adjustment Date	the date at the end of each Contract Year;
CNDT Compensation	in respect of each Dwelling, the amount of compensation due to the Contractor as a consequence of a CNDT as calculated in accordance with clause 31.6 (Changes to Numbers of Dwellings by Tenure);
CNDT Date	the date upon which the CNDT actually occurs in respect of a Dwelling;
CNDT Model	the specific model constructed to illustrate the CNDT Compensation in the Agreed Form;
CNDT Notice	a notice serviced (and not withdrawn) by the Authority under clause 31.6.1 (Changes to Numbers of Dwellings by Tenure) where a Dwelling is subject to a Statutory CNDT or Voluntary CNDT;
CNDT Review Date	the last day of each month during the Contract Period;
CNDT Standard	has the meaning given to it in clause 31.6.6 (Changes to Number of Dwellings by Tenure);
CNDT Survey	has the meaning given to it in clause 31.6.6 (Changes to Number of Dwellings by Tenure);

Code of Practice	has the meaning given to it in clause 58.10.8 (Freedom of Information);
Collateral Warranty	a collateral warranty executed as a deed between the Authority and (as the case may be), the Building Contractor, the Responsive Repairs and Cyclical Maintenance and Renewal Contractor, the Housing Management Contractor, any Building Sub-Contractor, and a member of the Professional Team in the relevant form as set out in the relevant part of Schedule 5 (Collateral Warranties);
Commencement Date	the date of this Agreement;
Commercially Sensitive Information	the sub set of Confidential Information listed in Column 1 of Part 1 (Commercially Sensitive Contractual Provisions) and Column 1 of Part 2 (Commercially Sensitive Material) of Schedule 19 (Commercially Sensitive Information) in each case for the period specified in Column 2 of Parts 1 and 2 of Schedule 19 (Commercially Sensitive Information);
Committed Stand-by Facility	a standby facility committed by the Senior Lenders at or at a date later than the date of this Agreement or, without prejudice to clause 50.3.1 , as the same may be amended as allowed by clause 50.3 for the purposes of funding any unforeseen cost overrun, increased expenses or loss of revenues to be incurred by the Contractor;
Common Parts	any: <ul style="list-style-type: none"> (a) sewers, drains, channels, ducts, watercourses, cables, pipes, wires and heating systems or other services installations; (b) accesses, entrances, passages, landings, staircases, gardens, refuse areas, forecourts, roadways and pathways; and (c) roofs, walls, floors, ceilings,

	foundations, timbers, joists, beams, chimney stacks, gutters and rain water and soil pipes,
	used in common by residents of one or more Dwellings;
Communal Areas	the Park and the Community Centre;
Community Centre	the community centre constructed as a result of completion of the Service Works;
Compensation Date	<p>Either:</p> <p>(a) if clause 46.2 (Retendering Procedure) applies, the earlier of:</p> <p>(i) the date that the New Agreement is entered into; and</p> <p>(ii) the date on which the Authority pays the Adjusted Highest Compliant Tender Price to the Contractor; or</p> <p>(b) if clause 46.3 (No Retendering Procedure) applies, the date that the Adjusted Estimated Fair Value of the Contract has been agreed or determined;</p>
Compensation Event	a breach by the Authority of any of its obligations under this Agreement or of any warranty under this Agreement and any other matter or event expressly referred to as required to be treated as or deemed to be a Compensation Event within this Agreement;
Completion Date	the date on which the final Certificate of Availability is issued in relation to the Project;
Compliant Tender	any tender submitted by a Compliant Tenderer that meets the Qualification Criteria notified under clause 46.2 (Retendering Procedure);

Compliant Tenderer	a tenderer who is a Suitable Substitute Contractor;
Confidential Information	<p>(a) information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) and may include information whose disclosure would or would be likely to prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998; and</p> <p>(b) Commercially Sensitive Information;</p>
Consents	all permissions, consents, approvals, certificates, permits, licences, and authorisations of a Relevant Authority required for the performance of any of the Contractor's obligations under this Agreement but excluding the obtaining of any orders affecting the permanent extinguishment of public rights of way required for the performance of the Works;
Consequential Unavailability	the deeming of a Dwelling (which is otherwise Available) to be Unavailable because the occupation of that Dwelling is hindered through and/or the occupation of that Dwelling is not reasonably practical due to the Unavailability of a Common Part which supplies or services the Dwelling, regardless of whether it is directly associated to that Dwelling and the expression "Consequential Unavailability" shall be construed accordingly;
Construction Panel	has the meaning given to it in clause 64.4 (Identity of Adjudicator);
Construction and Refurbishment Programme	the programme for the carrying out of the Service Works as contained in Part 3 of Schedule 2 (Contractor's Proposals) as may

be varied from time to time in accordance with the Review Procedure;

Contamination

means all or any pollutants or contaminants, including any chemical or industrial, radioactive, dangerous, toxic or hazardous substance, waste or residue (whether in solid, semi-solid or liquid form or a gas or vapour) and including without limitation genetically modified organisms;

Contingent Funding Liabilities

the contingent or future liabilities to subscribe for equity or subordinated debt (if any) at the relevant time of:

- (a) the Shareholders; and/or
- (b) the Subordinated Lender; and/or
- (c) any other parties providing equity or subordinated debt

owed under any of the Financing Agreements to the Contractor, Holdco and/or the Senior Lenders together with, without double counting, any security (by way of letter of credit, guarantee or otherwise) for those liabilities;

Contract Month

any month in a Contract Year provided that:

- (a) the first Contract Month shall commence on the Commencement Date and end on the last day of the month in which the Commencement Date occurs; and
- (b) the last Contract Month shall begin on the first day of the month in which the last day of the Contract Period occurs and end on that day;

Contract Period

the period from and including the Commencement Date to the Expiry Date, or if earlier, the Termination Date;

Contract Year	<p>a period of twelve (12) months commencing on 1 April, provided that:</p> <ul style="list-style-type: none"> (a) the first Contract Year shall be the period commencing on the Commencement Date and ending on the immediately following 31 March; and (b) the final Contract Year shall be the period commencing on 1 April immediately preceding the last day of the Contract Period and ending on that day;
Contractor Change	has the meaning given in the Change Protocol;
Contractor Change Notice	has the meaning given in the Change Protocol;
Contractor Default	<p>any one or more of the following events:</p> <ul style="list-style-type: none"> (a) a breach by the Contractor of any of its obligations and/or warranties under this Agreement which materially and adversely affects the performance of the Services; (b) a Persistent Breach occurs; (c) a court makes an order that the Contractor or Holdco be wound up or a resolution for a voluntary winding-up of the Contractor or Holdco is passed; (d) any receiver or manager in respect of the Contractor or Holdco is appointed or possession is taken by or on behalf of any creditor of any property of the Contractor or Holdco that is the subject of a charge; (e) any voluntary arrangement is made for a composition of debts or a scheme of arrangement is approved under the Insolvency Act 1986 or the Companies Act 2006 in respect of the Contractor

or Holdco;

- (f) an administration order is made or an administrator is appointed in respect of the Contractor or Holdco;
- (g) a breach by the Contractor of its obligations under **clause 67.2** (Restriction on the Contractor) or **clause 67.3** (Exceptions) occurs;
- (h) a breach of **clause 68.5** (Restricted Share Transfer) occurs;
- (i) the Contractor Abandons the Project at any time;
- (j) the Contractor has not commenced the Service Works by the date three months after the Start on Site Date;
- (k) Certificates of Availability in respect of all the Service Works have not been issued by the Long Stop Date;
- (l) a failure to complete the Milestone by the Milestone Completion Date;
- (m) in any 9 month period the Authority has been entitled to reduce the amount of the Adjusted Gross Monthly Unitary Charge (payable in aggregate during such nine month period) by more than 25 per cent through Unavailability Deductions;
- (n) in each and every month of any 9 month period the Authority has been entitled to reduce the amount of the Adjusted Gross Monthly Unitary Charge by more than 20 per cent through Performance Deductions;
- (o) a breach by the Contractor of its obligations to take out and maintain

	any of the Required Insurances
	(p) failure to replace a Contractor Related Party in accordance with clause 28.3 (Public Safety Incident);
Contractor Related Party	<p>(a) an officer, servant or agent of the Contractor, or any Affiliate of the Contractor and any officer, servant or agent of such a person;</p> <p>(b) any Sub-Contractor or other sub-contractor of the Contractor and any of their officers, servants or agents;</p> <p>(c) any person on or at any Dwellings or Blocks, Communal Areas or Exterior Common Areas at the express or implied invitation of the Contractor (other than an Authority Related Party) excluding any member of the public using or attending any of the Communal Areas or Exterior Common Areas or gardens which form part of the Common Parts;</p>
	and for the avoidance of doubt excluding any Leaseholder and any Tenant;
Contractor's Contractual Method Statements	those of the Contractor's method statements for the provision of the Works and Services to satisfy the Output Specification which are to be contractually binding upon the Contractor as contained in Part 1 Construction and Refurbishment Proposals and Part 2 Service Delivery Proposals of Schedule 2 (Contractor's Proposals), any proposed variation to which the Authority may raise objections in accordance with the Review Procedure;
Contractor's Notice(s)	a notice or notices served by the Contractor on the Authority under clause 9.3.1 below setting out the Outstanding Interests that the Contractor requests should be acquired by the Authority and the date on which vacant

	possession is required for the Authority to approve in exercising its powers to secure vacant possession of the CPO Land pursuant to the GVD and/or CPO to enable the Project to proceed;
Contractor's Proposals	the specific proposals for the provision and/or refurbishment of the Project Site or any part thereof and provision of the Services to satisfy the Output Specification, as contained in Schedule 2 (Contractor's Proposals);
Contractor's Representative	the person to be appointed by the Contractor pursuant to clause 15.1 (Contractor's Representative);
Contractor's Share	the percentage figure corresponding to that part of the Cumulative Capital Expenditure at the relevant time, shown in the first column of the table set out in Schedule 3 (Change in Law – Contractor's Share);
Contractor Termination Notice	has the meaning given to it in clause 40.2 (Termination on Authority Default);
Contractor Warranted Data	the data and/or information relating to the Contractor and its Affiliates contained in Part 4 of Schedule 9 (Warranted Data);
Council of Mortgage Lenders Certificate	<p>either:</p> <ul style="list-style-type: none"> (a) a certificate issued by a qualifying consultant; or (b) a copy of a new home warranty provider's cover note issued <p>in accordance with the requirements of the Lender's Handbook issued by the Council of Mortgage Lenders (being a trade association representing the mortgage lending industry in the UK) certifying that a Unit on the Development Site is complete;</p>
CPO	The London Borough of Lambeth (Myatts Fields North Estate) Compulsory Purchase Order

2007;

CPO Costs

the aggregate of all compensation costs and expenses payable to all Owners and Claimants and all costs and expenses (but excluding any Relevant Expenses) reasonably and properly to be incurred by the Authority arising from the date of this Agreement and from or in connection with the preparation for and the making of and the implementation of the CPO (whether the same are (where relevant) agreed with the relevant Owner or Claimant or determined by the Lands Tribunal or the court or other competent third party) including:

- (a) the purchase price or any compensation for or in respect of any Outstanding Interest which the Authority acquires:
 - (i) pursuant to the CPO; or
 - (ii) as a result of any Blight Notice; or
 - (iii) by agreement in advance of the CPO;
- (b) any payment under the Compulsory Purchase Act 1965 or the Land Compensation Acts 1961 and 1973 made as a result of the acquisition of or interference with any land interest or right within or over the CPO Land (including for the avoidance of doubt any payment pursuant to sections 23-29 of and Schedule 3 to the Land Compensation Act 1961);
- (c) any statutory interest and any costs payable to any Owner or Claimant (including without limitation interest which may be payable by virtue of the Authority taking possession of any land or interest referred to in

paragraphs (a) and (b) of this definition before the amount of any payments referred to in those paragraphs have been agreed);

- (d) any legal valuation or other costs and expenses payable to an Owner or Claimant;
- (e) all disturbance, home loss basic loss and/or occupiers loss payments to which any Owner or occupier is entitled;
- (f) the purchase price or any compensation (including any payment for severance or injurious affection) payable as the result of the severance of land in common ownership and the cost of accommodation works the Authority is required to carry out as a result of the CPO in respect of land not included in the CPO and not otherwise acquired by the Authority;
- (g) any Advance Payment;
- (h) any compensation payment pursuant to the provisions of sections 236 or 237 of the TCP Act;
- (i) any compensation payable for depreciation payable under Part I of the Land Compensation Act 1973 as a result of physical factors caused by the use of public works comprised in the Project;
- (j) not used;
- (k) a sum or sums equal to any VAT arising for whatever reasons whether directly or indirectly as a result of the implementation of the matters contemplated in this Agreement or in respect of any of the CPO Costs save

to the extent that the Authority obtains repayment or credit in respect of the same as an allowable input tax;

CPO Land	the land (and each and every part of it) in or over which interests or rights are to be acquired pursuant to the CPO;
Criminal Records Bureau	the bureau established pursuant to Part V of the Police Act 1997;
Cumulative Capital Expenditure	the aggregate of: <ul style="list-style-type: none"> (a) all Capital Expenditure that has been incurred as a result of each General Change in Law that has come into effect on or after the issue of the relevant Certificate of Availability; and (b) the amount of Capital Expenditure that is agreed, or determined to be required, as a result of a General Change in Law under clause 55 (Change in Law);
Customer Satisfaction Survey	has the meaning given in clause 38.2 (Customer Satisfaction Survey);
Customer Satisfaction Survey Date	the date which is three (3) months prior to the Annual Service Report Date and each anniversary thereof during the Contract Period;
Cyclical Maintenance Replacement Programme	and the programme for Cyclical Maintenance and Replacement Works as contained in Part 4 of Schedule 2 (Contractor's Proposals) as may be varied from time to time in accordance with the Review Procedure;
Cyclical Maintenance Renewal Works	and the works relating to the maintenance of and renewal of elements of the Project Site required to satisfy the Output Specification;
Decant	to carry out the removal of a Tenant from a Dwelling into Suitable Alternative Accommodation followed by the option for that

	Tenant to return to the same Dwelling as a result of carrying out the Works or by Services and the expressions “ Decanting ” and “ Decanted ” shall be construed accordingly;
Decant Protocol	means the decant protocol set out at Schedule 24 ;
Decant Refusal Event	has the meaning given to it in paragraph 8.1 of the Decant Protocol;
Deductions	where the context so admits either or both of Unavailability Deductions and Performance Deductions;
Deemed New Contract	<p>an agreement on the same terms and conditions as this Agreement as at the Termination Date, but with the following amendments:</p> <ul style="list-style-type: none"> (a) if this Agreement is terminated prior to the final Planned Services Commencement Date, then the relevant Planned Services Commencement Dates shall be extended by such period as would have been granted to allow a New Contractor to achieve completion of the Works; (b) any accrued Unavailability Deductions, Performance Deductions and/or Warning Notices shall for the purposes of termination only, and without prejudice to the rights of the Authority to make financial deductions, shall be cancelled; and (c) the term of such agreement shall be for a period equal to the term from the Termination Date to the Expiry Date;
Default Interest	any increased margin that is payable to the Senior Lender or which accrues as a result of any payment due to the Senior Lender not

	being made on the date on which it is due;
Defect	<p>any defect in any Dwelling, Block or Communal Area, or any part of them, attributable to:</p> <ul style="list-style-type: none"> (a) defective design; (b) defective workmanship or defective materials, plant or machinery used in the construction of such building(s) having regard to Good Industry Practice and to applicable British standards and codes of practice current at the date of construction of the building comprising the relevant Dwelling, Block, Communal Area or part thereof; (c) defective installation of anything in or on a Dwelling, Block or Communal Area having regard to Good Industry Practice and to applicable British standards and codes of practice current at the date of such installation; (d) defective preparation of the site on which a Dwelling, Block or Communal Area is constructed; or (e) adverse ground conditions at the site on which a Dwelling, Block or Communal Area is constructed;
Design and Construction Plan	shall mean the Overall Works Plan set out in the Contractor's Proposals;
Design Data	all drawings, reports, documents, plans, software, formulae, calculations and other data relating to the design, construction, testing or operation of the Dwellings, Blocks, Communal Areas and Exterior Common Areas;
Detailed Trees Survey	has the meaning given to it in paragraph 3.8.8.4 of Schedule 1 (Output Specification);
Development Agreement	the development agreement between the

	Contractor and the Development Contractor dated on or about the date of this Agreement;
Development Lessee	Myatt's Field Limited (registered number 7875412) of 6 New Street Square, London, EC4A 3LX;
Development Contractor	Myatt's Field Development LLP (registered number OC373429) of 1 Langton Road, Loughton, Essex IG10 3SD;
Development Phase	those phases identified in Schedule 39 (Development Works Leases);
Development Site	each and all of the individual sites on which the Development Works are to be carried out as identified in Schedule 39 (Development Works Leases);
Development Works	all of the works to be undertaken in accordance with this Agreement to satisfy the development obligations in the Output Specification and the Development Works Delivery Plan;
Development Works Delivery Plan	the delivery plan in the Agreed Form;
Development Works Lease	each lease in the Agreed Form to be granted by the Authority in accordance with the provisions of Schedules 38 (Development Works) and 39 (Development Works Leases) in respect of each Development Site;
Development Works Programme	the program identified within the Development Works Delivery Plan;
Direct Agreement	the direct agreement dated on or about the date of this Agreement and made between the Authority, the Contractor and the Agent;
Direct Losses	all damage, losses, indebtedness, claims, actions, cash, expenses (including the cost of legal or professional services, legal costs being on an agent/client, client paying basis), proceedings, demands and charges whether arising under statute, contract or at common

	law but, to avoid doubt, excluding Indirect Losses;
Directive	the EC Acquired Rights Directive 77/187 as amended;
Disclosed Adverse Rights	those Adverse Rights contained or referred to in any of the documents disclosed to the Contractor or which are entries in any public register which would have been revealed by searches carried out prior to the Services Commencement Date by a prudent purchaser of the Project Site or any part thereof;
Disclosed Data	<p>information relating to the Project disclosed to the Contractor and its Shareholders and advisers which comprises:</p> <ul style="list-style-type: none"> (a) the ISOS and ISDS; (b) the descriptive document issued by the Authority in July 2007 in relation to the Project; and (c) the data room located at Foxley Square, Myatts Field North Estate, London SW9 7RX;
Discriminatory Change in Law	<p>a Change in Law, the terms of which apply expressly to:</p> <ul style="list-style-type: none"> (a) the Project and not to similar projects procured under the PFI; (b) the Contractor and not to other persons; and/or (c) PFI Contractors and not to other persons;
Disputed Amount	has the meaning given to it in clause 36.4 (Disputed Amounts);
Dispute Resolution Procedure	the procedure for the resolution of disputes set out in clause 64 (Dispute Resolution);

Disrepair Action	the service of any Disrepair Notice or the commencement of any other action by a Tenant, Leaseholder or other legal occupier of a Dwelling in relation to or as a consequence of the disrepair of a Dwelling whether under the terms of a Tenancy Agreement or Leaseholder Lease or otherwise;
Disrepair Action Cut Off Date	<p>in relation to actions, claims, demands, costs, damages, compensation, expenses (including legal expenses), fines and penalties due in connection with Disrepair Actions, the date which is the earlier of:</p> <ul style="list-style-type: none"> (a) the date which is one year after the Services Commencement Date; (b) the date upon which a Dwelling has reached the Availability Standards Rented (Full), Availability Standards Rented (Interim) or the Availability Standards Leasehold (Full) (as appropriate) where the relevant Disrepair Action relates to work undertaken, or which should (in accordance with this Agreement) have been undertaken by the Contractor prior to the achievement by the relevant property of the Availability Standards Rented (Full), Availability Standards Rented (Interim) or Availability Standards Leasehold (Full) (as appropriate);
Disrepair Notice	any report made or notice served and/or any other action taken (whether by way of claim or counterclaim) by a Tenant, Leaseholder or other legal occupier of a Dwelling under, Section 82 of the Environmental Protection Act 1990, Section 11 Landlord and Tenant Act 1985, the Defective Premises Act 1972, the Occupiers Liability Act 1957 or any other Legislation or under the common law;
Disrepair	Transitional the disrepair transitional arrangements

Arrangements Protocol

protocol set out at **Schedule 26**;

Distribution

- (a) whether in cash or in kind any:
- (i) dividend or other distribution in respect of share capital;
 - (ii) reduction of capital, redemption or purchase of shares or any other reorganisation or variation to share capital;
 - (iii) payments under the Subordinated Financing Agreements (whether of principal, interest, breakage costs or otherwise);
 - (iv) payment, loan, contractual arrangement or transfer of assets or rights to the extent (in each case) it was put in place after Financial Close and was neither in the ordinary course of business nor on reasonable commercial terms;
 - (v) the receipt of any other benefit which is not received in the ordinary course of business and on reasonable commercial terms; or
- (b) the early release of any Contingent Funding Liabilities, the amount of such release being deemed to be a gain for the purposes of any calculation of Refinancing Gain;

DPA

the Data Protection Act 1998;

Dwellings

the flats or houses listed by address in **Schedule 30** (List of Dwellings) together with those dwellings constructed as a result of

	completion of the Service Works (but excluding any Dwelling in respect of which the freehold interest in that Dwelling has been disposed of);
EEA	from time to time the European Economic Area as created by the Agreement on the European Economic Area 1992 or any successor or replacement body, association, entity or organisation which has assumed either or both the function and responsibilities of the European Economic Area;
Emergency	an event causing or, in the reasonable opinion of a party, threatening to cause death or injury to any individual, or serious disruption to the lives of a number of people or extensive damage to property, or contamination of the environment, in each case on a scale beyond the capacity of the emergency services or preventing the Services operating under normal circumstances and requiring the mobilisation and organisation of the emergency services;
Employee Liability Information	the information which a transferor is obliged to notify to a transferee pursuant to Regulation 11(2) of TUPE regarding any person employed by him who is assigned to the organised grouping of resources of employees which is the subject of the Relevant Transfer and also such employees as fall within Regulation 11(4) of TUPE;
Energy Centre	the facility for the provision of combined heat and power to Dwellings and the Community Centre, to be provided as part of the Project in accordance with the terms of this Agreement and located on the area edged orange on the Project Site Plan;
Energy Lease	Any of: (a) the lease and deed of grant of easements in relation to the Energy Centre between the Authority and the

	Energy Services Contractor of the area edged orange on the Project Site Plan; and
	(b) the lease of the district heat pipework within the Project Site to be entered into between the Authority and the Energy Services Contractor
Energy Services Contract	the agreement in the Agreed Form between the Contractor and the Energy Services Contractor relating to that part of the Services which involves the supply of energy;
Energy Services Contractor	E.ON UK PLC (company registered number 02366970) of Allington Westwood Way, Westwood Business Park, Coventry, CV4 8LG;
Environmental Information Regulations	the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations;
Equalities Legislation	the Race Relations Act 1976, the Sex Discrimination Act 1975, the Equal Pay Act 1970, the Disability Discrimination Act 1995, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Age) Regulations 2006, the Equality Act 2006 and the Equality Act 2010;
Equality Requirements	the obligations to be performed by the Contractor in performing the Works and/or Services in accordance with all relevant Equalities Legislation and the requirements set out in Schedule 21 (Equality Requirements);
Equity IRR	the projected blended rate of return to the Relevant Persons over the full term of this Agreement, having regard to Distributions made and projected to be made;

Estate TMO	the Myatts North Tenant Management Organisation Limited;
Estimated Change in Project Costs	in relation to clause 19 (Extensions of Time) and clause 55 (Change in Law), and the Change Protocol the aggregate of any estimated increase in construction costs, operating costs and financing costs less the aggregate of any estimated reduction in construction costs, operating costs and financing costs;
Estimated Fair Value of the Contract	the amount determined in accordance with clause 46.3 (No Retendering Procedure) that a third party would pay to the Authority as the market value of the Deemed New Contract on the assumption that a Consent under Section 27 Housing Act 1985 has been given in respect of any Management Agreement (as defined in Section 27) which the Deemed New Contract may constitute;
Excusing Event	to the extent that such impacts upon the Availability of a Dwelling and/or the performance of the Services any of: - <ul style="list-style-type: none"> (a) an Authority Default; (b) Compensation Event; (c) the implementation of an Authority Change, a Low Value Change or a Contractor Change; (d) an Emergency (which is not a breach of the Obligations of the Contractor under this Agreement); (e) the carrying out of Cyclical Maintenance and Replacement Work; (f) the carrying out of Service Works or Services to remedy any matters that are the subject of a Disrepair Action prior to the Disrepair Action Cut Off

Date;

- (g) an event of Tenant and Third Party Damage provided the Contractor has complied with the Tenant and Third Party Damage Protocol;
- (h) unforeseen ground conditions or a Defect being revealed or asbestos Contamination being found for which the Authority is responsible under this Agreement;
- (i) as a result of the Contractor acting in accordance with a written instruction of the Authority issued in accordance with this Agreement;
- (j) the occurrence of a Refurbishment Works or Services Denial Event;

Exempt Refinancing

- (a) any Refinancing that was fully taken into account in the calculation of the Unitary Charge;
- (b) a change in taxation or change in accounting treatment;
- (c) the exercise of rights, waivers, consents and similar actions which relate to day to day administrative and supervisory matters, and which are in respect of:
 - (i) breach of representations and warranties or undertakings;
 - (ii) movement of monies between the Project Accounts in accordance with the terms of the Senior Financing Agreements;
 - (iii) late or non-provision of information, consents or

licences;

- (iv) amendments to Sub-Contracts;
- (v) approval of revised technical and economic assumptions for financial model runs (to the extent required for forecasts under the Financing Agreements as at Financial Close (or as amended with the prior written approval of the Authority));
- (vi) restrictions imposed by the Senior Lenders on the dates at which the Senior Debt can be advanced to the Contractor under the Senior Financing Agreements as at Financial Close (or as amended with the prior written approval of the Authority) and which are given as a result of any failure by the Contractor to ensure that the construction work is performed in accordance with the agreed Construction and Refurbishment Programme and which are notified in writing by the Contractor or the Senior Lender to the Authority prior to being given;
- (vii) changes to milestones for drawdown as at Financial Close (or as amended with the prior written approval of the Authority) and which are given as a result of any

failure by the Contractor to ensure that construction work is performed in accordance with the agreed Construction and Refurbishment Programme and which are notified in writing by the Contractor or the Senior Lenders to the Authority prior to being given;

(viii) failure by the Contractor to obtain any consent by statutory bodies required by the Senior Financing Agreements as at Financial Close (or as amended with the prior written approval of the Authority); or

(ix) voting by the Senior Lenders and the voting arrangements between the Senior Lenders in respect of the levels of approval required by them under the Senior Financing Agreements as at Financial Close (or as amended with the prior written approval of the Authority

(d) any amendment, variation or supplement of any agreement approved by the Authority as part of any Qualifying Variation under this Agreement;

(e) any sale of shares in the Contractor or Holdco by the Shareholders or securitisation of the existing rights and/or interests attaching to shares in the Contractor or Holdco provided that this paragraph (e) shall in respect of shares in Holdco only apply for so long

	as Holdco holds 100% of the issued share capital of the Contractor;
	(f) any sale or transfer of the Subordinated Lenders' existing rights and/or interests under the Subordinated Financing Agreements or securitisation of the Subordinated Lenders' existing rights and/or interests under the Subordinated Financing Agreements; or
	(g) any Qualifying Bank Transaction;
Existing Owners	the list of owners (whether freehold or leasehold) set out in Part 2 (List of Leaseholders and Freeholders) of Schedule 33 (Tenants, Leaseholders and Freeholders);
Expiry Date	the 25 th anniversary of the Commencement Date;
Exterior Common Areas	those parts of the Project Site (excluding the Development Sites) required for the Public Realm and Infrastructure Works as set out in the Output Specification and Contractor's Proposals and including any infrastructure that has not been adopted by the relevant Highways Authority;
Fair Value	the amount at which an asset or liability could be exchanged in an arm's length transaction between informed and willing parties, other than in a forced or liquidation sale;
Fees Regulations	the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004;
Final Employee List	has the meaning given to it in clause 32.4.2 (Employment Costs);
Final Warning Notice	has the meaning given to it in clause 41.2 (Final Notice);
Financial Close	has the meaning given to it in the Senior

	Credit Agreement as at the date of this Agreement;
Financing Agreements	all or any of the agreements or instruments entered into or to be entered into by the Contractor or any of its Associated Companies relating to the financing of the Project (including the Initial Financing Agreements and any agreements or instruments entered into by the Contractor or any of its Associated Companies relating to the re-scheduling of their indebtedness or any Refinancing);
Financing Default	any event of default under and as defined in the Senior Credit Agreement;
First Contractor	the person with whom the Authority initially contracted for the provision of services which are similar to the Services;
First Employee List	has the meaning given to it in clause 32.4.1 (Employment Costs);
FOIA	the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such Act;
Force Majeure Event	<p>the occurrence after the date of this Agreement of:</p> <ul style="list-style-type: none"> (a) war, civil war, armed conflict or terrorism; or (b) nuclear, chemical or biological contamination unless the source or the cause of the contamination is as a result of the actions of or breach by the Contractor or its sub-contractors of any tier; or

	(c) pressure waves caused by devices travelling at supersonic speeds,
	which directly causes either party (the " Affected Party ") to be unable to comply with all or a material part of its obligations under this Agreement;
Force Majeure Termination Sum	has the meaning given to it in clause 45.2.1 (Force Majeure Termination Sum);
Freeholder	a person, other than the Authority, who owns the freehold title to a Dwelling;
Full Annual Community Centre Delivery Charge	the amount shown in the cell captioned "Full Annual Community Centre Delivery Charge" in worksheet entitled "Project Agreement Outputs" in the Base Case;
Full Annual Rented Delivery Charge	the amount shown in the cell captioned "Full Annual Rented Delivery Charge" in worksheet entitled "Project Agreement Outputs" in the Base Case;
Full Monthly Service Delivery Charge	the amount calculated in accordance with paragraph 2.4 of Schedule 4 (Payment Mechanism);
Full Services Commencement Date	has the meaning given to it Schedule 17 (Planned Completion Programme and Planned Services Commencement Date);
Future Service Provider	has the meaning given to it in clause 32.12.2 (Indemnities);
General Change in Law	a Change in Law which is not a Discriminatory Change in Law or a Specific Change in Law or a Best Value Change in Law;
Generated Intellectual Property Rights	any and all Intellectual Property Rights created after the date of this Agreement and during the term of this Agreement and which are in whole or substantially connected with the Project and including without limitation any Intellectual Property Rights arising in the Project Data;


Good Industry Practice	that degree of skill, care, prudence and foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced contractor (engaged in the same type of undertaking as that of the Contractor) or facilities management contractor or building contractor or any sub-contractor under the same or similar circumstances;
Gross Monthly Unitary Charge	has the meaning given to it in paragraph Error! Reference source not found. of Schedule 4 (Payment Mechanism);
Ground Physical and Geophysical Investigation	means the investigation of all the conditions of the Project Site and of any extraneous materials in, on or under the Project Site (including its surface and subsoil) to enable the Works to be carried out with due regard for those conditions and the seismic activity (if any) in the region of the Project Site;
Guidance	any applicable guidance or directions with which the Contractor is bound to comply;
GVD	any general vesting declaration or general vesting declarations made by the Authority pursuant to the CPO;
Handback Standard	the standard to which the Project Site is to be handed back to the Authority on the Expiry Date as set out in the Output Specification;
Health and Safety Regime	means the Health and Safety at Work etc. Act 1974 (and associated regulations), the Fire Precautions Act 1971, the Environmental Protection Act 1990, the Water Industry Act 1991, the Water Resources Act 1991 and any similar or analogous health, safety or environmental legislation in force from time to time;
Highest Compliant Tender Price	the price offered by the Compliant Tenderer (if any) with the highest tender price and, if no Compliant Tenders are received, zero;

Highways Act	the Highways Act 1980;
Highways Authority	the Highways Authority for the area in which the Project Site is situated;
Highways Order	any order made under Part X of the TCP Act or under the Highways Act 1980 and/or any other relevant legislation in relation to the temporary or permanent diversion or closure of any highway or the extinguishment of any right to use or any restriction upon the use of any highway where such order has been made to facilitate the Project;
Holdco	Regenter Myatts Field North Holding Limited;
Holding Company	has the meaning given to it in Section 1159 of the Companies Act 2006, save that for the purposes of determining whether one entity is a Holding Company of another any transfer of shares by way of security or to a nominee of the transferor shall be disregarded;
Home Ownership Protocol	the home ownership protocol set out at Schedule 1 ;
Housing Benefit Failure Event	<p>where, in any Contract Month in respect of the period of that Contract Month:</p> <ul style="list-style-type: none"> (a) the average time taken to process new claims to determination exceeds the average time taken by Inner London Boroughs to process such claims by 10% or more; or (b) the percentage of claims renewals processed to determination is less than the percentage of such claims renewals processed by Inner London Boroughs by 10% or more; and (c) the overall rent collection rate within the Authority on a month by month basis falls beneath 80%;
Housing Information	the information provided by the Authority to

the Contractor as set out or described in Part **1** of **Schedule 9** (Warranted Data);

Housing Agreement	Management	the agreement in the Agreed Form between the Contractor and the Housing Management Contractor relating to that part of the Services which involves housing and housing management;
Housing Agreement Dispute	Management	has the meaning given to it in clause 64.15.2 (Similar Disputes);
Housing Contractor	Management	Pinnacle Housing Limited, or such other housing management contractor as the Contractor may, subject to clause 7 (Project Documents) and clause 31.2 (Management Agreements), appoint to provide the Services;
Housing Management Functions		has the meaning given to it in clause 31.2 (Management Agreement);
IC Services		means the services to be performed by the Independent Certifier pursuant to the terms of the Independent Certifier's Deed of Appointment;
ICT Protocol		the ICT protocol set out at Schedule 28 ;
Indemnified Party		has the meaning given to it in clause 59.7 (Notification of Claims);
Indemnifying Party		has the meaning given to it in clause 59.7 (Notification of Claims);
Independent Certifier		the person appointed jointly by the Authority and the Contractor and Senior Lender to act as independent certifier to the Project in accordance with the Independent Certifier's Deed of Appointment;
Independent Certifier's Deed of Appointment		the deed of appointment of the Independent Certifier in the Agreed Form;
Index		has the meaning given to it in the definition of RPIx in this clause 1.1 (Definitions);

Indexed Element	that part of the Unitary Charge indexed in accordance with paragraphs 2.5 and 2.6 of Schedule 4 (Payment Mechanism);
Indirect Losses	loss of profits, loss of use, loss of production, loss of business, loss of business opportunity, or any claim for consequential loss or for indirect loss of any nature;
Information	has the meaning given under section 84 of the Freedom of Information Act 2000;
Initial Annual Rented Delivery Charge	the amount shown in the cell captioned "Initial Annual Rented Delivery Charge" in worksheet entitled "Project Agreement Outputs" in the Base Case;
Initial Financing Agreements	the Financing Agreements put in place upon signature of this Agreement as listed in Parts 1 and 2 of Schedule 13 (Financing Agreements) copies of which have been initialled by the Parties for the purposes of identification;
Initial Monthly Service Delivery Charge	the amount calculated in accordance with paragraph 2.3 of Schedule 4 (Payment Mechanism);
Initial Trees Survey	has the meaning given to it in paragraph 3.8.8.3 of Schedule 1 (Output Specification);
Inner London Boroughs	the London Boroughs of Haringey, Camden, Islington, Hackney, Hammersmith and Fulham, Kensington and Chelsea, City of Westminster, Newham, Tower Hamlets, Lewisham, Southwark, Wandsworth, Lambeth and the City of London;
Insurance Review Procedure	the procedure set out in paragraph 2 of Schedule 20 (Insurance Premium Risk Sharing);
Insurance Term	any terms and/or conditions required to be included in a policy of insurance by clause 60.1 (Requirement to Maintain) and/or Schedule 11 (Insurances) but excluding any

	risk;
Insurance Undertaking	has the meaning given in the rules from time to time of the Financial Services Authority;
Intellectual Property Rights	any and all patents, trade marks, service marks, copyrights, database rights, moral rights, rights in a design, know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto;
Interim Project Report	an interim project report which sets out the reasons for the Financing Default and the steps that the Contractor and the Senior Lender propose to take in relation to such default;
Intervening Contract	a contract with the Authority for the provision of services which are similar to Services, at times after they were provided under a contract with the First Contractor and before they are to be provided by the Contractor;
Joint Insurance Account	
Junior Debt	all amounts outstanding at the Termination Date under the Subordinated Financing Agreements;
Key Performance Indicator	the requirements set out in the Output Specification in respect of which the Contractor is measured for each part of the Service;
Laing Associate	<p>(a) John Laing Investments Limited and any company which is its subsidiary, any holding company of John Laing Investments Limited or a subsidiary of such holding company; and/or</p> <p>(b) the JLIF Limited Partnership registered number LP014109 and any company</p>

which is its subsidiary; and/or

- (c) the John Laing Pension Trust Limited registered number 00653103 (as trustee to the John Laing Pension Fund); and/or
- (d) any unit trust, investment fund, partnership, other fund or other entity of which any entity referred to in sub-paragraph (a) of this definition or Henderson Group plc (incorporated and registered in Jersey with registered number 101484) or any of its subsidiaries is directly either the general partner, trustee or manager (a “Related Fund”); and/or
- (e) any body corporate or other entity (whether or not having separate legal personality) in which the majority of voting or economic rights vests directly in a Related Fund; and/or
- (f) any general partner, nominee or trustee of any entity falling within the sub-paragraphs (a), (d) or (e) of this definition acting in such capacity (whether on a change of general partner, nominee or trustee or otherwise);

Land Interest	a freehold or leasehold interest in any part of the CPO Land;
Leaseholder	a person who holds a Leasehold Dwelling under a Long Lease;
Leasehold Dwellings	the Dwellings marked “leasehold dwellings” in Schedule 30 (List of Dwellings);
Leaseholder Lease	the Long Lease under which a Leaseholder holds a Leasehold Dwelling;
Legislation	(a) any Act of Parliament;

- (b) any subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978;
- (c) any exercise of the Royal Prerogative; and
- (d) any enforceable community right within the meaning of Section 2 of the European Communities Act 1972

in each case in the United Kingdom;

Like for Like Properties

the list of properties set out at **Schedule 41** (Like for Like Properties);

Liquid Market

there are sufficient willing parties (being at least two parties, each of whom is capable of being a Suitable Substitute Contractor) in the market for PFI contracts or similar contracts for the provision of services (in each case the same as or similar to the Agreement) for the price that is likely to be achieved through a tender to be a reliable indicator of Fair Value provided always that any vehicle controlled and established by the Senior Lenders specifically for the purposes of this Project and to which this Agreement may be novated shall be discounted in assessing whether there are sufficient willing parties in the market for such purposes;

Local Authority

a principal council (as defined in Section 270 of the Local Government Act 1972) or any body of government in England established as a successor to principal councils in relation to social housing;

Local Housing Authority

shall have the same meaning as "Local Housing Authority" in Section 1 of the 1985 Act;

Lock in Period

the period expiring on the date that is one (1) year after Certificate of Availability (Full Standard) has been given in relation to all Dwellings in the Project;

Long Lease	a lease for a term in excess of 7 years;
Long Stop Date	means 12 months after the Full Services Commencement Date or such later date as may be allowed in accordance with the terms of this Agreement;
Losses	all damages, losses, liabilities, costs, expenses (including legal and other professional charges and expenses) and charges whether arising under statute, contract or at common law, or in connection with judgments, proceedings, internal costs or demands;
Management Agreement	has the meaning given to it in clause 31.2 (Management Agreements);
Market Tested Services	has the meaning given to it in clause 30 (Market Testing Procedure);
Market Testing	market testing in accordance with clause 30.3.2 (Market Testing Procedure);
Market Testing Proposal	has the meaning given to it in clause 30.3.2 (Market Testing Procedure);
Market Testing Review Dates	has the meaning given to it in clause 30.3 (Market Testing Procedure);
Market Value Availability Deduction Amount	for any month or part of a month, an amount equal to the Unavailability Deductions that were made to the Unitary Charge under Schedule 4 (Payment Mechanism) in the month immediately preceding the Termination Date, less an amount equal to any Unavailability Deductions that were made for a Dwelling which was Unavailable at the Termination Date but which has subsequently become Available whether as a result of the Authority incurring Rectification Costs or otherwise;
Maximum Unitary Charge	in respect of a month, the Unitary Charge payable in respect of that month before any deductions are made under clause 36 (Payment Provisions) and Schedule 4

	(Payment Mechanism) but allowing for indexation in accordance with Schedule 4 (Payment Mechanism);
Measurement Period	in respect of: <ul style="list-style-type: none"> (a) a Monthly Key Performance Indicator, a Contract Month; (b) a Quarterly Key Performance Indicator, a Quarter; (c) a Semi-Annual Key Performance Indicator, six months; and (d) an Annual Key Performance Indicator, a year;
Milestone	the issue of: <ul style="list-style-type: none"> (a) a Certificate of Availability for 80 Dwellings to be constructed as part of the Project; and (b) a Certificate of Availability for all the Dwellings to be refurbished as part of the Project;
Milestone Completion Date	the first day of the 28th Month following Financial Close;
Minimum Tolerable Level	each of those minimum tolerable levels specified in column 5 of the table set out in Annex III of the Output Specification;
Monthly Key Performance Indicators	those of the Key Performance Indicators that are measured monthly;
Monthly Performance Deduction	the Deduction which may be made in accordance with Part IV of Schedule 4 (Payment Mechanism) for Sub-standard Performance in respect of the Performance Standards which are to be measured monthly as set out in column 13 of Annex III of the Output Specification;
Monthly Unavailability	the Unavailability Deduction for the relevant

Deduction ("MUD")	Contract Month (n) calculated in accordance with paragraph Error! Reference source not found. of Schedule 4 (Payment Mechanism);
Moratorium Period	has the meaning given to it in clause 31.2 (Management Agreements);
Named Employee	has the meaning given to it in clause 34.1.1 (Criminal Records Bureau);
National Performance Indicators	means the single set of national indicators set out in "The New Performance Framework for Local Authorities & Local Authority Partnerships" published by the Secretary of State on 11 October 2007, as supplemented by the "National Indicators for Local Authorities and Local Authority Partnerships: Handbook of Definitions" published by the Secretary of State on 1 April 2008 and as amended by the "National Indicators for Local Authorities and Local Authority Partnerships: Updated National Indicator Definitions" published by the Secretary of State on 13 February 2009 and as further amended by "Smarter Government" published by the Secretary of State on 25 March 2010, or any other national performance indicators relating to performance of local authorities and/or local authority partnerships, as may be issued by any competent authority from time to time;
Net Monthly Unitary Payment	has the meaning given to it in paragraph Error! Reference source not found. of Schedule 4 (Payment Mechanism);
Net Present Value	the aggregate of the discounted values, calculated as of the estimated date of the Refinancing, of each of the relevant projected Distributions, in each case discounted using the Threshold Equity IRR;
New Build Dwellings	those dwellings constructed as a result of completion of the Service Works;
New Contract	an agreement on the same terms and

conditions as this Agreement at the Termination Date, but with the following amendments:

- (a) if this Agreement is terminated prior to the final Planned Services Commencement Date, then the relevant Planned Services Commencement Dates shall be extended by a period to allow a New Contractor to achieve completion of the Works;
- (b) any accrued Unavailability Deductions, Performance Deductions and/or Warning Notices shall for the purposes of termination only and without prejudice to the rights of the Authority to make financial deductions be cancelled;
- (c) the term of such agreement shall be equal to the term from the Termination Date until the Expiry Date;
- (d) any other amendments which do not adversely affect the Contractor;

New Contractor	the person who has entered or who will enter into the New Contract with the Authority;
New Employees	those new employees employed by the Contractor to provide the Services who will be working alongside the Relevant Employees;
Non Disclosed Adverse Right	an Adverse Right other than a Disclosed Adverse Right;
Notice Date	the later of the Termination Date and (if applicable) the date that the Adjusted Estimated Fair Value of the Contract is agreed between the parties pursuant to clause 46.3 (No Retendering Procedure);

Notice to Treat	any notice served by the Authority in respect of a Land Interest pursuant to the Compulsory Purchase Act 1965;
Notifiable Financings	any Refinancing described in paragraph (a) or (c) of the definition of Refinancing and any other arrangement put in place by the Contractor or another person which has an effect which is similar to those described in paragraphs (a) or (c) or which has the effect of limiting the Contractor's or any Contractor's Associated Company's ability to carry out any such refinancing or other arrangements which would have a similar effect;
Operating Manual	has the meaning given to it in clause 34.10 (Maintenance Manual);
Operational Panel	has the meaning given to it in clause 64.4 (Identity of Adjudicator);
Original Senior Commitment	the amount committed under the Senior Financing Agreements as at Financial Close (as adjusted to take into account any Qualifying Variation);
Output Specification	the output specification for the Works and Services (comprising Part 1 Property Management Standards Table and Part 2 Service Performance Standards Table) contained in Schedule 1 (Output Specification);
Outstanding Interests	the list of leasehold and freehold interests set out in Part 1 of Schedule 41 (Like for Like Properties);
Outstanding Principal	the principal amount outstanding at the Termination Date of each borrowing (other than any borrowing under any equity bridge facility) under the Senior Financing Agreement;
Owner	any party owning an Outstanding Interest which is to be acquired and (if applicable) the successors in title to such party;

Park	the park constructed as a result of completion of the Service Works;
Pass Through Costs	<p>any of the following categories of costs which occur in Contract Month (n):</p> <ul style="list-style-type: none"> (a) the cost of Low Value Changes payable by the Authority in accordance with Clause 55; (b) the relevant percentage of Qualifying Costs identified as being payable by the Authority pursuant to paragraph 3 of Schedule 29 (Tenant and Third Party Damage); (c) any adaptations undertaken to any Dwelling to assist any Tenant with special needs; (d) any costs agreed by both the Authority and the Contractor in writing prior to such costs being incurred; (e) any sums paid to Tenants pursuant to the statutory compensation schemes related to a Right to Repair or a Right to Carry Out Improvements; (f) utility costs incurred as a result of those landlord responsibilities contained within a Tenancy Agreement; (g) any requirement by the Authority for the disposal of items of waste collected by the Contractor in accordance with the requirements of paragraph 7.1.6.6 of Schedule 1 (Output Specification); and (h) any additional payments into the Temporary Decant Fund in accordance with paragraph 12.3.1 of Part 3 of Schedule 24 (Decant Protocol)

Performance Deductions	where the context so admits Monthly Performance Deductions, Quarterly Performance Deductions, Semi-Annual Performance Deductions, and/or Annual Performance Deductions;
Performance Standards	in respect of a Service, a minimum standard of service provision relating to that Service as set out in Annex III of Schedule 1 (Output Specification);
Performance Benchmarking Exercise	Standard the benchmarking exercise to be undertaken in relation to the Services in accordance with clause 38.4 (Performance Standard Benchmarking);
Permitted Borrowing	without double counting, any: <ul style="list-style-type: none"> (a) advance to the Contractor under the Senior Financing Agreements (disregarding any amendments that have not been approved for the purposes of clause 50.3.1), provided that such advance is not made under any Committed Standby Facility; (b) Additional Permitted Borrowing; and (c) advance to the Contractor under any Committed Standby Facility which is made solely for the purpose of funding any cost overruns, increased expenses or loss of revenue which the Contractor incurs, provided that such funds are not used in substitution for other sources of committed funding designated for those purposes; and (d) interest on the above amounts and (disregarding any amendments that have not been approved for the purposes of clause 50.3.1) other amounts accrued or payable under the terms of the Senior Financing Agreements

	except where the amount referred to in paragraphs (a) to (d) above is or is being used to fund a payment of Default Interest on any Additional Permitted Borrowing;
Persistent Breach	a breach for which a Final Warning Notice has been issued which has continued for more than 30 days or recurred in two or more months within the six month period after the date on which such Final Warning Notice is served on the Contractor;
Personal Data	personal data as defined in the DPA which is supplied to the Contractor by the Authority or obtained by the Contractor in the course of performing the Services;
PFI	the Government's Private Finance Initiative or any similar or replacement initiative;
PFI Contractor	a person that has contracted with the Government, a Local Authority or other public and statutory body to provide services under the PFI;
Physical Damage Policies	has the meaning given to it in clause 61.1 (Application of Insurance Proceeds);
Planned Development Works Lease Date	in relation to each Development Site the dates set out in Schedule 39 (Development Works Leases);
Planned Maintenance	any maintenance, repairs, refurbishment or replacement to be carried out by the Contractor to comply with its obligations under clause 26.1 (Maintenance);
Planned Maintenance Programme	the programme the works of Planned Maintenance for Dwellings and/or Blocks and/or Communal Areas and/or Exterior Common Areas as contained in Part 6 of Schedule 2 (Contractor's Proposals) as may be varied from time to time in accordance with the Review Procedure;
Planned Refurbishment	the date that is 18 months after the date of

Completion Date	Financial Close or such later date as may be allowed in accordance with the provisions of the Project Agreement;
Planned Commencement Date	Services the date shown as the Planned Services Commencement Date in columns numbered (2) of the table in Schedule 17 (Planned Completion Programme and Planned Service Commencement Date) or such later date as may be allowed in accordance with this Agreement;
Post Termination Amount	<p>Service for the purposes of clause 46.2 (Retendering Procedure), for the whole or any part of a month for the period from the Termination Date to the Compensation Date, an amount equal to the Maximum Unitary Charge which would have been payable in that month under this Agreement had this Agreement not been terminated, less an amount equal to the aggregate of:</p> <ul style="list-style-type: none"> (a) the Market Value Availability Deduction Amount for that month; (b) the Rectification Costs incurred by the Authority in that month; and (c) (where relevant) the amount by which the Post Termination Service Amount for the previous month was less than zero;
Prescribed Rate	two per cent above the base rate from time to time of Barclays Bank plc;
Pre-Refinancing Equity IRR	the nominal post-tax (i.e. post Contractor tax, pre shareholder tax for the Contractor but pre-tax for the Shareholders) Equity IRR calculated immediately prior to the Refinancing;
Professional Team	the architects, structural engineers, mechanical and electrical engineers and environmental consultant employed by the Building Contractor in connection with the Works;

Prohibited Act

- (a) offering, giving or agreeing to give to any servant of the Authority any gift or consideration of any kind as an inducement or reward:
 - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Authority; or
 - (ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Authority;
- (b) entering into this Agreement or any other agreement with the Authority in connection with which commission has been paid or has been agreed to be paid by the Contractor or on its behalf, or to its knowledge, unless before the relevant agreement is entered into particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Authority; or
- (c) committing any offence:
 - (i) under the Bribery Act 2010
 - (ii) under Legislation creating offences in respect of fraudulent acts; or
 - (iii) at common law in respect of fraudulent acts in relation to this Agreement or any other agreement with the Authority;

- (d) any act or omission which leads to the commission of an offence under Section 117 of the Local Government Act 1972;
- (e) defrauding or attempting to defraud or conspiring to defraud the Authority;

Prohibited Employment Grounds the grounds of:

- (a) colour, race, nationality, or ethnic or national origins contrary to Part II (Discrimination in the employment field) of the Race Relations Act 1976 and the Equality Act 2010;
- (b) sex, gender reassignment, pregnancy and maternity or marital status (including Civil Partnerships) contrary to Part II (Discrimination in the employment field) of the Sex Discrimination Act 1975, the Equal Pay Act 1970 and the Equality Act 2010;
- (c) disability contrary to Part II (Employment) of the Disability Discrimination Act 1995, the Equality Act 2006 and the Equality Act 2010;
- (d) religion or belief contrary to Part II (Discrimination in employment and vocational training) of the Employment Equality (Religion or Belief) Regulations 2003 and the Equality Act 2010;
- (e) sexual orientation contrary to Part II (Discrimination in employment and vocational training) of the Employment Equality (Sexual Orientation) Regulations 2003 and the Equality Act 2010; and/or
- (f) age contrary to Part II (Discrimination in employment and vocational training) of the Employment Equality

(Age) Regulations 2006 and the Equality Act 2010;

Prohibited Grounds

the grounds of:

- (a) colour, race, nationality, or ethnic or national origins contrary to Part III (Discrimination in other fields) of the Race Relations Act 1976 and the Equality Act 2010;
- (b) sex, gender reassignment, pregnancy and maternity or marital status (including Civil Partnerships) contrary to Part III (Discrimination in other fields) of the Sex Discrimination Act 1975 and the Equality Act 2010;
- (c) disability contrary to Part III (Discrimination in other Areas) of the Disability Discrimination Act 1995 and the Equality Act 2010;
- (d) religion or belief contrary to Part III (Other Unlawful Acts) of the Employment Equality (Religion or Belief) Regulations 2003 and the Equality Act 2010;
- (e) sexual orientation contrary to Part III (Other Unlawful Acts) of the Employment Equality (Sexual Orientation) Regulations 2003 and the Equality Act 2010; and/or
- (f) age contrary to Part III (Other Unlawful Acts) of the Employment Equality (Age) Regulations 2006 and the Equality Act 2010;

Project

the provision and/or refurbishment, management and maintenance of Authority owned dwellings and/or properties at the Project Site and the provision of housing management services, all pursuant to the Private Finance Initiative and the terms of the

	Agreement;
Project Accounts	the accounts referred to in and required to be established under the Senior Financing Agreements;
Project Data	<p>(a) all Design Data;</p> <p>(b) all drawings, reports, documents, plans, software, formulae, calculations and other data relating to the carrying out of the Works or the provision of the Services;</p> <p>(c) any other materials, documents or data acquired brought into existence or used in relation to the Works, the Services or this Agreement;</p>
Project Documents	the agreements entered into by the Contractor for the performance of its obligations under this Agreement which are listed in Part 1 of Schedule 14 (Project Documents) copies of which have been initialled by the parties for the purposes of identification;
Project Liaison Group	has the meaning given to it in paragraph 1.1 of Schedule 8 (Liaison Procedure);
Project Phase	each of the phases of the Works identified in the Construction and Refurbishment Programme;
Project Site Plans	the plans of the Project Site set out in the Agreed Form;
Project Site	the Myatts Field North Estate edged red on the relevant Project Site Plan;
Property	any Outstanding Interest acquired by the Authority pursuant to this Agreement;
Property Standards	<p>Management those standards for the Dwellings and/or Blocks and/or Communal Area and/or Exterior Common Areas contained in Schedule 1 (Output Specification);</p>

Proposed Workforce	has the meaning given to it in clause 32.4.4 (Employment Costs);
Public Realm and Infrastructure Works	those works carried out pursuant to the requirements of the Output Specification for the provision of public realm within the Project Site;
Public Safety Incident	an incident, which results in serious personal injury to or death of any Authority Related Party, Tenant, Leaseholder or Freeholder which may have been caused by a negligent act or omission of the Contractor or any Contractor Related Party in the performance of the Service Works and/or the Services;
Qualification Criteria	<p>the criteria that the Authority requires tenderers to meet as part of the Tender Process which (subject to compliance with the procurement regulations) shall be:</p> <ul style="list-style-type: none"> (a) the new contract terms; (b) tenderers should have the financial ability to pay the capital sum tendered for the New Contract and the financial ability to deliver the Works and/or the Services (as appropriate) for the price tendered; (c) the tenderers may only bid on the basis of a single capital payment to be made on the date of the New Contract; (d) the tenderer is experienced in providing the Services of similar services; (e) the technical solution proposed by the tenderers is capable of delivery and the tenderer is technically capable of delivery of the Services; and (f) any other tender criteria agreed by the Authority and the Contractor;

- Qualifying Bank Transaction
- (a) the syndication by a Senior Lenders, in the ordinary course of its business, of any of its rights or interests in the Senior Financing Agreements;
 - (b) the grant by a Senior Lenders of any rights of participation, or the disposition by a Senior Lenders of any of its rights or interests (other than as specified in paragraph (a) above), in respect of the Senior Financing Agreements in favour of:
 - (i) any other Senior Lenders;
 - (ii) any institution which is recognised or permitted under the law of any member state of the EEA to carry on the business of a credit institution pursuant to Council Directive 2006/48/EC relating to the taking up and pursuit of the business of credit institutions or which is otherwise permitted to accept deposits in the United Kingdom or any other EEA member state;
 - (iii) a local authority or public authority;
 - (iv) a trustee of a charitable trust which has (or has had at any time during the previous two years) assets of at least ten (10) million pounds (£10,000,000) (or its equivalent in any other currency at the relevant time);
 - (v) a trustee of an occupational pension scheme or

stakeholder pension scheme where the trust has (or has had at any time during the previous two (2) years) at least fifty (50) members and assets under management of at least ten (10) million pounds (£10,000,000) (or its equivalent in any other currency at the relevant time);

(vi) an EEA or Swiss Insurance Undertaking;

(vii) a Regulated Collective Investment Scheme; or

(viii) any other institution in respect of which the prior written consent of the Authority has been given;

(c) the grant by a Senior Lenders of any other form of benefit or interest in either the Senior Financing Agreements or the revenues or assets of the Contractor or Holdco, whether by way of security or otherwise, in favour of:

(i) any other Senior Lenders;

(ii) any institution specified in paragraphs (b)(ii) to (vii) above; or

(iii) any other institution in respect of which the prior written consent of the Authority has been given;

Qualifying Change in Law

(a) a Discriminatory Change in Law;

(b) a Specific Change in Law;

- (c) a Best Value Change in Law; or
- (d) a General Change in Law which comes into effect during the Service Period and which involves Capital Expenditure (other than such as shall apply to the Service Works) to which the Authority is required to contribute by way of an Authority Share

which was not foreseeable at the date of this Agreement;

Qualifying Refinancing

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

Qualifying Variation

means either:

- (a) a change to the Works and/or Services in respect of which either an Authority Change Notice or a Contractor Change Notice has been served and, in the case of:
 - (i) an Authority Change Notice, the Authority has confirmed the Estimate and, where the Contractor is not funding all or part of the required Capital expenditure, the Authority has agreed to meet all or the remaining part (as appropriate) of such Capital Expenditure; and
 - (ii) a Contractor Change Notice, has been accepted by the Authority, or

- (b) a Qualifying Change in Law

and in respect of which any documents or amendments to the Project Documents which are required to give effect to such change in the Works and/or the Services or Qualifying

		Change in Law have become unconditional in all respects;
Quarter		a consecutive period of three months ending on 30 June, 30 September, 31 December or 31 March;
Quarterly Indicators	Key Performance	those of the Key Performance Indicators that are measured quarterly;
Quarterly Deduction	Performance	the Deduction which may be made in accordance with Part IV of Schedule 4 (Payment Mechanism) for Sub-standard Performance in respect of the Performance Standards which are to be measured quarterly as set out in column 13 of Annex III of the Output Specification;
Recipient		has the meaning given to it in clause 36.10 (VAT on Payments);
Rectification Costs		for the purposes of any Termination Date that occurs during the Services Period, an amount equal to the reasonable and proper costs incurred by the Authority in a particular month or part of a month in ensuring that the Services are available;
Rectification Period		the period for rectification of Unavailability as set out in annex II of Schedule 1 (Output Specification);
Refinancing		<p>(a) any amendment, variation, novation, supplement or replacement of any Financing Agreement (other than any Subordinated Financing Agreement);</p> <p>(b) the exercise of any right, or the grant of any waiver or consent, under any Financing Agreement (other than any Subordinated Financing Agreement);</p> <p>(c) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, any Financing Agreement (other than</p>

any Subordinated Financing Agreement) or the creation or granting of any other form of benefit or interest in either the Financing Agreements (other than the Subordinated Financing Agreements) or the contracts, revenues or assets of the Contractor whether by way of security or otherwise; or

- (d) any other arrangement put in place by the Contractor or another person which has an effect which is similar to any of a) to c) above or which has the effect of limiting the Contractor's or any Associated Company's ability to carry out any of a) to c) above;

Refinancing Gain

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

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

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

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

	Equity IRR;
Refurbishment Works	all of the works (including design and works necessary for obtaining access to the Project Site) to be undertaken to existing buildings and structures, which are to be retained in accordance with the Construction and Refurbishment Programme to satisfy the refurbishment requirements of the Output Specification;
Refurbishment Works Services Denial Event	<p>or any of:</p> <ul style="list-style-type: none"> (a) Access Refusal Event; (b) Re-housing Refusal Event; (c) Tenant Waiver of Works Event; (d) the exercise by any Relevant Authority of powers preventing the Contractor from gaining access to any relevant Dwelling, to which the Contractor requires access for the purpose of performing its obligations under this Contract; or <p>any other circumstances which may, in the discretion of the Authority, be agreed with the Contractor;</p>
Refurbishment Works Period	the period of 18 months commencing from the Commencement Date;
Registered Social Landlord	any entity appearing in the register of social landlords maintained by the Housing Corporation pursuant to Section 1 of the Housing Act 1996;
Regulated Collective Investment Scheme	has the meaning given in the rules from time to time of the Financial Services Authority;
Rehousing Refusal Event	where the Contractor has followed the procedure contained in the Decant Protocol and Access Protocol, either:

- (a) a Tenant refusing to be Decanted; or
- (b) a Tenant being unable to be Decanted due to his or her frail or elderly condition

to enable the Works and/or Services to be carried out and there is "No Access" for the purposes of the Decant and Access Protocols;

Reinstatement Plan has the meaning given to it in **clause 61.3** (Obligations);

Reinstatement Works has the meaning given to it in **clause 61.3.1** (Reinstatement);

Relevant Assumptions the assumptions that the sale of the Contractor is on the basis, that there is no default by the Authority, that the sale is on a going concern basis that no restrictions exist on the transfer of share capital, that no Additional Permitted Borrowing has taken place and therefore that the effect of the Additional Permitted Borrowing on the calculation of such amount is disregarded but that otherwise the actual state of affairs of the Contractor and the Project is taken into account;

Relevant Authority any court with the relevant jurisdiction and any local, national or supra-national agency, authority, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the European Union;

Relevant Employees the employees who are the subject of a Relevant Transfer;

Relevant Event the occurrence of an event as a result of which there may be an adjustment to the Unitary Charge in accordance with this Agreement including any event under **clauses 19** (Extensions of Time), **30** (Market Testing), **37** (Indexation), **38** (Best Value), **55** (Change in Law) and the Change Protocol;

Relevant Expenses

all reasonable and proper costs and expenses (including Authority External Costs) incurred by the Authority arising from or in connection with:

- (a) the negotiation for and acquisition of any Outstanding Interest by agreement in advance of the services of notices to enter (including any acquisition made consequent on any Blight Notice);
- (b) the holding and management of all Outstanding Interests;
- (c) the costs relating to the execution of any CPO and/or the service of notices to enter;
- (d) the negotiations for the payment of the compensation to Owners and Claimants and other matters relating to the acquisition of Outstanding Interests including relocation arrangements;
- (e) implementing the sheriff's warrant procedure necessary to secure vacant possession;
- (f) the re-housing by the Authority in accordance with the Land Compensation Act 1973 of any person displaced from a dwelling in consequence of the Authority compulsorily acquiring any Outstanding Interest;
- (g) internal costs of the Authority relating to the CPO or otherwise securing vacant possession of the Outstanding Interests;
- (h) any reference to the Lands Tribunal or the court for the determination of the statutory compensation payable in

respect of the acquisition of any of the Outstanding Interests;

- (i) any reference to the Lands Tribunal following the service of a Blight Notice;
- (j) any other claim reference or proceedings in connection with or arising out of the CPO;
- (k) Mediation or other costs associated with any Alternative Dispute Resolution process connected with the CPO and/or with any claim for compensation under the CPO save to the extent the Authority is entitled to obtain repayment or credit in respect of such costs;
- (l) any VAT in respect of any of the Relevant Expenses save to the extent that the Authority is entitled to obtain repayment or credit in respect of it;
- (m) any stamp duty land tax and land registry fees payable by the Authority whether directly or indirectly as a result of the implementation of the matters contemplated in this Agreement;

Relevant Incident	has the meaning given to it in clause 61.3 (Reinstatement);
Relevant Person	a Shareholder and any of its Affiliates;
Relevant Proceeds	any amounts standing to the credit of the Joint Insurance Account;
Relevant Transfer	a relevant transfer for the purposes of TUPE;
Relevant Transfer Date	the date on which a Relevant Employee transfers to the Contractor and/or one or more sub-contractor by virtue of a Relevant Transfer;

Relief Event

any of the following:

- (a) fire, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation (to the extent it does not constitute a Force Majeure Event), earthquakes, riot and civil commotion;
- (b) failure by any statutory undertaker, utility company, local authority or other like body to carry out works or provide services;
- (c) any accidental loss or damage to the Project Site or any roads servicing it or any part thereof;
- (d) any failure or shortage of power, fuel or transport;
- (e) any blockade or embargo which does not constitute a Force Majeure Event;
- (f) any:
 - (i) official or unofficial strike;
 - (ii) lockout;
 - (iii) go-slow; or
 - (iv) other disputegenerally affecting the construction, housing or facilities management industry or a significant sector of it
- (g) the occurrence of a Refurbishment Works or Services Denial Event, or
- (h) unexploded ordinance affecting the Works and/or Services

unless any of the events listed in paragraphs a) to h) inclusive arises (directly or indirectly) as a result of any wilful default or wilful act of the

	Contractor or any of its sub-contractors;
Remuneration Costs	has the meaning given to it in clause 32.4.4.2 (Employment Costs);
Rent Arrears	the aggregate of the amounts due and payable by each Tenant to the Authority pursuant to the Tenancy Agreement between the Authority and that Tenant which are unpaid at the relevant time;
Rented Dwellings	all Dwellings other than Leasehold Dwellings;
Reorganisation Costs	has the meaning given to it in clause 32.4.4.3 (Employment Costs);
Repairs Audit	the repairs audit, carried out immediately before the Commencement Date, in the Agreed Form;
Repeated Unavailability Cycle Period	for each Dwelling or Zone, a period of 30 consecutive days applying to a Dwelling or Zone commencing after Unavailability in relation to that Dwelling has been rectified;
Repeated Unavailability Event	<p>Unavailability that:</p> <ul style="list-style-type: none"> (a) remains unrectified (after the expiry of the Relevant Rectification Period) over consecutive days; and/or (b) has previously been rectified but becomes Unavailable for the same event that breaches the relevant Unavailability Standard within the Repeated Unavailability Cycle Period <p>and “Repeatedly Unavailable” or “Repeated Unavailability” shall be construed accordingly;</p>
Repeated Unavailability Ratchet	the ratchet factor determined in accordance with paragraph Error! Reference source not found. of Schedule 4 (Payment Mechanism);
Reporting Failure	any failure to report Unavailability, Repeated Unavailability or Sub-standard Performance;

Reporting Failure Deduction	any deduction permitted by paragraph Error! Reference source not found. of Schedule 4 (Payment Mechanism);
Request for Information	has the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term “request” shall apply);
Required Insurances	the insurances specified in Schedule 11 (Insurances);
Required Standard	Has the meaning given to it in clause 44.4 (Results of Survey);
Responsive Repairs	the responsive repairs service to be carried out by the Contractor to satisfy the Output Specification;
Responsive Repairs and Cyclical Maintenance and Renewal Contract	the Agreement in the Agreed Form between the Contractor and the Responsive Repairs and Cyclical Maintenance and Renewal Contractor relating to that part of the Services which involves Cyclical Maintenance and Renewal Works and Responsive Repairs;
Responsive Repairs and Cyclical Maintenance and Renewal Contractor	Rydon Maintenance Limited (company registration number 01651097) of Rydon House, Forest Row, East Sussex, RH18 5DW or such other responsive repairs and cyclical maintenance and renewal contractor or the Contractor may, subject to clause 7 (Project Procurements) and clause 31.2 (Management Agreements), appoint to provide the Services and Refurbishment Works;
Responsive Repairs and Cyclical Maintenance and Renewal Contract Dispute	has the meaning given to it in clause 64.15 (Similar Disputes);
Restricted Share Transfer	the transfer of shares or any interest in shares of the Contractor to any Unsuitable Third Party;
Restrictions	all matters (whether arising before or after the date of this Agreement) affecting the Project

	Site or its use registered or capable of registration as local land charges, and all notices, charges, orders, resolutions, demands, proposals, requirements, regulations, restrictions, agreements, directions or other matters affecting the Project Site or its use served or made by any local or other competent authority or otherwise arising under any Legislation;
Retendering Information	has the meaning given to it in clause 32.6 (Retendering);
Retention Fund Account	has the meaning given to it in clause 44.5 (Retention Fund);
Return Date	has the meaning given to it in clause 32.16.2 (Employees on Termination of Agreement);
Returning Employees	has the meaning given to it in clause 32.16.2 (Employees on Termination of Agreement);
Reviewable Design Data	the plans, drawings, documents and information relating to the Works;
Review Date	the first and each subsequent anniversary of the Commencement Date;
Review Procedure	the procedure set out in Schedule 6 (Review Procedure);
Revised Senior Termination Amount	<p>Debt subject to clause 50.3 (Changes to the Financing Agreements):</p> <p>(a) all amounts outstanding at the Termination Date, including interest and (other than in respect of Additional Permitted Borrowing) Default Interest accrued as at that date, from the Contractor to the Senior Lender in respect of Permitted Borrowing;</p> <p>(b) all amounts including costs of early termination of interest rate hedging arrangements and other breakage</p>

costs, payable by the Contractor to the Senior Lenders as a result of a prepayment in respect of Permitted Borrowing, or, in the case of early termination of interest rate hedging arrangements only, as a result of termination of this Agreement, subject in each case to the Contractor and the Senior Lenders mitigating all such costs to the extent reasonably possible,

less

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

- (i) all credit balances on any bank accounts (but excluding the Joint Insurance Account) held by or on behalf of the Contractor on the Termination Date
- (ii) any amounts claimable on or after the Termination Date in respect of Contingent Funding Liabilities;
- (iii) all amounts, including costs of early termination of interest rate hedging arrangements and other breakage costs, payable by the Senior Lenders to the Contractor as a result of prepayment of amounts in respect of Permitted Borrowing or, in the case of early termination of interest rate hedging arrangements

only, as a result of termination of this Agreement;

(iv) all other amounts received by the Senior Lenders on or after the Termination Date and before the date on which any compensation is payable by the Authority to the Contractor as a result of enforcing any other rights they may have; and

(v) all APB Distributions;

Right to Acquire on Rent to Mortgage Terms	the right conferred on a tenant by Part V of the Housing Act 1985 to acquire a Dwelling on rent to mortgage terms;
--	--

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

Right to Carry Out Improvements	the right of any tenant to carry out improvements to his Dwelling pursuant to Section 97 of the Housing Act 1985;
---------------------------------	---

Right to Manage	the right conferred on the tenants of the Dwellings by Section 27AB of the Housing Act 1985 to require that the Authority enters into a management agreement with a tenant management organisation;
-----------------	---

Right to Repair	the right of any tenant to have repairs carried out to his Dwelling pursuant to Section 96 of the Housing Act 1985;
-----------------	---

RPIx	the index published in Table 5 (excluding mortgage interest payments) of Business Monitor (MM23) published by the Office for National Statistics or failing such publication or in the event of a fundamental change to the Index, such other index as the parties may agree, or such adjustments to the Index as the parties may agree (in each case with the intention of putting the parties in no better nor
------	--

	worse position than they would have been had the Index not ceased to be published or the relevant fundamental change not been made) or, in the event that no such agreement is reached, as may be determined in accordance with clause 64 (Dispute Resolution);
RRO	the Regulatory Reform (Housing Management Agreements) Order 2003;
Scheme	the London Borough of Lambeth Pension Scheme;
Secretary of State	the Secretary of State for Communities and Local Government or other ministry or authority for the time being having or entitled to exercise the powers now conferred upon the Secretary of State by Parts IX and X of the TCP Act and the Acquisition of Land Act 1981 and any other relevant legislation and where the context requires shall include a person appointed by the said Secretary of State to make a determination on his behalf;
Section 27	Section 27 of the Housing Act 1985 as amended and substituted by the RRO;
Section 27 Consent	has the meaning given to it in clause 31.2 (Management Agreements);
Semi-Annual Key Performance Indicator	those of the Key Performance Indicators that are measured semi-annually;
Semi-Annual Performance Deduction	the Deduction which may be made in accordance with Part IV of Schedule 4 (Payment Mechanism) for Sub-standard Performance in respect of the Performance Standards which are to be measured semi-annually as set out in column 13 of Annex III of the Output Specification;
Semi-Variable Costs	for the purpose of clause 31.6 (Changes to Numbers of Dwellings By Tenure), the costs each as contained in the Base Case by reference to whether a relevant Dwelling is a Rented Dwelling or a Leasehold Dwelling and

	defined and shown in the Table in Schedule 15 (Changes in Numbers of Dwelling by Tenure);
Senior Credit Agreement	the credit agreement between the Contractor and Senior Lenders as at the date of this Agreement or as amended with prior written approval of the Authority pursuant to clause 50.3 (Changes to Financing Agreements);
Senior Debt	means the financing provided by the Senior Lenders under the Senior Financing Agreements;
Senior Debt Rate	the non-default interest rate as defined in the Senior Financing Agreements or such lower rate as the parties may agree;
Senior Financing Agreements	those of the Financing Agreements listed in Part 1 of 13 (Initial Financing Agreements) as at the date of this Agreement or without prejudice to clause 50.3 as the same may be amended pursuant to clause 50.3.2.1 (Changes to Financing Agreements);
Senior Lenders	persons providing finance to the Contractor under the Senior Financing Agreements;
Services	the services required to satisfy the Output Specification at Schedule 1 (Output Specification) of this Agreement;
Services Commencement	the commencement of the Services;
Services Commencement Date	the Commencement Date;
Service Delivery Plan	The plan for the delivery of the Services as contained in Part 2 of Schedule 2 (Contractor's Proposals) as may be varied from time to time in accordance with the Review Procedure;
Service Level Requirements	the requirements annex II of Schedule 1 (Output Specification);
Services Media	all pipes, sewers, drains, mains, ducts,

	conduits, gutters, water courses, wires, cables, meters, switches, channels, flues and all other conducting media appliances and apparatus including any fixtures, louvres, cowls and other ancillary apparatus;
Services Period	the period specified in clause 3.2 (Duration);
Service Transfer Date	the transfer on a date agreed by the parties to the Contractor of responsibility for provision of (or procuring the provision by sub-contractors of) the Services in accordance with this Agreement;
Service Users	a reasonably representative sample of those users who consume or benefit from the Services;
Service Works	all of the works (including design and works necessary for obtaining access to the Project Site or any parts thereof) to be undertaken in accordance with this Agreement to satisfy the Output Specification but excluding the Development Works;
Shareholder	Any person from time to time holding share capital in the Contractor or its Holding Company;
Site Conditions	The conditions of the Project Site including (but not limited to) climatic, hydrological, hydrogeological, ecological, environmental, geotechnical and archaeological conditions;
Snagging List	The list to be prepared by the Independent Certifier in accordance with clause 23.4.1 (Snagging Items) containing particulars of minor defects, deficiencies or omissions of a snagging nature which do not prevent the Independent Certifier from issuing a Certificate of Availability;
Snagging Programme	Has the meaning given to it in clause 23.4.1 (Snagging Items);

Space	a Dwelling, Common Part or Zone;
Specific Change in Law	<p>a Change of Law which specifically refers to:</p> <ul style="list-style-type: none"> a) the provision of housing or tenant management services to housing owned by a Local Housing Authority or a Registered Social Landlord; b) the provision of construction and maintenance of housing services to residential tenanted accommodation; c) a Tenant or Leaseholder or other lawful occupiers of housing owned by a Local Housing Authority or a Registered Social Landlord; and/or d) the holding of shares in companies or industrial and provident societies whose main business is providing services referred to in (a) or (b) above;
Starting Arrears	Rent Arrears at the Services Commencement Date;
Start on Site Date	the day following the date of this Agreement;
Statutory CNDT	a change to the number of Rented Dwellings or Leasehold Dwellings in the Project as a consequence of the exercise of the Right to Buy or Right to Manage (unless the Authority elects to treat such as an Authority Change in accordance with clause 31.8 (Right to Manage) or of any other right to purchase or acquire the freehold interest or leasehold interest of a Dwelling (including any right conferred by the Leasehold Reform and Urban Regeneration Act 1993 and Commonhold and Leasehold Reform Act 2002);
Stock Condition Survey	the stock condition survey of the Dwellings and/or Blocks carried out by the Stock Condition Surveyor in accordance with the Stock Condition Surveyor's Appointment;

Stock Condition Surveyor	Michael Dyson Associates Limited (registered number 2903668) whose registered office is at West House, Meltham Road, Honley, West Yorkshire HD9 6LB;
Stock Condition Surveyor's Appointment	the appointment dated 11 December 2008 between the Authority (1), Balfour Beatty Capital Limited (2), United House Solutions Limited (3), Higgins Construction plc (4) and Michael Dyson Associates Limited (5) pursuant to which Stock Condition Surveyor carried out the Stock Condition Survey;
Sub-Agreement	has the meaning given to it in clause 31.2 (Management Agreements);
Sub-Contractor	means each of the counterparties of the Contractor to the Project Documents or any person engaged by the Contractor from time to time as may be permitted by this Agreement to procure the provision of the Works and/or Services (or any of them). References to sub-contractors means sub-contractors of any tier of the Contractor;
Sub-Contracts	the contracts entered in to between the Contractor and the Sub-Contractors;
Sub-Contractor Breakage Costs	<p>Losses that have been or will be reasonably and properly incurred by the Contractor as a direct result of the termination of this Agreement, but only to the extent that:</p> <ul style="list-style-type: none"> (a) the Losses are incurred in connection with the Project and in respect of the provision of Services or completion of Service Works, including: <ul style="list-style-type: none"> (i) any materials or goods ordered or sub-contracts placed that cannot be cancelled without such Losses being incurred; (ii) any expenditure incurred in

anticipation of the provision of services or the completion of works in the future;

(iii) the cost of demobilisation including the cost of any relocation of equipment used in connection with the Project; and

(iv) redundancy payments; and

(b) the Losses are incurred under arrangements and/or agreements that are consistent with terms that have been entered into in the ordinary course of business and on reasonable commercial terms provided that any Losses in respect of loss of profit shall be limited:

(i) in respect of any Sub-Contract related to the delivery of the Services to 10 per cent of the relevant Annual Service Fee for each year from the Termination Date to the date upon which the relevant sub-contract would otherwise have expired which shall not in any case exceed 150 per cent of the relevant Annual Service Fee; and

(ii) in respect of the Building Contract to loss of profits for a period of one year from the Termination Date;

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

Subordinated Financing Agreements	those of the Financing Agreements listed in Part 2 of Schedule 13 (Initial Financing Agreements) or as amended with the prior written approval of the Authority;
Subordinated Lenders	a person providing finance under the Subordinated Financing Agreements;
Subsequent Contractor	another person after the First Contractor with whom the Authority subsequently contracts for the provision of the Services;
Subsidiary	has the meaning given to it in Section 1159 of the Companies Act 2006;
Sub-standard Performance	a failure of the Contractor to provide the Services in accordance with a Performance Standard;
Successful Tenderer	has the meaning given to it in clause 30.4 (Adjustments to Unitary Charge);
Suitable Alternative Accommodation	any suitable, equivalent, alternative housing accommodation to be provided as substitute for an Unavailable Dwelling which meets the relevant Availability Standards (Full) under this contract, is located within one of the London Boroughs of Lambeth, Westminster, Southwark or Wandsworth, and is considered suitable (and equivalent) with regard to the particular circumstances of the Tenant or Leaseholder including consideration of the number of bedrooms;
Suitable Substitute Contractor	<p>a person approved by the Authority (such approval not to be unreasonably withheld or delayed) as:</p> <ul style="list-style-type: none"> (a) having the legal capacity, power and authority to become a party to and perform the obligations of the Contractor under this Agreement; and (b) employing persons having the appropriate qualifications, experience and technical competence and having

the resources available to it (including committed financial resources and sub-contracts) which are sufficient to enable it to perform the obligations of the Contractor under this Agreement;

Supplier	has the meaning given to it in clause 36.10.2 (VAT on Payments);
Target Arrears	£90,000;
Tax	any kind of tax, duty, levy or other charge (other than VAT) whether or not similar to any in force at the date of this Agreement and imposed by a Relevant Authority;
TCP Act	the Town and Country Planning Act 1990 as amended and all regulations and orders made thereunder;
Temporary Decant Dwellings	those houses or flats outside of the Project Site identified by the Authority for temporary occupation by a Tenant as part of the Decant;
Tenancy Agreement	any tenancy agreement (whether in writing or otherwise) between the Authority and a tenant of a Rented Dwelling;
Tenant	the person who from time to time is a tenant, licensee or other lawful occupier of a Dwelling;
Tenant Damage	any damage wilfully, intentionally or negligently caused to a Dwelling by a Tenant of that Dwelling, a member of his household or by a person invited into the Dwelling but excluding any damage arising from fair wear and tear or damage arising from a failure to comply with the Contractor's obligations under this Agreement;
Tenant and Third Party Damage Protocol	the tenant and third party damage protocol set out at Schedule 29 ;
Tenant and Leaseholder Enforcement Policy	the policy applying to the enforcement of Tenancy Agreements and Leaseholder Leases as contained in Schedule 12 (Authority

	Policies);
Tenant Improvements	any improvement properly carried out by a Tenant to a Rented Dwelling or by a Leaseholder to a Leaseholder Dwelling whether before or after the Services Commencement Date;
Tenant Waiver	a waiver provided by a Tenant in accordance with the Tenant Waiver Protocol;
Tenant Waiver Event	has the meaning given to it in paragraph 3.3 of the Tenant Waiver Protocol;
Tenant Waiver Protocol	the tenant waiver protocol set out at Schedule 23 ;
Tenant Waiver of Works Event	where the Contractor has followed the procedure contained in the Tenant Waiver Protocol, a Tenant or Leaseholder waives any part of the Refurbishment Works or Services and there is "No Access" for the purposes of the Tenant Waiver and Access Protocols;
Tender Costs	the reasonable and proper costs of the Authority incurred in carrying out the Tender Process and/or in connection with any calculation of the Estimated Fair Value of the Contract;
Tender Documents	has the meaning given to it in clause 30.3.1 (Market Testing Procedure);
Tender Process	means the process by which the Authority requests tenders from any parties interested in entering into a New Contract, evaluates the responses from those interested parties and enters into a New Contract with a new service provider in accordance with clause 46.2.5 (Retendering Procedure);
Tender Process Monitor	means a third party appointed by the Contractor under the clause 46.2.5 ;
Termination Date	the date of early termination of this Agreement

in accordance with its terms;

Termination Date Discount Rate a discount rate expressed as:

$(1 + R + B - A) \times (1+I) - 1$ where:

R = the real pre-tax Project IRR as set out in the Base Case;

I = the agreed assumed forecast rate of increase in RPIx for the remaining term of the Agreement;

Gilt A = the real yield to maturity as at Financial Close on a benchmark government Gilt instrument of the same maturity as the average life, as determined from the Base Case as at Financial Close, of the Senior Debt; and

Gilt B = the real yield to maturity as at the Termination Date on a benchmark government Gilt instrument of the same maturity as the average life, as determined from the Base Case as at the Termination Date, of the Senior Debt outstanding on that date;

Termination Notice

a notice of termination issued in accordance with this Agreement;

Termination Sum

any compensation payable by the Authority to the Contractor on an early termination of this Agreement under **Clause 45** (Compensation on Termination for Force Majeure), **Clause 46** (Compensation on Termination for Contactor Default), **Clause 47** (Compensation on Termination for Authority Default/Voluntary Termination) and **Clause 48** (Compensation on Corrupt Gifts, Fraud and Refinancing Breaches) (excluding the Adjusted Highest Compliant Tender Price);

Threshold Equity IRR

the threshold equity IRR set out in the worksheet of the Base Case entitled "Project Agreement Outputs";

Third Party Damage	any damage caused to a Dwelling, Block, the Park or the Community Centre by a Tenant or third party save to the extent such damage constitutes Tenant Damage;
Total Deductions	the aggregate of the Monthly Unavailability Deductions, the Aggregate Performance Deductions, the Reporting Failure Deductions and the Authority Alternative Accommodation Deductions;
Total Arrears Reduction Target	the difference between the Starting Arrears and the Target Arrears;
TPL Risk	a risk which is required to be insured under the third party liability insurance policy;
Trees Survey	the Initial Trees Survey, an Annual Trees Survey or a Detailed Trees Survey as relevant;
Tree Works	the works to trees identified in a Trees Survey including additional works as agreed by the Authority in accordance with paragraph 3.8.8.11 of Schedule 1 (Output Specification);
TUPE	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (246/2006) and/or any other regulations enacted for the purposes of implementing the Directive into English Law;
Unavailable	a Dwelling is not Available or is Consequentially Unavailable and "Unavailability" shall be construed accordingly;
Unavailable but Used	a Dwelling which is Unavailable but still occupied by the Tenant or Leaseholder, unless the failure to meet Property Management Standards giving rise to Unavailability relates to any Property Management Standards for which the Output Specification indicates that the full Unavailability Deduction will be made regardless of whether or not the Tenant or Leaseholder remains in occupation;

Unavailability Deductions	the unavailability deductions calculated in accordance with Part III of Schedule 4 (Payment Mechanism);
Unavailability Period	the period commencing upon the date of notification of Availability in accordance with paragraph Error! Reference source not found. of Schedule 4 (Payment Mechanism) until the date of certification by the Contractor of Availability in accordance with paragraph Error! Reference source not found. of Schedule 4 (Payment Mechanism);
Uninsurable	<p>in relation to a risk, either that:</p> <ul style="list-style-type: none"> (a) insurance is not available to the Contractor in respect of the Project in the worldwide insurance market with reputable insurers of good standing in respect of that risk; or (b) the insurance premium payable for insuring that risk is at such a level that the risk is not generally being insured against in the worldwide insurance market with reputable insurers of good standing by contractors in the United Kingdom;
Unit	each new dwelling constructed as a result of the carrying out of the Development Works;
Unitary Charge	the fee payable by the Authority under clause 36 (Payment Provisions) and calculated in accordance with Schedule 4 (Payment Mechanism);
Unsuitable Third Party	<p>either:</p> <ul style="list-style-type: none"> (a) any person who has a material interest in the production, distribution or sale of tobacco products and/or alcoholic drinks; (b) any person whose activities are, in the reasonable opinion of the Authority,

incompatible with the provision of having Services by the Authority; or

- (c) any person whose activities, in the reasonable opinion of the Authority, pose or could pose a threat to national security;

Vacant Possession Condition

- (a) the termination of all rights of occupation in relation to those parts of the Project Site relevant to each Project Phase in accordance with the Construction and Refurbishment Programme and/or relevant to each Development Phase in accordance with **Schedule 39** (Development Works Leases) (as the case may be) related to that Project Phase and/or Development Phase (as the case may be) and rights of any relevant utility or statutory authority under any deed of easement or wayleave in respect of gas, electricity or other statutory supply insofar as they might affect a particular Project Phase and/or Development Phase (as the case may be); and
- (b) the obtaining of any orders affecting the permanent extinguishment of public rights of way required for the performance of the Works

but excluding:

- (c) any such matters of which the delivery by the Authority is prejudiced by a failure on the part of the Contractor to perform in a timely manner its obligations under this Agreement; and
- (d) any licences granted by the Authority to the Contractor or the Development Contractor in respect of a Project

	Phase and/or Development Phase;
Variable Costs	for the purposes of clause 31.6 (Changes to Number of Dwellings by Tenure), the variable costs each as contained in the Base Case by reference to whether a relevant Dwelling is a Rented Dwelling or a Leasehold Dwelling and shown in Table A of Schedule 15 (Change in the Number of Dwellings by Tenure);
Voluntary CNDT	a change to the number of Rented Dwellings or Leasehold Dwellings in the Project as a consequence of the Authority withdrawing a Dwelling from the Project or changing the tenure of a Dwelling where expressly permitted to do so by the provisions of this Agreement;
Voluntary Principles	either: <ul style="list-style-type: none"> (a) the Cabinet Office Principles of Good Employment Practice dated December 2010 (as amended or replaced from time to time); or (b) where any similar or equivalent principles of good employment practice are introduced in respect of local authority service contracts, such similar or equivalent principles (as amended or replaced from time to time);
Void Dwelling	a Dwelling to which no Tenancy Agreement or Leaseholder Lease has been granted;
VAT	value added taxes;
Works Delivery Plans	together the Contractor's Contractual method statements for the Works, the Cyclical Maintenance and Replacement Programme, the Design and Construction Plan and the Planned Maintenance Programme;
Works	means the Development Works and the Service Works;

Year	the 12 month period from and including a day to (but not including) the day bearing the same number in the same month of the following year (or, in the case only of a period commencing on 29 February, ending on the next following 28 February);
Zone	those zones within the Project Site identified in Annex V to Schedule 1 (Output Specification);

1.2 **Interpretation**

In this Agreement except where the context otherwise requires:

- 1.2.1 the masculine includes the feminine and vice-versa;
- 1.2.2 the singular includes the plural and vice versa;
- 1.2.3 a reference to any Clause, Sub-clause, paragraph, Schedule, Recital, Appendix or Annex is, except where expressly stated to the contrary, a reference to such Clause, Sub-clause, paragraph, Schedule, Recital, Appendix or Annex of and to this Agreement;
- 1.2.4 save where otherwise provided in this Agreement, any reference to this Agreement or to any other documents shall include any permitted variation, amendment or supplement to such document;
- 1.2.5 any reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or other similar instrument as amended, replaced, consolidated or re-enacted;
- 1.2.6 a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees;
- 1.2.7 headings are for convenience of reference only; and
- 1.2.8 words preceding "include", "includes", "including" and "included" shall be construed without limitation by the words which follow those words.
- 1.2.9 reference to a document being "in the Agreed Form" is reference to the form of the document agreed between the parties and for the purposes of identification initialled by each of them on their behalf;

1.3 **Schedules**

The Schedules and Appendices and Annexes to this Agreement form part of this Agreement.

1.4 **Indexation**

In this Agreement, references to amounts expressed to be “indexed” are references to such amounts at February 2012 multiplied by:

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

where I_1 is the value of RPIx most recently published prior to the relevant calculation date, and I_2 is the value of RPIx at February 2012.

1.5 **Precedence of Documentation**

In the event of any inconsistency between the provisions of the body of this Agreement and the Schedules, or between any of the Schedules, the conflict shall be resolved according to the following descending order of priority:

- 1.5.1 the body of this Agreement;
- 1.5.2 the Output Specification;
- 1.5.3 the Schedules (excluding the Output Specification) and **Schedule 2** (Contractor’s Proposals));
- 1.5.4 **Schedule 2** (Contractor’s Proposals).

1.6 **Approval by the Authority**

No review, comment or approval by the Authority under the provisions of this Agreement shall operate to exclude or limit the Contractor’s obligations or liabilities under this Agreement (or the Authority’s rights under this Agreement).

1.7 **Responsibility for Related Parties**

The Contractor shall be responsible as against the Authority for the acts and omissions of the Contractor Related Parties as if they were the acts and omissions of the Contractor and the Authority shall be responsible as against the Contractor for the acts and omissions of the Authority Related Parties as if they were the acts and omissions of the Authority. The Contractor shall, as between itself and the Authority, be responsible for the selection of and pricing by all Contractor Related Parties.

1.8 **Contractor Remains Responsible**

Neither the giving of any approval, consent, examination, acknowledgement, knowledge of the terms of any agreement or document nor the review of any document or course of action by or on behalf of the Authority, shall unless otherwise expressly stated in this Agreement, relieve the Contractor of any of its obligations under the Project Documents or of any duty which it may have hereunder to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, examination, acknowledgement or knowledge.

2. EXCLUSION OF LEGISLATION

2.1 Housing Grants, Construction and Regeneration Act

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

2.2 Third Party Rights

No term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.

3. COMMENCEMENT AND DURATION

3.1 Commencement

This Agreement and the rights and obligations of the parties to this Agreement shall take effect on the Commencement Date.

3.2 Duration

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

3.2.1 the Expiry Date; and

3.2.2 the Termination Date.

4. COLLATERAL WARRANTIES

The Contractor shall:

4.1 on or before the date of this Agreement enter into: -

4.1.1 the Building Contract with the Building Contractor;

- 4.1.2 the Responsive Repairs and Cyclical Maintenance and Renewal Contract with the Responsive Repairs and Cyclical Maintenance and Renewal Contractor;
 - 4.1.3 the Housing Management Agreement with the Housing Management Contractor; and
 - 4.1.4 the Energy Services Contract with the Energy Services Contractor.
- 4.2 deliver the Collateral Warranties from the Building Contractor, any relevant sub-contractors of the Building Sub-Contractor, the members of the Professional Team the Independent Certifier the Responsive Repair and Cyclical Maintenance and Renewal Contractor, the Housing Management Contractor and the Energy Services Contractor to the Authority within 20 Business Days of the date of this Agreement;
- 4.3 not engage any new Building Contractor, any relevant sub-contractors of the Building Contractor, Responsive Repairs and Cyclical Maintenance and Renewal Contractor, Housing Management Contractor or Energy Services Contractor or any new member of the Professional Team in connection with the Works and/or Services unless such person has delivered to the Authority a duly executed agreement substantially in the Agreed Form of the relevant Collateral Warranty duly executed as a deed and in each case such Collateral Warranty must be delivered to the Authority before such entity enters onto any Dwelling, Block, or Communal Area.

5. **GENERAL WARRANTIES AND INDEMNITIES**

5.1 **Contractor Warranties**

- 5.1.1 The Contractor warrants and represents to the Authority that on the date hereof:
- 5.1.1.1 it is properly constituted and incorporated under the laws of England and Wales and has the corporate power to own its assets and to carry on its business as it is now being conducted;
 - 5.1.1.2 it has the corporate power to enter into and to exercise its rights and perform its obligations under the Project Documents;
 - 5.1.1.3 all necessary action to authorise the execution of and the performance of its obligations under the Project Documents has been taken or, in the case of any Project

Document executed after the date of this Agreement, will be taken before such execution;

- 5.1.1.4 the obligations expressed to be assumed by the Contractor under the Project Documents are, or in the case of any Project Document executed after the date of this Agreement will be, legal, valid, binding and enforceable to the extent permitted by law and each Project Document is or will be in the proper form for enforcement in England;
- 5.1.1.5 it will procure that each and every one of the New Build Dwellings with regard to which a Certificate of Availability is issued has or will have the benefit of the appropriate NHBC "Buildmark" or Zurich Municipal structural defects cover or such other defects cover acceptable to mortgage Lenders under the most recently published guidance issued by the Council of Mortgage Lenders, or cover in such other form as shall be approved by the Authority from time to time; and
- 5.1.1.6 the execution, delivery and performance by it of the Project Documents does not contravene any provision of:
 - (a) any existing Legislation either in force, or enacted but not yet in force binding on the Contractor;
 - (b) the Memorandum and Articles of Association of the Contractor;
 - (c) any order or decree of any court or arbitrator which is binding on the Contractor; or
 - (d) any obligation which is binding upon the Contractor or upon any of its assets or revenues;
- 5.1.1.7 the information, representation and other matters of fact committed in writing to the Authority by the Contractor in connection with or arising out of its tender are true and complete in all material respects in the context of the Project;
- 5.1.1.8 the Contractor Warranted Data is true and accurate in all respects;

- 5.1.1.9 the Contractor has not, other than in connection with the Project, traded at any time since its incorporation as a company pursuant to the Companies Act 2006 (as amended);
- 5.1.1.10 no claim is presently being assessed and no litigation, arbitration or administrative proceedings are presently in progress or, to the best of the knowledge of the Contractor, pending or threatened against it or any of its assets which will or might have a material adverse effect on the ability of the Contractor to perform its obligations under any Project Document;
- 5.1.1.11 it is not the subject of any other obligation, compliance with which will or is likely to have a material adverse effect on the ability of the Contractor to perform its obligations under any Project Document;
- 5.1.1.12 no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues;
- 5.1.1.13 each of the Project Documents is or, when executed, will be in full force and effect and constitutes or, when executed, will constitute the valid, binding and enforceable obligations of the parties thereto;
- 5.1.1.14 the copies of the Project Documents which the Contractor has delivered or, when executed, will deliver to the Authority are or, as the case may be, will be true and complete copies of such documents and there are not in existence any other agreements or documents replacing or relating to any of the Project Documents which would materially affect the interpretation or application of any of the Project Documents.

and the Authority relies upon such warranties and representations.

- 5.1.2 The Contractor warrants and undertakes to the Authority that it has and will throughout the duration of the Agreement have in place adequate procedures (as referred to in section 7(2) of the Bribery Act 2010) designed to prevent persons associated with the Contractor from bribing any person with the intention of obtaining or retaining business

for the Contractor or with the intention of obtaining or retaining an advantage in conduct of business for the Contractor.

5.2 Contractor Undertakings

The Contractor undertakes with the Authority that for so long as this Agreement remains in full force:

- 5.2.1 it will upon becoming aware that any litigation, arbitration, administrative or adjudication or mediation proceedings before or of any court, arbitrator or Relevant Authority may be threatened or pending and immediately after the commencement thereof (or within twenty (20) Business Days of becoming aware the same may be threatened or pending or with twenty (20) Business Days after the commencement thereof where the litigation or arbitration or administrative or adjudication or mediation proceedings is against a sub-contractor) give the Authority notice of such litigation, arbitration, administrative or adjudication or mediation proceedings which would adversely affect, to an extent which is material in the context of the Project, the Contractor's ability to perform its obligations under this Agreement;
- 5.2.2 it will not without the prior written consent of the Authority (and whether by a single transaction or by a series of transactions whether related or not) sell, transfer, lend or otherwise dispose of (other than by way of security) the whole or any part of its business or assets which would materially affect the ability of the Contractor to perform its obligations under this Agreement;
- 5.2.3 it will not cease to be resident in the United Kingdom or transfer in whole or in part its undertaking, business or trade outside the United Kingdom;
- 5.2.4 it will not undertake the performance of its obligations under this Agreement for the provision of the Services otherwise than through itself or a Sub-Contractor;
- 5.2.5 it shall not without the written consent of the Authority (such consent not to be unreasonably withheld or delayed) incorporate any company or purchase or acquire or subscribe for any shares in any company save where such company is involved in the provision of the Services or Works;
- 5.2.6 it shall not without the written consent of the Authority (such consent not to be unreasonably withheld or delayed) make any loans or grant any credit or give any guarantee or indemnity to or for the benefit of

any person or otherwise voluntarily or for consideration assume any liability (whether actual or contingent) in respect of any obligation of any other person except in the ordinary course of business and/or as contemplated by the Project Documents and/or Financing Agreements; and

5.2.7 it shall not change or cease its business or start any other business which is materially different from that to be carried on by it under this Agreement.

5.3 **Status of Warranties**

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

6. **AUTHORITY WARRANTIES**

6.1 **No Warranty by Authority**

Subject to **clause 6.3** (Fraudulent Statements) and **clause 6.4** (Authority Warranted Data) the Authority does not give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for any purpose of any of the Disclosed Data.

6.2 **No Liability to Contractor**

Subject to **clause 6.4** (Authority Warranted Data), neither the Authority nor any of its agents or employees shall be liable to the Contractor in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of:

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

6.2.2 any failure to make available to the Contractor any materials, documents, drawings, plans or other information relating to the Project.

6.3 **Fraudulent Statements**

Nothing in this **clause 6** (Authority Warranties) shall exclude any liability which the Authority or any of its agents or employees would otherwise have to the Contractor in respect of any statements made fraudulently prior to the date of this Agreement.

6.4 **Authority Warranted Data**

The Authority warrants to the Contractor that the Housing Information set out or described in Part 1 of **Schedule 9** (Warranted Data) has been prepared after due and careful enquiry and is in all material respects true, accurate and complete as at the date of this Agreement.

6.5 **Contractor's Due Diligence**

The Contractor shall, subject to the terms of this Agreement, be deemed to have:

- 6.5.1 satisfied itself as to the assets to which it will acquire rights and the nature and extent of the risks assumed by it under this Agreement; and
- 6.5.2 gathered all information necessary to perform its obligations under this Agreement and other obligations assumed including:
 - 6.5.2.1 information as to the nature, location and condition of the land (including topography, hydrological, geological, geotechnical and sub-surface conditions);
 - 6.5.2.2 information relating to archaeological finds, areas of archaeological scientific or natural interest, local conditions and facilities and the quality of existing structures;
 - 6.5.2.3 information as to any Contamination or asbestos on the Project Site;
 - 6.5.2.4 information relating to the condition of each of the Dwellings, the Community Centre, other retained structures, roads and footpaths on the Project Site;
 - 6.5.2.5 the sufficiency of the service ducts and media for all utilities servicing the Dwellings, Common Parts and the Communal Areas;

6.6 **No Relief**

Subject to **clause 6.3** (Fraudulent Statements) and **clause 6.4** (Authority Warranted Data), the Contractor shall not in any way be relieved from any obligation under this Agreement nor shall it be entitled to claim against the Authority on grounds that any information, whether obtained from the Authority or otherwise (including information made available by the Authority), is incorrect or insufficient and shall make its own enquiries as to the accuracy and adequacy of that information.

7. CO-OPERATION

7.1 Authority Obligations

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

7.2 Co-operation

Each party agrees to co-operate, at its own expense, (but without being compelled to incur material expenditure) with the other party (and the Contractor shall co-operate with Authority Related Parties) in the fulfilment of the purposes and intent of this Agreement. To avoid doubt, neither party shall be under any obligation to perform any of the other's obligations under this Agreement.

7.3 Protocols

The Authority agrees to comply with all its obligations under the Authority's Protocols. The Contractor agrees to comply with its obligations under those Authority Protocols to the extent that they are applicable to it by way of this Agreement.

PART 2 - LAND ISSUES

8. NATURE OF LAND INTERESTS

8.1 Licence

8.1.1 The Authority grants with effect from the Services Commencement Date until the Expiry Date (or, if earlier, the Termination Date) to the Contractor and to every Contractor Related Party with or without vehicles, plant and equipment, licence in common with the Authority, its Tenants and persons authorised by them and any Authority Related Party to occupy the Project Site to enable the Contractor to discharge its obligations and exercise its rights under this Agreement and any other relevant areas which are required for Works or Services carried out pursuant to **Part 3** (Temporary Decant Protocol) of **Schedule 24** (Decant Protocol). In exercising its rights under such licence the Contractor shall take all reasonable steps to minimise any damage, inconvenience, disruption and disturbance to the Authority, its Tenants or to the owners, users and occupiers of any Adjoining Property and shall make good any damage caused and indemnify the Authority in respect of all proven claims and demands arising from the exercise of such right in accordance with **clause 59.1** (Contractor's Indemnity). The Contractor will pay to the Authority a licence fee in the sum of one pound (£1) sterling, exclusive of VAT receipt of which the Authority hereby acknowledges for the use and occupation of the Project Site.

8.1.2 The licence granted by **clause 8.1.1** is subject to:

- 8.1.2.1 the statutory right of any relevant authority or third party to have access to the Project Site;
- 8.1.2.2 the right of the Authority and those authorised by it to have access to the Project Site in accordance with this Agreement; and
- 8.1.2.3 the rights granted under the Tenancy Agreements; and
- 8.1.2.4 the rights, covenants and encumbrances contained in the titles to the Project Site.
- 8.1.2.5 In the event that this Agreement is terminated prior to the expiry of the Contract Period then such licence granted pursuant to this **clause 8.1** shall immediately terminate.

8.2 Limited Effect of the Licence

The rights of access granted pursuant to **clause 8.1** (Licence) shall subsist for the purposes of carrying out the Works and/or the provision of the Services and all purposes ancillary or related thereto and for the purpose of complying with any other provision of this Agreement and/or any other Project Document and/or for the installation, diversion, renewal and maintenance of service media by the Contractor but for no other purpose and shall be by way of licence for the activity only and shall not grant or be deemed to grant any legal right or other interest in land.

8.3 **Termination of Licence**

Upon the earlier of:

8.3.1 the Termination Date; and

8.3.2 the Expiry Date,

or as otherwise may be provided pursuant to this Agreement, the Contractor's licence granted pursuant to **clause 8.1** (Licences of the Properties) (or part thereof if the Agreement so provides) shall determine.

8.4 **Wayleaves**

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

8.5 **Adverse Rights**

8.5.1 The Authority represents and warrants that it has disclosed all Adverse Rights provided that it shall not be responsible for nor be liable to pay any compensation or be held to be in breach of this warranty in respect of any Disclosed Adverse Rights.

8.5.2 Subject to **clause 8.5** (Adverse Rights), in the event that a Non Disclosed Adverse Right is revealed and the Authority is found to be in breach of its warranty given in **clause 8.5** (Adverse Rights) which breach prevents or disrupts the provision of the Service Works and/or the Services, the matter shall (subject to the provisos in **clauses 8.5.1** and **8.5.2** (Adverse Rights) be treated as a Compensation Event and **clause 19.5** (Delays due to a Compensation Event) shall apply

until such time as the Authority procures the removal of the Non Disclosed Adverse Right or issues an Authority Change in accordance with the Change Protocol to remove the breach or terminates this Agreement in accordance with **clause 42** (Termination on Force Majeure) and **clause 45** (Compensation on Termination for Force Majeure) shall apply as if Force Majeure Event had occurred.

- 8.5.3 In the event that the Contractor discovers a Non Disclosed Adverse Right which is disrupting or preventing or may disrupt or prevent the Service Works and/or the Services, it shall immediately notify the Authority of its existence. The Authority shall then seek to procure the removal (whether temporarily or permanently) of such Non Disclosed Adverse Right to the extent that it disrupts or prevents the Service Works and/or the Services provided that in the event that the Contractor fails or delays in providing the said notification the Authority shall not be liable pursuant to **clause 8.5.1** and **clause 19.5** (Delays due to a Compensation Event) for any delay and/or additional costs which would have been avoided but for such failure and/or delay by the Contractor.

PART 3 - WORKS ARRANGEMENTS

9. ACQUIRING INTERESTS COVERED BY THE CPO

9.1 Developer's Obligations to Negotiate

- 9.1.1 The Contractor shall update the timetable to be employed by the Parties in relation to the acquisition of Outstanding Interests by private treaty instead of by means of the CPO on each occasion that the Contractor changes its Construction and Refurbishment Programme and/or Development Works Programme (as the case may be).
- 9.1.2 The Parties shall cooperate so as to procure the acquisition by private treaty of the Outstanding Interests by the Authority (including where appropriate the instigation of procedures under the Landlord and Tenant Act) and will keep each other fully informed about all negotiations and their progress with Owners which have been completed and prices agreed to be paid or being negotiated.
- 9.1.3 If any Owner offers (except by way of service of a Blight Notice) to dispose of Outstanding Interests to the Authority by agreement in advance of the service of the notice of entry, the Authority shall promptly inform the Contractor of such offer and request the Contractor to undertake negotiations for the acquisition of those interests by the Authority. If the Contractor fails to acquire an interest of the Authority by way of negotiation, it shall promptly inform the Authority and request that a notice of entry is served in relation to that interest.
- 9.1.4 The Authority shall promptly comply with any reasonable request by the Contractor, pursuant to **clause 9.1.3**, to serve a notice of entry.

9.2 Provisions relating to Negotiations

- 9.2.1 The Contractor shall be solely responsible for the payment of any fees payable to the Contractor's consultants in connection with the negotiations relating to the acquisition of Outstanding Interests by private treaty.
- 9.2.2 The Contractor shall provide to the Authority:
 - 9.2.2.1 details of the heads of terms agreed (subject to contract) with the Owners for the acquisition of their respective Outstanding Interests such details to be provided within five Business Days of their being agreed subject to contract; and

- 9.2.2.2 for its approval (such approval not to be unreasonably withheld or delayed and shall be automatic where the total compensation agreed in the heads of terms are between the lower and upper limits of compensation for each relevant property in accordance with **Schedule 41**) copies of all documents to be entered into between the Authority and the Owners such copies to be provided within five (5) Business Days of their being agreed subject to contract.
- 9.2.3 For each such purchase or purchases negotiated by the Contractor:
- 9.2.3.1 the Authority shall use all reasonable endeavours to enter into the relevant contract as soon as reasonably practicable and then:
- (a) within ten (10) Business Days provide a certified copy to the Contractor; and
 - (b) observe and perform any obligations on the part of the purchaser contained in such contract including, subject to Part 2 of **Schedule 41**, obligations for payment; and
 - (c) use all reasonable endeavours to enforce the observance and performance by the relevant vendor of the obligations on its part contained in such contract; and
- 9.2.3.2 following completion:
- (a) within ten Business Days provide the Contractor with a certified copy of the relevant assignment transfer or other instrument; and
 - (b) observe and perform the obligations and other matters on the part of the purchaser contained in such assignment transfer or instrument; and
- 9.2.3.3 the Authority shall within ten Business Days following registration provide the Contractor with official copies and a filed plan of the title in question and all other documents relevant to the title or the purchase of the property.
- 9.2.4 Subject to **clause 9.2.2.2**, if:
- 9.2.4.1 the Authority does not agree such purchase or purchases negotiated by the Contractor; or

9.2.4.2 the Contractor is unable to agree terms for such purchase or purchases with the relevant Owner or Owners

the acquisition of the relevant Outstanding Interest(s) shall (subject to the terms of this Agreement) be pursued by means of the CPO by the Authority.

9.3 **Acquisition by/Vesting in the Authority**

9.3.1 The Contractor shall as soon as is reasonably practicable serve the Contractor's Notice(s) on the Authority together with an explanation of the means by which the Contractor proposes that the interests not included in the Contractor's Notice(s) are to be acquired by the Authority.

9.3.2 Following the Authority sending written approval of the Contractor's Notice(s) (such approval not to be unreasonably withheld or delayed) to the Contractor, the Authority shall use all reasonable endeavours to secure the vesting of all Outstanding Interests in accordance with the approved Contractor's Notice(s) in the Authority by means of the notice of entry procedure.

9.4 **Blight**

If the Authority shall be served with a Blight Notice the Authority shall:

9.4.1 supply a copy of such Blight Notice to the Contractor as soon as reasonably practicable together with copies of any relevant supporting correspondence papers and other documents which the Authority may have received in relation to it;

9.4.2 consult with the Contractor as to the appropriate manner in which to respond to such Blight Notice so as to ensure that the Authority can (following such consultation) respond within the statutory time limit; and

9.4.3 resist any such Blight Notice which the Authority (following such consultation) reasonably believes to be invalid or inappropriate and reasonably believes ought not to be accepted by serving a counter-notice in the appropriate form and comply with all statutory requirements in relation to it.

9.5 **Lands Tribunal**

Subject to **clause 9.2.2.2**, if the Parties (each acting reasonably) are unable to agree the amount of any compensation payable to an Owner or a Claimant the Authority shall:

- 9.5.1 refer the matter to the Lands Tribunal; and
- 9.5.2 liaise with the Contractor in relation to the reference and supply to the Contractor copies of all correspondence papers and documents as the Contractor shall reasonably require.
- 9.5.3 in relation to any matter referred to the Lands Tribunal as mentioned in **clause 9.5.1** the Contractor shall where requested by the Authority:
 - 9.5.3.1 on behalf of the Authority, to the extent practicable, have conduct of the reference and any associated negotiations and shall keep the Authority informed of the progress of the reference with the objective of securing an order or settlement at the lowest reasonably achievable figure consistent with the Authority's statutory duties and responsibilities;
 - 9.5.3.2 consult with the Authority on the appointment of counsel and the expert witnesses to represent the Authority and shall consider the use where appropriate of the Contractor's consultants as expert witnesses
 - 9.5.3.3 consult with the Authority in relation to the amount of any sealed offer to be made
 - 9.5.3.4 use reasonable endeavours to prepare for the hearing of the reference in consultation with the Authority
 - 9.5.3.5 liaise with and have due regard to the views of the Authority in connection with the preparation for the hearing of the reference and in particular shall:
 - (a) consult the Authority as to the content and nature of all evidence to be submitted to the Lands Tribunal including all applications which may be made in connection with the reference and as to the overall strategy in relation to the conduct of the reference; and
 - (b) invite the Authority to attend consultations with counsel and/or provide the Authority with all written opinions of counsel instructed by the Contractor which are relevant to the reference.
 - 9.5.3.6 liaise with and have due regard to the views of the Authority in relation to any decision to appeal against any decision of the Lands Tribunal and, in prosecuting any

such appeal on behalf of the Authority, the Contractor shall:

- (a) supply copies of all relevant correspondence and other documents pertaining to the appeal to the Authority;
- (b) use all reasonable endeavours to prosecute the appeal;
- (c) liaise with and have due regard to the views of the Authority as to the manner of prosecution of the appeal;
- (d) keep the Authority apprised of the progress and result of the appeal.

9.5.4 The Authority, in advance of any Lands Tribunal hearing, shall not settle any outstanding claim without obtaining the prior written consent of the Contractor (such consent not to be unreasonably withheld or delayed).

9.6 **Payment of CPO Costs**

The Authority shall, subject to **Schedule 41**, pay the CPO Costs, agreed with any Owner or Claimant or determined by the Lands Tribunal to the relevant Owner or Claimant from time to time.

9.7 **Expenses**

Any costs or expenses not for the account of the Contractor shall, subject to **Schedule 41** (like for Like Properties), be for the account of the Authority.

10. **VACANT POSSESSION CONDITION**

10.1 **Parties to Perform the Terms of this Agreement with a view to delivering the Vacant Possession Condition**

The Parties shall perform all their respective obligations under this Agreement so as to deliver the Vacant Possession Condition.

10.2 **Consequences of failure to deliver the Vacant Possession Condition**

10.2.1 To the extent that performance by the Parties of their respective obligations under this Agreement does not deliver the Vacant Possession Condition in accordance with **clause 10.1**, the Authority shall at its own expense discharge the Vacant Possession Condition in respect of a Project Phase in accordance with the Construction and Refurbishment Programme and/or Development Phase in accordance with **Schedule 39** (Development Works Leases) (as the case may be),

provided always that any failure to deliver the Vacant Possession Condition has not been caused or contributed to by any act or omission of the Contractor.

10.2.2 If the Authority is unable to discharge, but only as required by **clause 10.2.1**, the Vacant Possession Condition in respect of a Project Phase in accordance with the Construction and Refurbishment Programme and/or Development Phase in accordance with **Schedule 39** (Development Works Leases) (as the case may be), then, subject to **clause 10.2.3** and provided that the Contractor has complied with **clause 10.1**, such failure shall constitute a Compensation Event until such time as the Vacant Possession Condition for such Project Phase and/or Development Phase is satisfied or any Authority Change is agreed pursuant to **clause 56** (Authority and Contractor Changes), provided that any relief granted to the Contractor pursuant to this **clause 10.2.2** shall be discounted to take into account any failure by the Contractor to perform its obligations under **clause 10.1** in accordance with the programme.

10.2.3 The Contractor shall take all reasonable steps to mitigate the effect of the failure to discharge the Vacant Possession Condition which mitigation shall include, where practicable, the alteration to the order in which the Service Works or the Development Works (as the case may be) are to be carried out.

11. **CONSULTATION AND PROTOCOLS**

11.1 **Consultation with Tenants**

Before commencing the Works and throughout the carrying out of the Works the Contractor shall comply with the arrangements for consultation with the Tenants, other residents of the Dwellings, organisations and businesses adjoining the Project Site affected thereby in accordance with the Output Specification, Contractor's Proposals and all Legislation and Guidance.

11.2 **Authority Protocols**

11.2.1 The Contractor shall, in undertaking the Works, adopt and fully comply with the Access Protocol, Decant Protocol and Tenant Waiver Protocol.

11.2.2 In the event that the Contractor becomes aware of a Refurbishment Works or Services Denial Event the Contractor shall immediately upon becoming so aware notify the Authority of this fact.

12. THE SERVICE WORKS

12.1 Obligation to Carry Out

The Contractor shall or shall procure that the Building Contractor (and its sub-contractors and/or consultants) shall carry out the design (including the preparation of Design Data) and the construction and completion, commissioning and testing of the Service Works so that:

- 12.1.1 each Dwelling shall achieve the Certificate of Availability Rented (Full Standard) or Certificate of Availability Leasehold (Full Standard) as appropriate on or before the Planned Services Commencement Date for that Dwelling;
- 12.1.2 the Park shall achieve the Certificate of Availability Park (Full Standard) on or before the Planned Services Commencement Date for the Park;
- 12.1.3 the Community Centre shall achieve the Certificate of Availability Community Centre (Full Standard) on or before the Planned Services Commencement Date for the Community Centre;
- 12.1.4 the Service Works fully comply with and meet all the requirements of this Agreement, the Output Specification, the Contractor's Proposals, Good Industry Practice, Guidance, all Consents and all applicable Authority's Policies, Legislation and the provisions of a Tenancy Agreement and Leaseholder Lease. In the event that the Contractor enters into any sub-contract in connection with the Service Works it shall ensure that such sub-contractor complies with and meets all the requirements of the Equality Requirements;
- 12.1.5 the Public Realm and Infrastructure Works shall achieve the Certificate of Availability Public Realm and Infrastructure Works (Full Standard) on or before the Planned Services Commencement Date for the Public Realm and Infrastructure Works;
- 12.1.6 new materials only will be used in carrying out the Service Works (unless the Authority agrees otherwise in writing or the contrary is set out in the Output Specification) and all goods used or included in the Service Works will be of satisfactory quality, and there will be used or included in the Service Works none of those products and materials listed in **Schedule 7** (Prohibited Materials) nor any products or materials not in conformity with relevant British or European Union Standards or codes of practice which at the time of use are widely known to building contractors or members of the relevant design profession within the European Union to be deleterious to health or safety or to the durability of buildings and/or other structures and/or

finishes and/or plant and machinery in the particular circumstances in which they are used;

- 12.1.7 all persons employed in connection with the performance of the Service Works will be skilled and experienced in their several professions, trades and callings or adequately supervised;
- 12.1.8 all aspects of the Service Works will be supervised by sufficient numbers of persons having adequate knowledge of such matters for the satisfactory and safe performance of the Service Works in accordance with this Agreement having regard to the activities which are carried out at the Dwellings, Blocks, Communal Areas and Exterior Common Areas and also to the existence of Tenants and Leaseholders;
- 12.1.9 the Service Works are maintained in good order, kept in a safe condition and protected from damage, and working areas of the Project Site are secure against trespassers and clean and tidy so far as practicable having regard to the nature of the Service Works; and
- 12.1.10 adequate retaining and supporting walls are provided to support any Adjoining Property during the carrying out of the Service Works.
- 12.1.11 the Service Works are carried out and completed in a manner not likely to prejudice the satisfaction of the Output Specification; and
- 12.1.12 the Service Works are carried out in compliance with the Equality Requirements.

12.2 **Inconsistencies**

- 12.2.1 Where there is an inconsistency within the Service Works Delivery Plans the Contractor shall inform the Authority in writing of its proposed amendment to remove the inconsistency and the Contractor shall, subject to obtaining the written approval of the Authority in accordance with the Review Procedure to deal with such inconsistency, amend the Service Works Delivery Plans without any adjustment of the Unitary Charge.
- 12.2.2 Subject to **clause 55** (Changes in Law), where there is an inconsistency between the Service Works Delivery Plans and any Legislation, the Contractor shall amend the Service Works Delivery Plans to comply with such Legislation and any such amendment shall not be deemed to be an Authority Change and the Contractor shall not be entitled to any additional monies or adjustment of the Unitary Charge in respect of any loss incurred as a result of such inconsistency or its adjustment.

13. THE DEVELOPMENT WORKS

13.1 Conduct of the Development Works

The Contractor warrants that it shall and shall procure the construction and completion of the Development Works in accordance with:

- 13.1.1 the terms of this Agreement;
- 13.1.2 the Development Works Delivery Plan;
- 13.1.3 the requirements of all Consents;
- 13.1.4 all applicable Legislation and Guidance;
- 13.1.5 Good Industry Practice.

13.2 Development Works Leases

- 13.2.1 The Contractor shall procure that the Development Lessee shall comply with its obligations in any Development Works Lease.
- 13.2.2 The Authority shall comply with its obligations in any Development Works Lease.
- 13.2.3 The Authority shall not grant after the date of the Agreement any leases or licences, grant rights over or encumber the Development Sites without the prior written consent of the Contractor (such consent not to be unreasonably withheld or delayed) provided that, subject to **clause 56** (Authority and Contractor Changes), nothing in this clause shall limit, exclude or prevent the implementation of any procedures in relation to the compulsory purchase or stopping or diversion of roads and footpaths by the Authority or any other statutory authority and the Authority shall not require the consent of the Contractor in connection with any such procedures.

13.3 Grant of a Development Works Lease

The Authority shall deliver to the Development Contractor or the Development Lessee a completed Development Works Lease for the relevant Development Site within the relevant Development Phase set out in **Schedule 39** (Development Works Leases) on the relevant Planned Development Works Lease Date, provided that a counterpart of such Development Works Lease in respect of each and every Development Site referred to within the relevant Development Phase has been previously executed by the Development Lessee.

13.4 **Completion and Development Works Programme**

- 13.4.1 The Contractor shall ensure that each Development Site of the Development Works is carried out in accordance with the Development Works Programme.
- 13.4.2 Failure by the Contractor to complete or procure the completion of any part of the Development Works in accordance with the Development Works Programme shall not be a Contractor Default Event but shall be dealt with pursuant to **clause 13.5**.
- 13.4.3 Subject to **Clause 19** (Extensions of Time), the Contractor shall ensure that once works on a Development Site are commenced, notwithstanding any changes to the Development Works Delivery Plan, such Development Site is completed within the timescale set out in the Development Works Delivery Plan by reference to the period from the date work actually commenced.

13.5 **Termination and Consequences of Termination on the Development Works**

- 13.5.1 The provisions of this **clause 13** (Development Works) are subject to the Direct Agreement.
- 13.5.2 Notwithstanding anything to the contrary in this Agreement, where this Agreement is terminated pursuant to Part 6 (Termination) for any reason, then:
 - 13.5.2.1 the Development Sites that have already been the subject of the grant of a Development Works Lease shall be deemed not to be included in the definition of Assets for the purposes of any transfer to the Authority; but
 - 13.5.2.2 the provisions of **clause 13.8** and **Schedule 40** (Authority's Share of Proceeds of the Development Works) shall continue to apply.

13.6 **Completion of a Development Site**

- 13.6.1 The Development Works to be carried out on a Development Site shall be deemed, for the purposes of this Agreement, to have been completed upon the issue of a Council of Mortgage Lenders Certificate for each Unit on that Development Site in accordance with the Development Works Delivery Plan.
- 13.6.2 The Contractor shall give the Authority not less than five (5) Business Days' notice of the date on which the Contractor proposes to inspect

the Development Works within a Development Site with a view to the issue of the final Council of Mortgage Lenders Certificate for each Unit to be constructed on that Development Site in accordance with this Agreement and representatives from the Authority shall be entitled to make a joint inspection with the Contractor and comment to the Contractor on whether they consider the relevant Development Works to have been completed in accordance with the requirements of this Agreement.

13.7 **Exclusive Remedies in respect of Development Works Obligations**

Without prejudice to any liability of the Contractor for

- 13.7.1 death or personal injury caused by the Contractor's negligence or the negligence of anyone for whom the Contractor is vicariously liable;
- 13.7.2 fraud or fraudulent misrepresentation;
- 13.7.3 any warranty as to title, freedom from encumbrances or quiet possession implied by statute,

notwithstanding anything to the contrary in any other provision of this Agreement, the provisions of **Clause 13.5** and claims under the indemnities in **Clause 59** (Indemnities) shall be the Authority's exclusive remedies in respect of any breach by the Contractor or the Development Contractor of its obligations or warranties in relation to the Development Works and the Contractor or Development Contractor shall have no other liability to the Authority as a result of any such breach.

13.8 **Authority's Share of Development Profit**

The Parties shall and the Contractor shall procure that the Development Contractor shall give effect to **Schedule 40** (Authority's Share of Proceeds of the Development Works) for the purpose of calculating the amount to be returned to the Authority ("Authority Rebate") by way of adjustment to the consideration moving from the Contractor to the Authority under this Agreement. The Contractor shall procure that the Development Contractor shall issue to the Authority an annual statement of the cumulative Authority Rebate owing to the Authority within 30 Business Days of the end of each Year occurring prior to the actual date of completion of the Development Works Programme. The Contractor shall procure that the Development Contractor shall from the planned date of completion of the Development Works Programme pay to the Authority any total cumulative sum outstanding in respect of the cumulative Authority Rebate as agreed between the Authority and the Development Contractor within 40 Business Days of the end of each Year, and the balance of any disputed sum determined in favour of the Authority (plus interest at the Prescribed Rate

calculated from the date such payment was due to be paid) within 10 Business Days of such determination.

14. **WORKS STIPULATIONS**

During the carrying out of the Works the Contractor shall and shall procure that the Building Contractor and its sub-contractors shall comply with the Works procedures contained in **Schedule 18** (Works Procedures).

15. **REPRESENTATIVES**

15.1 **Contractor's Representative**

The Contractor shall employ a representative, the identity of whom will be subject to the prior approval of the Authority (such approval not to be unreasonably withheld or delayed), to act as the Contractor's Representative in connection with the carrying out of the Works, the provision of the Services and generally in connection with this Agreement. The name and address of the Contractor's Representative shall, at all times, be made known to the Authority by the Contractor as shall a telephone number on which the Contractor's Representative or his delegate can be contacted twenty four (24) hours a day.

15.2 **Authority of Contractor's Representative**

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

15.3 **Appointment of Successor**

The Contractor may terminate the appointment of the Contractor's Representative and shall appoint a successor in accordance with the Review Procedure.

15.4 **Authority's Representative**

The Authority shall appoint an individual to be the Authority's Representative and as such to liaise with the Contractor's Representative, and shall keep the Contractor informed of the identity from time to time of the Authority's Representative.

15.5 **Authority of Authority's Representative**

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

15.6 **Notices etc**

15.6.1 Subject to **clause 73** (Notices), any notice, information, instructions or public communication given to:

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

15.6.1.2 the Authority's Representative shall be given in writing and shall be deemed to have been given to the Authority

15.6.2 The Authority shall not be responsible for and the Contractor shall not be entitled to rely on and shall not do so or claim relief, additional time, losses, expenses, damages, costs or other liabilities should the Contractor act on or fail to act on any notice, communication or other purported instruction given by a person alleging to act for and on behalf of the Authority unless such person was the Authority's Representative.

16. **SITE MEETINGS**

The Contractor shall procure that representatives of the Authority are afforded an opportunity to attend site meetings relating to the Works and (whether or not such representatives have attended) that a copy of the minutes of site meetings is promptly supplied to the Authority.

17. **FURTHER DESIGN**

17.1 **Obligation to Finalise Design**

The Contractor shall develop and finalise the design and specification of the Service Works in accordance with the Design and Construction Plan and the Authority may review the Reviewable Design Data in accordance with the Review Procedure and the provisions of this clause.

17.2 Submission of Reviewable Design Data

The Contractor shall submit the Reviewable Design Data and the design of any variations developed in accordance with **clause 18** (Changes to the Works) to the Authority's Representative for review under the Review Procedure.

17.3 No Construction prior to Review

The Contractor shall not commence or permit the commencement of the construction of the part or parts of the Service Works to which any Reviewable Design Data relate until it has submitted the relevant Reviewable Design Data for review and is entitled to proceed in accordance with the Review Procedure.

17.4 Approved RDD

With effect from the date on which any item of Reviewable Design Data is or becomes an Approved RDD Item in accordance with the Review Procedure, the Contractor may proceed with the construction of the relevant part or parts of the Service Works (subject to the need to submit any associated Reviewable Design Data to review) in accordance with that Approved RDD Item.

17.5 Review of Design Data

The Contractor shall allow the Authority's Representative at any time a reasonable opportunity to view any items of Design Data, which shall be made available to the Authority's Representative as soon as reasonably practicable following receipt of any written request from the Authority's Representative.

17.6 Design Database

The Contractor shall procure that the Building Contractor establishes and maintains a computerised design database which the Contractor's Representative and the Authority's Representative may access remotely by computer to view drawings comprised within the Design Data (including Reviewable Design Data) and electronically store and print copies of such Design Data. If the Authority's Representative is unable to access that design database, the Contractor shall procure that the database is made available as soon as reasonably practicable for inspection by the Authority's Representative or any person authorised by the Authority's Representative.

17.7 Design and Construction Plan

The Contractor shall not amend or replace the Design and Construction Plan or Contractor Contractual Method Statements other than in accordance with the Review Procedure.

18. CHANGES TO THE WORKS

18.1 Works Change

Either Party may request a change to the Works in accordance with the Change Protocol and in the case of a Change to the Works required as a result of a Change in Law only the provisions of **clause 55** (Change in Law) shall apply.

18.2 Works Delivery Plan

The Contractor shall provide or procure the provision of one or more Works Delivery Plans for the completion of the Works. The Contractor shall not make any variations to a Works Delivery Plan (other than minor or immaterial changes) unless it is approved in accordance with the Review Procedure.

18.3 Limitation

The Contractor shall not be entitled to propose a variation to a Works Delivery Plan (other than where necessitated by a Compensation Event or Qualifying Change in Law or as a direct consequence of an Authority Change or a variation to the Works Delivery Plan which is implemented at the request of Agreement of the Authority) which would delay any Planned Services Commencement Date or would lead to an increase in the Unitary Charge.

18.4 No Implementation without Consent

The Contractor shall not implement any variation to a Works Delivery Plan until the Authority consents or is deemed to have consented to the variation in accordance with the Review Procedure or Construction and Refurbishment Programme as the case maybe, provided that in the case of a Change in Law the Authority shall be deemed to have given such consent. Once consented to, a proposed variation will form part of the Contractor's Proposals.

19. EXTENSIONS OF TIME

19.1 Notice

If at any time the Contractor becomes aware that there will be or is likely to be a delay in the Works such that a Start on Site Date, a Milestone Completion Date or Planned Services Commencement Date or following a Planned Services Commencement Date, the Long Stop Date may not be achieved, the Contractor shall as soon as reasonably practicable and in any event within twenty (20) Business Days of becoming aware of the likely delay give notice to the Authority to that effect specifying:

19.1.1 the reason for the delay or likely delay; and

- 19.1.2 an estimate of the likely effect of the delay or the Works including the Start on Site Date, the Milestone Completion Date and the relevant Planned Services Commencement Dates or following a Planned Services Commencement Date, the Long Stop Date (taking into account any measures that the Contractor proposes to adopt to mitigate the consequences of the delay in accordance with **clause 19.3** (Duty to Mitigate)).

19.2 **Supply of Information**

Following service of a notice by the Contractor pursuant to **clause 19.1** (Notice), the Contractor shall promptly supply to the Authority any further information relating to the delay which:

- 19.2.1 is received by the Contractor; or
- 19.2.2 is reasonably requested by the Authority.

19.3 **Duty to Mitigate**

The Contractor shall take all reasonable steps to mitigate the consequences of any delay which is the subject of a notice pursuant to **clause 19.1** (Notice).

19.4 **Time for Completion of the Works**

If any delay or anticipated failure to

- 19.4.1 commence the Works by the Start on Site Date; or
- 19.4.2 achieve the issue of a Certificate of Availability by the relevant Planned Service Commencement Date or if the delay occurs after a Planned Service Commencement Date, a delay in achieving the issue of the final Certificate of Availability by the Long Stop Date; or
- 19.4.3 complete the Milestone by the Milestone Completion Date,

is notified to the Authority by the Contractor as being in the Contractor's reasonable opinion attributable to:

- 19.4.4 a Compensation Event, then the provisions of **clause 19.5** (Delays due to a Compensation Event) shall apply;
- 19.4.5 a Relief Event, then the provisions of **clause 54** (Relief Events) shall apply;
- 19.4.6 a Force Majeure Event, then the provisions of **clause 42** (Termination on Force Majeure) shall apply;

- 19.4.7 an Authority Change, then the provisions of the Change Protocol shall apply; or
- 19.4.8 a Qualifying Change in Law, then the provisions of **clause 55** (Change in Law) shall apply.

19.5 **Delays due to a Compensation Event**

If at any time as a direct result of the occurrence of a Compensation Event:

- 19.5.1 the Contractor is unable to:
 - 19.5.1.1 commence the Works by the Start on Site Date; or
 - 19.5.1.2 achieve the issue of a Certificate of Availability on or before a relevant Planned Services Commencement Date or following a Planned Service Commencement Date will be delayed in achieving the issue of the final Certificate of Availability by the Long Stop Date; or
 - 19.5.1.3 is unable to achieve the Milestone by the Milestone Completion Date;
- 19.5.2 the Contractor is unable to comply with its obligations under this Agreement; and/or
- 19.5.3 the Contractor incurs costs or loses revenue,

then subject to **clause 21.9** (Asbestos), the Contractor is entitled to apply for relief from its obligations and/or to claim compensation under this Agreement.

19.6 **Procedure for Relief and Compensation**

Subject to **clause 19.8** (Late Provision of Information) below, to obtain relief, extension and/or claim compensation the Contractor must:

- 19.6.1 as soon as practicable, and in any event within fifteen (15) Business Days after it became aware that the Compensation Event has caused or is likely to cause delay, breach of an obligation under this Agreement and/or the Contractor to incur costs or lose revenue, give to the Authority a notice of its claim for an extension of time for Service Commencement, payment of compensation and/or relief from its obligations under this Agreement;
- 19.6.2 within ten (10) Business Days of receipt by the Authority of the notice referred to in **Clause 19.6.1** (Procedure for Relief and Compensation), give full details of the Compensation Event and the extension of time

and/or any Estimated Change in Project Costs and/or loss of revenue claimed; and

19.6.3 demonstrate to the reasonable satisfaction of the Authority that:

19.6.3.1 the Compensation Event was the direct cause of the Estimated Change in Project Costs and/or loss of revenue and/or any delay in commencing the Works by the Start on Site Date or achieving the issue of a Certificate of Availability by a relevant Planned Services Commencement Date or, following a Planned Services Commencement Date, delay in achieving the issue of the final Certificate of Availability before the Long Stop Date and/or the Milestone by the Milestone Completion Date and/or breach of the Contractor's obligations under this Agreement; and

19.6.3.2 the Estimated Change in Project Costs and/or loss of revenue, time lost and/or relief from the obligations under this Agreement claimed could not reasonably be expected to be mitigated or recovered by the Contractor acting in accordance with Good Industry Practice.

19.7 Giving of Relief and Compensation

In the event that the Contractor has complied with its obligations under **clause 19.6** (Procedure for Relief and Compensation), then:

19.7.1 in the case of a delay, the Start on Site Date or the relevant Planned Services Commencement Date or, following a Planned Service Commencement Date, the Long Stop Date and/or the Milestone Completion Date shall be postponed by such time as shall be reasonable for such a Compensation Event, taking into account the likely effect of delay;

19.7.2 in the case of an additional cost being incurred or revenue being lost by the Contractor:

19.7.2.1 in relation to a Dwelling, Communal Area or Exterior Common Area, on or before the Planned Services Commencement Date for that Dwelling, Communal Area or Exterior Common Area; or

19.7.2.2 as a result of Capital Expenditure being incurred by the Contractor at any time,

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

19.7.3 in the case of a payment of compensation for the Estimated Change in Project Costs and/or without double counting, loss of revenue that does not result in Capital Expenditure being incurred by the Contractor referred to in **clause 19.7** (Giving of Relief and Compensation) but which reflects a change in the costs being incurred by the Contractor after a Planned Services Commencement Date, the Authority shall compensate the Contractor in accordance with **clause 19.10** (Method of Calculating Compensation) by an adjustment to the Unitary Charge in accordance with **clause 69** (Financial Adjustments); and/or

19.7.4 the Authority shall give the Contractor such relief from its obligations under this Agreement as is reasonable for such a Compensation Event.

19.8 **Late Provision of Information**

In the event that information is provided after the dates referred to in **clause 19.6** (Procedure for Relief and Compensation), then the Contractor shall not be entitled to any extension of time, compensation or relief from its obligations under this Agreement in respect of the period for which the information is delayed.

19.9 **Failure to Agree**

If the parties cannot agree the extent of any compensation, delay incurred, relief from the Contractor's obligations under this Agreement, or the Authority disagrees that a Compensation Event has occurred (or as to its consequences), or that the Contractor is entitled to relief under **clauses 19.5** (Delays due to a Compensation Event) to **19.7** (Giving of Relief and Compensation), the parties shall resolve the matter in accordance with the Dispute Resolution Procedure.

19.10 **Method of Calculating Compensation**

Any payment of compensation referred to in **clause 19.7.3** (Giving of Relief and Compensation) shall be calculated and made in accordance with **clause 69** (Financial Adjustments).

20. **CDM REGULATIONS**

20.1 **Contractor to act as Client**

In respect of the CDM Regulations:

- 20.1.1 in this **clause 20.1** (Contractor to act as Client), Client, Executive, Health and Safety File and CDM Co-ordinator have the same meanings as in the CDM Regulations;
- 20.1.2 the Contractor hereby elects that for the purposes of the CDM Regulations the Contractor shall be treated as the only Client in respect of the Works and Services pursuant to Regulation 8 of the CDM Regulations and the Authority hereby agrees to such election;
- 20.1.3 the Contractor shall ensure that the Building Contractor is aware of such election and warrants to the Authority that it is competent to perform the duties imposed on a Client by the CDM Regulations and shall not at any time terminate, withdraw or derogate in any manner from its declaration or its acceptance of its responsibilities as Client; and
- 20.1.4 the Contractor shall within twenty (20) Business Days of the issue of the Certificate of Availability deliver to the Authority the Health and Safety File.

20.2 **Compliance with CDM Regulations**

The Contractor shall observe, perform and discharge and/or shall procure the observance, performance and discharge of:

- 20.2.1 all the obligations, requirements and duties of the Client arising under the CDM Regulations in connection with the Project; and
- 20.2.2 any obligations incumbent on the Client under any Code of Practice for the time being approved by the Health and Safety Commission and issued in connection with the CDM Regulations.

21. **THE PROJECT SITE**

21.1 **Access**

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

21.2 **Site Matters - New Build**

- 21.2.1 To the extent that:

21.2.1.1 unforeseen ground conditions not revealed by the Stock Condition Survey ;and/or

21.2.1.2 Contamination

exist in any parts of the Project Site upon which New Build Dwellings or Communal Areas are to be constructed which are under existing Dwellings and/or Blocks or any existing hardstanding as at Financial Close the Contractor shall not be responsible for them (unless and to the extent that a reasonably skilled building contractor could have inferred from any survey dealing with the ground conditions that such ground conditions and/or Contamination existed in those parts of the Project Site). If the Contractor is not responsible for such ground conditions and/or Contamination under this **clause 21.2.1** then the Authority shall be so responsible.

21.2.2 Where pursuant to **clause 21.2.1** the Authority is responsible for any of the matters referred to then the following provisions shall apply:

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

21.2.2.2 no Unavailability Deductions or Performance Deductions may be made in respect of the Dwelling or Block pursuant to **Schedule 4** (Payment Mechanism) and any work or change to the Services required or instructed to be done in consequence of it, shall be deemed to be an Authority Change;

21.2.3 Where any such matter is Contamination the Authority shall further hold the Contractor harmless from cleaning up and otherwise dealing with such Contamination and shall indemnify the Contractor in respect of all Direct Losses incurred by the Contractor resulting from such Contamination.

21.2.4 In respect of the parts of the Project Site upon which New Build Dwellings are to be constructed which are not under existing Dwellings and/or Blocks as at Financial Close, those Site Conditions for the New Build Dwellings shall be the sole responsibility of the Contractor and accordingly (but without prejudice to any other obligation of the Contractor under this Agreement) the Contractor shall be deemed to have:

- 21.2.4.1 carried out a ground physical and geophysical investigation and to have inspected and examined the Project Site for the New Build Dwellings and their surroundings and (where applicable) any existing structures or works on, over or under the Project Site for the New Build Dwellings;
 - 21.2.4.2 satisfied itself as to the nature of the Site Conditions, the ground and the subsoil, the form and nature of the Project Site for the New Build Dwellings the loadbearing and other relevant properties of the Project Site for the New Build Dwellings the risk of injury or damage to property affecting the Project Site for the New Build Dwellings the nature of the materials (whether natural or otherwise) to be excavated and the nature of the design, works and materials necessary for the execution of the Works;
 - 21.2.4.3 satisfied itself as to the absence of Contamination;
 - 21.2.4.4 satisfied itself as to the adequacy of the means and rights of access to and through the Project Site for the New Build Dwellings and any accommodation it may require for the purposes of fulfilling its obligations under this Agreement (such as additional land or buildings outside the Project Site);
 - 21.2.4.5 satisfied itself as to the possibility of interference by persons of any description whatsoever (other than the Authority) with access to or use of, or rights in respect of, the Project Site with particular regard to the owners of any land adjacent to the Project Site; and
 - 21.2.4.6 satisfied itself as to the precautions, times and methods of working necessary to prevent any nuisance or interference, whether public or private, being caused to third parties.
- 21.2.5 The Contractor accepts full responsibility for all matters referred to in **clause 21.2.4** (Site Matters) and the Contractor shall:
- 21.2.5.1 not be entitled to make any claim against the Authority of any nature whatsoever, without prejudice to **clause 54** (Relief Events), on any grounds including the fact that incorrect or insufficient information on any matter relating to the Project Site for the New Build Dwellings was given

to it by any person, whether or not an Authority Related Party; and

- 21.2.5.2 be responsible for, and hold the Authority harmless from, cleaning up and otherwise dealing with any Contamination at the Project Site for the New Build Dwellings so that it shall at all times comply with its obligations under this Agreement including complying with, at its own cost, any applicable Legislation and any Consents, orders, notices or directions of any regulatory body (whether made against the Authority or the Contractor).

21.3 Site Matters - Refurbishment

- 21.3.1 To the extent that unforeseen ground conditions not revealed by the Stock Condition Survey and/or Contamination exist in any parts of the Project Site which are to be refurbished which are under existing Dwellings and/or Blocks as at Financial Close the Contractor shall not be responsible for them. If the Contractor is not responsible for such ground conditions and/or Contamination under this **clause 21.3.1** then the Authority shall be so responsible.
- 21.3.2 Where pursuant to **clause 21.3.1** the Authority is responsible for any of the matters referred to then the following provisions shall apply:
 - 21.3.2.1 the matter shall be deemed to be a Compensation Event for the purposes of this Agreement and any work which is required or instructed to be done in consequence of it shall be deemed to be an Authority Change;
 - 21.3.2.2 no Unavailability Deductions or Performance Deductions may be made in respect of the Dwelling or Block pursuant to **Schedule 4** (Payment Mechanism) and any work or change to the Services required or instructed to be done in consequence of it, shall be deemed to be an Authority Change;
 - 21.3.2.3 where any such matter is Contamination the Authority shall further hold the Contractor harmless from cleaning up and otherwise dealing with such Contamination and shall indemnify the Contractor in respect of all Direct Losses incurred by the Contractor resulting from such Contamination.
- 21.3.3 The Contractor shall be entirely responsible for any unforeseen ground conditions revealed by the Stock Condition Survey and any

Contamination which it shall have brought on to any land within the Project Site.

21.3.4 The Contractor shall indemnify the Authority in respect of all Direct Losses and hold the Authority harmless from cleaning up and otherwise dealing with any Contamination within the Project Site where **clause 21.3.3** applies

21.3.5 The Contractor shall deemed to have:

21.3.5.1 satisfied itself as to the adequacy of the means and rights of access to and through the Project Site and any accommodation it may require for the purposes of fulfilling its obligations under this Agreement (such as additional land or buildings outside the Project Site);

21.3.5.2 satisfied itself as to the possibility of interference by persons of any description whatsoever (other than the Authority or Authority Related Party), with access to or use of, or rights in respect of, the Project Site with particular regard to the owners of any land adjacent to the Project Site; and

21.3.5.3 satisfied itself as to the precautions, times and methods of working necessary to prevent any nuisance or interference, whether public or private, being caused to any third parties.

21.4 Consents

21.4.1 The Contractor shall:

21.4.1.1 at its own expense obtain and maintain all Consents which may be required for the performance of the Project;

21.4.1.2 at its own expense use all reasonable endeavours to assist the Authority to obtain all Consents that, as a matter of law, the Contractor is not eligible to obtain;

21.4.1.3 supply free of charge to the Authority's Representative a copy of any application for a Consent (with a copy of all accompanying drawings and other documents) and a copy of any Consent obtained;

21.4.1.4 comply with the conditions attached to any Consents and procure that no such Consent is breached by it or any person under its control and use all reasonable

endeavours to procure that no Consent is revoked and that all Consents continue in full force and effect for such time as is necessary for the Contractor to carry out the Works and/or the Services;

21.4.1.5 the Contractor shall not (and shall use all reasonable endeavours to procure that any other person over whom it has control shall not) without the prior consent of the Authority under this Agreement (which consent shall not be unreasonably withheld or delayed) apply for or agree to any change, relaxation or waiver of any Consent (whether obtained before or after the date of this Agreement) or of any condition attached to it but, subject to the compliance by the Contractor with its obligations under this paragraph, references in this Agreement to Consents shall be construed as referring to the Consents as from time to time varied, relaxed or waived.

21.4.2 The Authority shall provide all reasonable assistance without being required to incur unreasonable expense to the Contractor in relation to:

21.4.2.1 obtaining any Consents that are the responsibility of the Contractor to obtain (including securing any temporary stopping up orders that may be required);

21.4.2.2 negotiating and agreeing any Section 38 Agreement that may be required; and

21.4.2.3 securing the carrying out of any service diversion works that may be required in relation to the Project.

21.5 **No Warranty**

Subject to **clause 21.7** (Defects) and **21.8** (Defects), the Contractor shall take the Project Site and any part thereof in their state and condition in all respects as at the date of this Agreement. Nothing in this Agreement or otherwise shall constitute or imply a warranty by or on the part of the Authority as to the fitness and suitability of the Project Site or any part thereof for the Works or for any other purpose.

21.6 **Third Party Rights**

Subject to **clause 8.5** (Adverse Rights), the Contractor shall observe and comply with any third party rights (including public rights) which may exist from time to time in respect of land comprising and adjoining the Project Site and the

Contractor shall ensure that the Works are carried out in such a way as not to interfere with access to and use and occupation of public or private roads or footpaths by any person who is entitled to any such access, use or occupation.

21.7 Defects

The Contractor accepts entire responsibility (including any financial or other consequences which result whether directly or indirectly) for the ascertainment of and dealing with any Defect in any of the New Build Dwellings, or any part of them, or anything installed in the Dwellings, Blocks or Communal Areas attributable to:

- 21.7.1 defective design;
- 21.7.2 defective workmanship or defective materials, plant or machinery used in such construction having regard to Good Industry Practice and to appropriate British standards and codes of practice current at the date of construction of the Dwelling, Block or Communal Area;
- 21.7.3 defective installation of anything in or on the Dwellings, Blocks or Communal Areas;
- 21.7.4 defective preparation of the site on which the Dwelling, Block or Communal Area is constructed; or
- 21.7.5 defects brought about by adverse ground conditions or by reason of subsidence, water table change or any other change to ground conditions.

21.8 Defects

- 21.8.1 The Authority accepts, in relation to the Dwellings, Blocks and Communal Areas that are to be refurbished, responsibility (including any financial and other consequences which result either directly or indirectly) for any Defect which is not revealed by the data contained in the Stock Condition Survey as a reasonable and prudent Contractor would interpret such data in the context of the Project other than any such Defect which should have been revealed by the data in the Stock Condition Survey had the Stock Condition Surveyor undertaken the Stock Condition Survey in accordance with the Stock Condition Surveyor's Appointment
- 21.8.2 Where pursuant to **clause 21.8.1** the Authority is responsible for any of the matters referred to then the following provisions shall apply:
 - 21.8.2.1 the matter shall be deemed to be a Compensation Event for the purposes of this Agreement and any work which is

required or instructed to be done in consequence of it shall be deemed to be an Authority Change; and

21.8.2.2 no Unavailability Deductions or Performance Deductions may be made in respect of the relevant Dwelling, Block or Communal Area pursuant to **Schedule 4** (Payment Mechanism) and any work or change to the Services required or instructed to be done in consequence of it, shall be deemed to be an Authority Change.

21.8.3 The Contractor accepts, in relation to the Dwellings, Blocks and Communal Area entire responsibility (including any financial and other consequences which result either directly or indirectly) for any Defect not covered by **clause 21.8.1**.

21.8.4 Where a Dwelling shall contain Defects, the Authority may on notice in writing to the Contractor withdraw that Dwelling from the Project and a Voluntary CNDT shall have been deemed to have occurred and **clause 31.6** (Changes to Numbers of Dwellings by Tenure) shall apply as if the Dwelling had been subject to a CNDT.

21.9 **Asbestos**

21.9.1 For the purposes of this Agreement, where asbestos is revealed in relation to any sample Dwelling, Block or Communal Area which was the subject of the Asbestos Survey, it shall be deemed to be present in all Dwellings, Blocks or Communal Area of the same type and to the same extent as that sample Dwelling, Block or Communal Area.

21.9.2 The Authority accepts, in relation to the Dwellings, Blocks and Communal Areas, responsibility (including any financial and other consequences which result either directly or indirectly) for any asbestos:

21.9.2.1 which is not revealed by; or

21.9.2.2 not deemed in accordance with **clause 21.9.1** to be revealed by

the data contained in the Asbestos Survey as a reasonable and prudent Contractor would interpret such data in the context of the Project.

21.9.3 Where pursuant to **clause 21.9.1** the Authority is responsible for any of the matters referred to then the following provisions shall apply:

21.9.3.1 the matter shall be deemed to be a Compensation Event for the purposes of this Agreement, provided that the

losses for which the Contractor shall be compensated for shall be limited to those costs incurred by a specialist 21.9.1 asbestos removal contractor and shall not include any internal management costs, preliminaries and/or programming costs incurred by the Contractor or its Sub-Contractors; and

21.9.3.2 no Unavailability Deductions or Performance Deductions may be made in respect of the relevant Dwelling, Block or Communal Area pursuant to **Schedule 4** (Payment Mechanism) and any work or change to the Services required or instructed to be done in consequence of it, shall be deemed to be an Authority Change; and

21.9.4 The Contractor accepts, in relation to the Dwellings, Blocks and the Communal Areas entire responsibility (including any financial and other consequences which result either directly or indirectly) for any asbestos not covered by **clause 21.9.2**.

21.9.5 Where a Dwelling shall contain asbestos, the Authority may on notice in writing to the Contractor withdraw that Dwelling from the Project and a Voluntary CNDT shall have been deemed to have occurred and **clause 31.6** (Changes to Numbers of Dwellings by Tenure) shall apply as if the Dwelling had been subject to a CNDT.

21.10 **Fossils and Antiquities**

21.10.1 As between the parties, all fossils, antiquities and other objects having artistic, historic or monetary value and human remains which may be found on or at the Project Site are or shall become, upon discovery, the absolute property of the Authority.

21.10.2 Upon the discovery of such item during the course of the Works, the Contractor shall:

21.10.2.1 immediately inform the Authority's Representative of such discovery;

21.10.2.2 take all steps not to disturb the object and, if necessary, cease any Works in so far as the carrying out of such Works would endanger the object or prevent or impede its excavation; and

21.10.2.3 take all necessary steps to preserve the object in the same position and condition in which it was found.

- 21.10.3 The Authority shall procure that the Authority's Representative promptly, and in any event within five (5) Business Days, issues an instruction to the Contractor specifying what action the Authority's Representative requires to be taken in relation to such discovery provided that if no instruction is forthcoming within such five (5) Business Days the Contractor may continue to carry out the Works.
- 21.10.4 The Contractor shall promptly and diligently comply with any instruction issued by the Authority's Representative referred to in **clause 21.10.3** (Fossils and Antiquities) (except and to the extent that such instruction constitutes an Authority Change pursuant to **clause 21.10.6** (Fossils and Antiquities), in which case the provisions of the Change Protocol shall apply) at its own cost.
- 21.10.5 If directed by the Authority's Representative, the Contractor shall allow representatives of the Authority to enter the Project Site for the purposes of removal or disposal of such discovery, provided that such entry shall be subject to the Authority complying with all relevant safety procedures, which shall include any relevant health and safety plans for the construction or refurbishment of the Dwellings, Blocks, Communal Areas and/or Exterior Common Areas from time to time and any reasonable directions with regard to site safety that may be issued by or on behalf of the Contractor's Representative from time to time.
- 21.10.6 If any instruction referred to in this **clause 21.10** (Fossils and Antiquities) includes a requirement for the Contractor to suspend the carrying out of the Works and/or to carry out works (being any work of alteration, addition, demolition or extension or variation in the Dwellings, the Blocks, Communal Areas and/or Exterior Common Areas) which are not works which would be necessary for the purpose of compliance with Legislation or any Consents, such works shall be deemed to be an Authority Change and the provisions of the Change Protocol shall apply.
- 21.10.7 The Authority shall act promptly and diligently in dealing with its obligations in this **clause 21** (The Project Site) in relation to any find so as to mitigate any effect on the Contractor, the Works and/or the Services

22. **MONITORING AND INSPECTION**

22.1 **Right of Inspection**

The Contractor shall procure that the Authority or any representative or adviser of the Authority shall have, at all reasonable times and upon giving reasonable notice, the right (but not so as to delay or impede the progress of the Works) to

enter any of the Project Site in order to inspect the state and progress of the Works (and to ascertain whether they are being properly executed), the operation and maintenance of the Project and to monitor compliance by the Contractor with its obligations under this Agreement.

22.1.1 **Right to Open Up**

- 22.1.1.1 Subject to **clause 22.1.1.2**, the Authority's Representative shall have the right at any time prior to the Planned Service Commencement Date to request the Contractor to open up and inspect any part or parts of the Works at that Dwelling or the Community Centre where the Authority's Representative reasonably believes that such part or parts of the Works is or are defective and the Contractor shall comply with such request.
- 22.1.1.2 Prior to exercising his right pursuant to **clause 22.1.1.1** above, the Authority's Representative shall notify the Contractor of his intention to exercise such right, setting out detailed reasons.
- 22.1.1.3 If, following the exercise by the Authority's Representative of his right pursuant to **clause 22.1.1.1**, the inspection shows that the relevant part or parts of the Works are not defective, any delay caused to the Works by the exercise of such rights shall, subject to (and in accordance with) the provisions of **clause 19** (Extensions of Time), be treated as a Compensation Event.
- 22.1.1.4 If, following the exercise by the Authority's Representative of his right pursuant to **clause 22.1.1.1**, the inspection shows that the relevant part or parts of the Works is or are defective, the Contractor shall rectify and make good such defect(s) and any consequence of such rectification and/or making good defect(s) shall be carried out by the Contractor at no cost to the Authority and the Contractor shall not be entitled to any extension of time in relation to such rectification and making good of the Works.
- 22.1.1.5 If, following the exercise by the Authority's Representative of his right pursuant to **clause 22.1.1.1**, the Authority's Representative is of the opinion that the inspection shows that the relevant part or parts of the Works is or are defective and the Contractor does not agree with such

opinion, the matter shall be determined in accordance with **clause 64** (Dispute Resolution Procedure).

22.1.1.6 Without prejudice to the rights of the Authority's Representative pursuant to this **clause 22.1.1** the parties acknowledge that the exercise of such rights shall not in any way affect the obligations of the Contractor under this Agreement save as expressly set out in this **clause 22**.

22.2 **Inspection of Facilities**

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

22.3 **Contractor's Reasonable Assistance**

The Contractor shall procure that satisfactory facilities are made available to the Authority and any representative of the Authority and that reasonable assistance is given for the purposes of **clauses 22.1** (Right of Inspection) and **22.2** (Inspection of Facilities), subject to the Contractor's and the sub-contractors' construction or operational requirements not being adversely affected and to the Authority reimbursing the Contractor for any reasonable costs or expenses incurred as a result of the action taken by the Authority under **clauses 22.1** (Right of Inspection) and **22.2** (Inspection of Facilities).

22.4 **Health and Safety Requirements**

The Authority and its representative shall at all times comply with any health and safety requirements when exercising its rights under this **clause 22** (Monitoring and Inspection).

22.5 **Supply of Information**

The Contractor shall supply to the Authority and any representative or adviser of the Authority visiting any part of the Project Site pursuant to **clauses 22.1** (Right of Inspection) and **22.2** (Inspection of Facilities) such information in respect of the Works as may reasonably be required.

22.6 **Site Meetings, Monitoring and Inspection**

22.6.1 The Contractor shall procure that:

22.6.1.1 subject to complying with all relevant safety procedures, which shall include any relevant health and safety plans for the construction of the Works, the Contractor's site

rules from time to time and any reasonable directions with regard to site safety that may be issued by or on behalf of the Contractor's Representative from time to time, the Authority's Representative and such other authorised personnel as notified by the Authority to the Contractor shall on reasonable prior notice appropriate to the circumstances have unrestricted access to all parts of the Project Site at all reasonable times during normal working hours necessary to:

- (a) view the state and progress of Works at the Project Site and to ascertain whether they are being executed in accordance with this Agreement; and
- (b) subject to obtaining the consent of the relevant manufacturer or supplier (which the Contractor agrees to use all reasonable endeavours to obtain), visit any site or workshop where materials, plant or equipment are being manufactured, prepared or stored for use in the Works for the purposes of general inspection and of attending any test or investigation being carried out in respect of the Works
- (c) the Authority's Representative shall have such rights of access to the Project Site in an emergency as it (acting reasonably) considers suitable in the circumstances; and
- (d) monthly progress meetings and site meetings are held and that the Authority's Representative shall have the right to attend such monthly progress meetings and site meetings and to attend as observer such other meetings as the Authority's Representative may reasonably request.

22.6.2 If, following any viewing, visit or inspection made by the Authority, it is discovered that there are defects in the Works or that the Contractor has materially failed to comply with the Output Specification or the Contractor's Proposals, the Authority may (without prejudice to any other right or remedy available to it) by notice to the Contractor increase the level of its monitoring of the Contractor until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Authority that it is capable of performing and will perform all its obligations under this Agreement.

22.6.3 **Supply of Information**

The Contractor shall supply to the Authority a copy of the minutes of all site and monthly progress meetings whether or not the Authority's Representative was in attendance together with information relating to the progress of the Works.

22.7 Damages

If the Authority or an Authority Related Party causes material damage to the Project Site in exercising any right under this **Clause 22** (Monitoring and Inspection), then the Authority shall be liable to the Contractor for the reasonable costs directly caused by such damage.

23. CERTIFICATION OF AVAILABILITY

23.1 Independent Certifier

23.1.1 The Authority and the Contractor shall on or before the date of this Agreement, appoint the Independent Certifier for the purposes of this Agreement upon the terms of the Independent Certifier's Deed of Appointment.

23.1.2 The Authority and the Contractor shall procure that the Independent Certifier carries out the IC Services upon the terms of the Independent Certifier's Deed of Appointment.

23.1.3 The Authority and the Contractor shall comply with the obligations placed upon it under the Independent Certifier's Deed of Appointment.

23.1.4 Neither the Authority nor the Contractor shall without the other's prior written approval (not to be unreasonably withheld or delayed):

23.1.4.1 agree to terminate, give notice to terminate or otherwise take action to terminate, repudiate or discharge or secure the termination of the Independent Certifier's Deed of Appointment or treat the same as having been terminated, repudiated or otherwise discharged;

23.1.4.2 release, waive, settle, compromise or otherwise prejudice or vary any rights or claims which the others may from time to time have against the Independent Certifier; or

23.1.4.3 vary or agree or purport to vary the terms of the Independent Certifier's Deed of Appointment or the service performed or to be performed by the Independent Certifier.

- 23.1.5 The Authority and the Contractor agree to co-operate with each other generally in relation to all matters within the scope of or in connection with the Independent Certifier's Deed of Appointment. All instructions and representations issued or made by either of the Authority or the Contractor to the Independent Certifier shall be simultaneously copied by that party to the other and both parties shall be entitled to attend all inspections undertaken by or meetings involving the Independent Certifier.
- 23.1.6 In the event of the Independent Certifier's appointment being terminated otherwise than following full performance, the Authority or the Contractor shall liaise and co-operate with each other in order to appoint a replacement consultant to act as the Independent Certifier as soon as reasonably practicable. The identity of any such replacement Consultant shall be as agreed by the Authority or the Contractor and the terms of his appointment shall, unless otherwise agreed, be as set out in the Independent Certifier's Deed of Appointment.
- 23.1.7 In the event that the Authority and the Contractor fail to agree the identity and/or terms of a replacement Independent Certifier in accordance with **clause 23.1.6** within forty (40) Days of the original Independent Certifier's appointment being terminated, then either Authority and the Contractor may refer the matter for determination under the Dispute Resolution Procedure.

23.2 Issue of Certificate of Availability

- 23.2.1 The Contractor shall give the Authority and the Independent Certifier not less than five (5) Business Days' notice of the date it proposes that a Dwelling, Communal Area and/or Exterior Common Area is inspected with a view to achieving the relevant Availability Standards in respect of the relevant Dwelling, Communal Area and/or Exterior Common Area and on such date the Independent Certifier shall inspect the relevant Dwelling, Communal Area and/or Exterior Common Area and representatives from the Authority and the Contractor and the Senior Lender shall be entitled to make a joint inspection with the Independent Certifier.
- 23.2.2 The Authority and the Contractor shall procure that the Independent Certifier certifies Dwellings, Communal Areas and/or Exterior Common Areas which have achieved the relevant Availability Standards in a Month by the end of that Month.
- 23.2.3 The Authority and the Contractor shall procure that where the Independent Certifier considers that the relevant Availability Standards

have been satisfied, and that all outstanding Works detailed in the Snagging List can be carried out within (20) Business Days of the issue of the Certificate of Availability the Independent Certifier will issue a Certificate of Availability with copies to the Authority and the Contractor.

23.3 Effect of Certificate of Availability

- 23.3.1 The issue of a Certificate of Availability by the Independent Certifier shall indicate only that the relevant Works satisfy the criteria for the issue of a Certificate of Availability as set out in the Independent Certifier's Deed of Appointment.
- 23.3.2 The issue of a Certificate of Availability shall in no way lessen or affect the obligations of the Contractor under this Agreement to provide the Services and shall not relieve the Contractor from Deductions in accordance with **Schedule 4** (Payment Mechanism).
- 23.3.3 As between the Authority and the Contractor the Certificate of Availability shall be conclusive as to whether the relevant Works have been completed in accordance with **clause 23.2** and in respect of Dwellings, Communal Area or Exterior Common Areas that such Dwellings, Communal Areas and/or Exterior Common Areas have reached the relevant Availability Standard, at the date of such Certificate of Availability.
- 23.3.4 A Certificate of Availability cannot be revoked for any reason after it has been issued.
- 23.3.5 At the end of each Contract Month the Contractor shall provide to the Authority on the report and invoice relating to such Contract Month the dates of issue of the Certificates of Availability in respect of Dwellings and/or Communal Areas which have achieved the Availability Standards (Full) during that Contract Month.
- 23.3.6 Where a Certificate of Availability has been issued in respect of a Dwelling and/or Communal Area in a Contract Month the Unitary Charge for the Contract Month next after the current Contract Month for the Dwellings and/or Communal Areas in the report referred to in **clause 23.3.5** shall be increased to reflect as applicable:
 - 23.3.6.1 the Full Rented Delivery Charge; or
 - 23.3.6.2 the Annual Park Delivery Charge if that Communal Area is a Park; or

23.3.6.3 The Full Annual Community Centre Delivery Charge if that Communal Area is a Community Centre

provided always that the maximum monthly Unitary Charge shall not exceed that amount set out in row 94 of the tab of the Base Case marked "Revenues Mth", subject to any difference between the indexation applicable in that period and that assumed in the Base Case.

23.4 **Snagging Items**

In the event that a Certificate of Availability for a Dwelling, Communal Area and/or Exterior Common Area is expected to be subject to any items appearing on a Snagging List:

23.4.1 the Independent Certifier shall within five (5) Business Days of the issue of the relevant Certificate of Availability issue to the Contractor and the Authority a list of the relevant snagging items for that Dwelling Communal Area and/or Exterior Common Area (the "**Snagging List**"). Within five (5) Business Days of receipt from the Independent Certifier of the Snagging List the Contractor shall provide to the Authority and the Independent Certifier a reasonable programme for making good each snagging item set out in the Snagging List provided that such programme shall require that each item appearing on the Snagging List shall be made good within one twenty (20) Business Days of the date of the agreement or determination of that programme or within such time as is reasonably practicable. The parties shall seek to agree such programme and in default of agreement shall refer the matter for determination under the Dispute Resolution Procedure. The programme agreed or determined in accordance with this **clause 23.4** (Snagging Items) shall be known as the "**Snagging Programme**"; and

23.4.2 the Contractor shall procure that each item appearing on a Snagging List is made good in accordance with the Snagging Programme to the satisfaction of the Independent Certifier. If any item appearing on a Snagging List has not been rectified by the date set out in the Snagging Programme then the Authority shall be entitled to effect such repairs as may be necessary and recover the costs of doing so from the Contractor.

23.5 **Site Clearance**

The Contractor shall, as soon as is reasonably practicable following issue of a Certificate of Availability for a Dwelling, Block, Communal Area and/or an

Exterior Common Area clear from the relevant Project Site, to the reasonable satisfaction of the Authority all temporary structures, rubbish and all building and surplus material and equipment and in default the Authority shall be entitled to employ an alternative contractor to clear them and shall be entitled to be reimbursed by the Contractor for any costs reasonably incurred in clearing or procuring the clearing of them provided that the Authority shall not be entitled to exercise such right for a period of five (5) Business Days following the date of the Certificate of Availability for that Dwelling, Block, Communal Area and/or Exterior Common Area.

23.6 Deemed Refurbishment Completion

Where by the Planned Refurbishment Completion Date (prior to the application of any relief pursuant to **clause 54** (Relief Events) as a result of a Refurbishment Works or Services Denial Event) a Certificate of Availability Rented (Full Standard) shall not have been issued in relation to a Dwelling as a consequence of a Refurbishment Works or Services Denial Event a Certificate of Availability Rented (Full Standard) shall be issued notwithstanding that the relevant Availability Standard shall not have been achieved.

23.7 Subsequent Works to Dwellings

The Contractor shall carry out the Works to achieve the Availability Standards (Full) in relation to a Dwelling referred to in **clause 23.6** (Deemed Refurbishment Completion) in accordance with the Access Protocol.

23.8 Withdrawal of Dwelling

The Authority may elect to withdraw a Rented Dwelling from the Project if, by the Planned Refurbishment Completion Date, the Contractor has been unable to satisfy the Availability Standards Rented (Full) in relation to that Rented Dwelling as a consequence of a Refurbishment Works or Services Denial Event and **clause 31.6** (Change to Numbers of Dwellings by Tenure) shall apply to that Dwelling as if that Dwelling had been the subject of a CNDT.

24. DELAYS INDEMNITY

24.1 Indemnity

If the Works to be undertaken to any Dwelling, Block, Communal Area and/or an Exterior Common Area to achieve the relevant Availability Standards are not, after such Works to such Dwelling, Block, Communal Area and/or Exterior Common Area have commenced, completed within a reasonable period, having regard to the nature of the Works required to make the Dwelling, Block, Communal Area and/or Exterior Common Area Available, the Contractor's Proposals and to any extension of time permitted under the terms of this

Agreement including in relation to the occurrence of any Force Majeure Event, Relief Event, Compensation Event, Authority Change, Low Value Change or Change in Law or Contractor Change or the issue of a Certificate of Availability has not occurred by the relevant Planned Services Commencement Date, the Contractor shall:

- 24.1.1 indemnify the Authority against Losses incurred by the Authority (in respect of the Unavailable Dwellings, Blocks, Communal Areas and/or Exterior Common Areas (except those Dwellings and Blocks which are Unavailable as a result of a Refurbishment Works or Services Denial Event)) as a consequence of the failure by the Contractor to procure that the Dwellings, Blocks, Communal Areas and/or Exterior Common Areas have met the Availability Standards Rented (Full), the Availability Standards Leasehold (Full), the Availability Standards Park (Full) or the Availability Standards Community Centre (Full) by the expiry of the reasonable period or the Planned Services Commencement Date as applicable;
- 24.1.2 without prejudice to the generality of **clause 24.1.1** save where the satisfaction of the Output Specification does not require the provision of alternative accommodation for the duration of the Works (unless such is required due to a breach of the Agreement by the Contractor), at the option of the Authority either:
 - 24.1.2.1 reimburse to the Authority the proper costs reasonably incurred by the Authority in providing Suitable Alternative Accommodation and associated arrangements to Tenants who are occupying such Dwellings; or
 - 24.1.2.2 provide at the Contractor's expense to Tenants who would otherwise be occupying such Dwellings in a location within reasonable travelling distance of such Dwellings having regard to the particular circumstances of the Tenants concerned and provide such additional or alternative ancillary services as may be required to enable the Suitable Alternative Accommodation to be used by such Tenants.

PART 4 – THE SERVICES

25. SERVICES OBLIGATIONS

25.1 Commencement and duration of the Services

25.1.1 In accordance with the Section 27 Consent dated 25 April 2012 the Authority agrees that the Contractor shall exercise such of the Authority's Housing Management Functions as set out in **Schedule 16** (Housing Management Functions) in relation to the Dwellings and such other housing management functions as shall be necessary to enable the Contractor properly to perform its obligations under this Agreements (the "**Housing Management Functions**") (and this Agreement shall be a "**management agreement**" for the purpose of section 27) and for these purposes appoints the Contractor as its manager save that (for the avoidance of doubt) such appointment shall not extend to:

25.1.1.1 rent or service charge setting policies;

25.1.1.2 allocation of Tenants to Dwellings;

25.1.1.3 amendment of the Authority's Policies or the Authority's Protocols; and

25.1.1.4 variations to the Tenancy Agreements or the Leaseholder Leases;

all of which are reserved to the Authority.

25.1.2 Subject to **clause 85** (Sole Remedy) the Contractor shall provide the Services from the Services Commencement Date for the duration of the Contract Period so that the Services are provided in accordance with:

25.1.2.1 this Agreement;

25.1.2.2 all applicable Legislation; and

25.1.2.3 the landlord's obligations contained or referred to in the Tenancy Agreements and the Leaseholder Leases;

25.1.2.4 the Output Specification;

25.1.2.5 the Policies;

25.1.2.6 the Service Delivery Plan(s);

25.1.2.7 Good Industry Practice.

provided that in the event of conflict or inconsistency, precedence shall be given in the order listed above (with being the highest priority; and being the lowest priority).

25.1.3 The Contractor shall ensure and shall procure that any Contractor Related Party shall ensure, that the Services are carried out in compliance with the Equality Requirements.

25.1.4 The Contractor shall at all times ensure that the Services are performed by appropriately qualified and travel personnel.

25.1.5 The hierarchy of documentation which shall apply to this Project for the purposes of interpreting and determining which such documentation shall apply in any circumstances, shall be the hierarchy set out at **clause 1.5** (Precedence of Documentation).

25.2 **Discrepancies**

If an inconsistency or conflict within the Output Specification in relation to the Services becomes apparent to the Contractor, the Contractor shall immediately inform the Authority in writing of that fact and shall obtain the written approval of the Authority to deal with such inconsistency or conflict and after approval by the Authority, the Output Specification shall be amended accordingly and any amendment shall be made without adjustment to the Unitary Charge. The Authority may not withhold its approval (or impose conditions in giving its approval) where the purpose of such withholding or such conditions is to deal with matters other than the correcting of any such inconsistency or conflict.

25.3 **Changes to the Services**

Either Party may request a Change to the Services in accordance with the Change Protocol.

25.4 **Service Delivery Plans**

The Contractor shall provide to the Authority one or more Service Delivery Plans for the delivery of the Services. The Contractor shall not make any variations to a Service Delivery Plan (other than minor or immaterial variations) unless it is approved in accordance with the Review Procedure.

25.5 **Retail Units and Marketing Suite**

The Authority will grant a lease in the Agreed Form:

- 25.5.1 to the Contractor in respect of the retail units to be refurbished or constructed and retained as part of the Service Works; and
- 25.5.2 to the Development Contractor in respect of Site 16D (as edged purple on the Project Site Plan).

26. **CONDITION OF THE PROPERTIES**

26.1 **Maintenance**

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

- 26.1.1 the Services are continuously available in accordance with the Output Specification;
- 26.1.2 it can maintain the design intention of the Dwellings, Blocks, and Communal Areas to achieve their full working life as set out in the Output Specification for the duration of the Contract Period;
- 26.1.3 the Dwellings, Blocks and Communal Areas are kept in good structural and decorative order (subject to fair wear and tear) in accordance with the Output Specification; and
- 26.1.4 the Dwellings, Blocks, Communal Areas and Exterior Common Areas are handed back to the Authority on the Expiry Date in a condition complying with the Handback Standard.

26.2 **Surveys**

- 26.2.1 If the Authority reasonably believes that the Contractor is in breach of its obligations under **clause 26.1** (Maintenance), then it may carry out or procure the carrying out of a survey of the Dwellings, Blocks, Communal Areas and/or Exterior Common Areas to assess whether the Dwellings, Blocks, Communal Areas and/or Exterior Common Areas have been and are being maintained by the Contractor in accordance with its obligations under **clause 26.1** (Maintenance). This right may not be exercised more often than once every two years.
- 26.2.2 The Authority shall notify the Contractor in writing a minimum of 10 Business Days in advance of the date it wishes to carry out the survey. The Authority shall consider in good faith any reasonable request by the Contractor for the survey to be carried out on a different date if such request is made at least five Business Days prior to the notified date and the Contractor (acting reasonably) is able to demonstrate that carrying out the survey on the notified date would materially prejudice the Contractor's ability to provide the Services.

- 26.2.3 When carrying out any survey, the Authority shall use reasonable endeavours to minimise any disruption caused to the provision of the Services by the Contractor. The cost of the survey shall, except where **clause 26.2.4** (Surveys) applies, be borne by the Authority. The Contractor shall give the Authority (free of charge) any reasonable assistance required by the Authority during the carrying out of any survey.
- 26.2.4 If the survey shows that the Contractor has not complied or is not complying with its obligations under **clause 26.1** (Maintenance), the Authority shall:
- 26.2.4.1 notify the Contractor of the standard that the condition of the Dwellings, Blocks, Communal Areas and/or Exterior Common Areas should be in to comply with its obligations under **clause 26.1** (Maintenance);
 - 26.2.4.2 specify a reasonable period within which the Contractor must carry out any necessary rectification and/or maintenance work; and
 - 26.2.4.3 be entitled, where the Contractor has not complied, or is not complying with its obligations in a material way, to be reimbursed by the Contractor for the cost of the survey and any administrative costs incurred by the Authority in relation to the survey.
- 26.2.5 The Contractor shall carry out such rectification and/or maintenance work within the period specified by the Authority and any costs it incurs in carrying out such rectification and/or maintenance work shall be at its own expense.

26.3 Life Cycle Works and Planned Maintenance

- 26.3.1 Without derogation from **clause 26.1** (Maintenance) the Contractor shall implement the proposals in the Cyclical Maintenance and Replacement Programme as reviewed or modified from time to time pursuant to this Agreement.
- 26.3.2 The Contractor will conduct an annual review of the Cyclical Maintenance and Replacement Programme so as to plan for works for the following five (5) years to ensure it will meet the Contractor's obligations under this Agreement and such annual review and any proposed modifications to it (other than minor or immaterial modifications) shall be subject to approval in accordance with the Review Procedure.

26.3.3 In addition the Contractor shall:

26.3.3.1 no later than 31st January in each Contract Year give the Authority a draft of a programme of Planned Maintenance for the next Contract Year which shall:

(a) include the commencement date, details and duration of Planned Maintenance (the “**Planned Maintenance Programme**”);

(b) be prepared on the basis that disturbance and Availability problems should be minimised;

(c) provide a breakdown of Planned Maintenance to show how the Contractor will thereby meet its obligations under this Agreement and how Planned Maintenance will meet or otherwise relate to the Cyclical Maintenance and Replacement Programme;

26.3.3.2 present each annual Planned Maintenance Programme for approval in accordance with the Review Procedure;

26.3.3.3 not make any variations to any Planned Maintenance Programme (other than minor or immaterial variations) unless they are approved in accordance with the Review Procedure.

26.3.4 The Authority and the Contractor shall jointly consider the Contractor's proposals in the draft Planned Maintenance Programme in order to agree arrangements for Planned Maintenance to be carried out, so far as practicable, in a manner and at times which will allow the Contractor to deliver the Services and to agree the planned duration of such Planned Maintenance.

27. **HAZARDOUS SUBSTANCES**

27.1 **Storage**

The Contractor shall ensure that any hazardous materials or equipment used or intended to be used in the carrying out of the Works or the provision of the Services are kept under control and in safe keeping in accordance with all relevant Legislation and Good Industry Practice, and shall ensure that all such materials are properly and clearly labelled on their containers, and shall promptly inform the Authority of all such materials being used or stored at the

Project Site and shall comply with any other reasonable requirement of the Authority in respect of such materials and equipment.

28. EMERGENCIES

28.1 Additional or Alternative Services

If an Emergency arises during the Contract Period which cannot be dealt with by performance of the Services, the Authority may instruct the Contractor to use its best endeavours to procure that such additional or alternative services are undertaken by the Contractor as and when required by the Authority to ensure that the Emergency is dealt with and normal operation of the relevant Dwellings, Block or Communal Area resumes as soon as is reasonably practicable provided that the Contractor shall not be obliged to provide any service which it is neither qualified nor competent to provide

28.2 Costs

The properly incurred costs of the Contractor of any additional or alternative services provided to the Authority under **clause 28.1** (Additional or Alternative Services) or any revenue lost by the Contractor shall be borne by the Authority and paid against the Contractor's invoice in accordance with **clause 36** (Payment Provisions). The Contractor shall be put in a position no better no worse than it would have been in had the Emergency not occurred, if such costs are not agreed, the matter shall be referred to the Dispute Resolution Procedure

28.3 Public Safety Incident

28.3.1 Following the occurrence of a Public Safety Incident, the Contractor shall, within 24 hours, of becoming aware of the same, provide the Authority with written proposals as to how such incident will be prevented from re-occurring, to the extent possible by operating efficiently in accordance with industry standard public safety policies and procedures. The Authority may accept or reject such proposals. When accepted (or determined following a reference to the Dispute Resolution Procedure) the Contractor shall cause them to be put into effect as soon as reasonably possible; if rejected the Authority shall explain why and the Contractor shall within a further 24 hours update its proposals and the process in this clause shall be repeated until the Authority accepts the proposals or until either party refers the matter for determination under the Dispute Resolution Procedure.

28.3.2 Where it is agreed or determined that the Public Safety Incident was in fact caused by the negligent act or omission of the Contractor or any Contractor Related Party in the performance of the Service Works and/or the Services, the Contractor shall within 24 hours of such

agreement or determination provide an update of the written proposals referred to in **clause 28.3.1** (which update shall be subject to the same acceptance and implementation process as is set out in **clause 28.3.1**). If such proposals do not involve the termination or the replacement of any offending Contractor Related Party the Authority may require that the relevant Contractor Related Party's involvement in the Service Works and/or Services is terminated and that a replacement is appointed in accordance with **clause 63** (Assignment and Sub-Contracting) within one hundred and twenty (120) Business Days of the notice by the Authority to that effect provided that in determining whether to exercise any right of termination of this Agreement or right to require the termination of the engagement of a Contractor Related Party:

- (a) the Authority shall act in a reasonable and proportionate manner having regard to the gravity of the Public Safety Incident, the identity of the person responsible for it and the number of such incidents that have previously occurred and the period over which they have occurred;
- (b) the Authority shall give all due consideration where appropriate to alternative action other than termination of the Agreement or the right to require the termination of the engagement of a Contractor Related Party; and
- (c) where the Public Safety Incident is caused by an employee of the Contractor Related Party acting independently of that Contractor Related Party and was not attributable to negligent management of that Contractor Related Party then any requirement of the Authority that the involvement of the relevant Contractor Related Party in the Service Works and/or Services is terminates shall not apply where within twenty (20) Business Days of the Authority's notice requiring termination, the Contractor procures that the employee's employment is terminated and (if necessary) procures the performance of such part of the Service Works and/or Services by another person.

29. PERFORMANCE MONITORING

29.1 Contractor Monitoring

The Contractor shall monitor its performance in the delivery of the Services in accordance with the procedure set out in **Schedule 4** (Payment Mechanism).

29.2 Authority Monitoring

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

29.3 **Erroneous Monitoring Reports**

Without prejudice to the Authority's rights under **clause 40.3** (Termination on Contractor Default) and to any other express rights under this Agreement, where the Contractor has been found to:

- 29.3.1 be fraudulent in the submission of monitoring reports or claims for payment under **clause 36** (Payment Provisions); or
- 29.3.2 have submitted at least two (2) erroneous monitoring reports, within a three (3) month period.

the Authority may by notice to the Contractor increase the level of its monitoring of the Contractor, or (at the Authority's option), of the Contractor's monitoring of its own performance of its obligations under this Agreement in respect of the relevant Service or Services the subject of such fraudulent or erroneous reporting until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Authority that it will perform (and is capable of performing) its obligations under this Agreement.

29.4 **Remedy of Erroneous Monitoring Reports**

For the purposes of **clause 29.3**, the Authority acknowledges that if the Contractor has otherwise failed to have demonstrated to the reasonable satisfaction of the Authority as required by **clause 29.3** but:

- 29.4.1 if the Contractor has removed the person or persons responsible for the fraudulent reporting; or
- 29.4.2 (under **clause 29.3.2**), if in the following three (3) month period following the Authority notice (if it has not already been established) there have been no further erroneous reports of any kind,

this shall be regarded as sufficient demonstration that the Contractor will perform and is capable of performing its obligations.

29.5 **Indemnity**

If the Authority issues a notice under **clause 29.3**, the Contractor shall bear its own costs and indemnify and keep the Authority indemnified at all times from and against all reasonable costs and expenses incurred by or on behalf of the Authority in relation to such increased level of monitoring arising due to circumstances under **clause 29.3.1**.

30. MARKET TESTING

30.1 Market Testing Review Dates

30.1.1 The following elements of the Services shall be subject to Market Testing (the **"Market Tested Services"**) undertaken by the Contractor or the Housing Management Contractor on the dates specified in the table below (such dates being referred to in this clause as the **"Market Testing Review Dates"**)

Element of Services	Market Testing Review Date
(a) Rent Collection and Arrears Recovery	The first Market Testing Review Date shall be the date which is the fifth anniversary of the Services Commencement Date and then each fifth anniversary of the First Market Testing Review Date
(b) Tenancy Management	
(c) Estate Management Services (including cleaning)	
(d) Grounds maintenance and management	
(e) Leasehold management	

30.2 Conditions for Market Testing

The Contractor shall undertake or procure that the Housing Management Contractor undertake Market Testing on any Market Testing Review Date.

30.3 Market Testing Procedure

Where this Agreement requires Market Testing the following procedure shall apply:

30.3.1 at least forty (40) weeks before each Market Testing Review Date the parties shall meet together as often as may be necessary in respect of all Market Tested Services to discuss and seek to agree:

- 30.3.1.1 the appropriate manner of advertising the Market Tested Services required and the means of identifying prospective tenderers;
- 30.3.1.2 the number and identity of prospective tenderers that will be invited to prepare and submit tenders for the Market Tested Services in question provided that any prospective tenderer shall possess an appropriate degree of skill, resources, reputation and financial standing relative to the provision of the Market Tested Services in question (and any dispute as to the selection of a prospective tenderer shall be determined in accordance with the Dispute Resolution Procedure); and
- 30.3.1.3 the form and contents of the tender documents (which shall include the Output Specification to the extent that it relates to the Market Tested Services) to be delivered to prospective tenderers (the **"Tender Documents"**); and
- 30.3.1.4 the tender requirements, which must include:
 - (a) a statement of the tender validity period;
 - (b) details of the tender evaluation criteria;
 - (c) the terms and conditions under which the Market Tested Services will be contracted;
 - (d) information relating to employees and their conditions of employment;
 - (e) the information that tenderers are required to provide;
 - (f) how many tenders are required for the Market Testing to be valid; and
 - (g) whether or not an independent tender manager needs to be appointed by the Contractor to manage the tender process.
- 30.3.2 No later than thirty (30) Business Days before each Market Testing Review Date, the Contractor shall prepare and deliver to the Authority a draft market testing proposal (the **"Market Testing Proposal"**) describing in detail the Contractor's proposed tenderers, the Tender Documents for each of the Market Tested Services in question and the tender requirements specified in **clause 30.3.1.4(d)** (Market Testing Procedure), and the Market Testing Proposal shall incorporate all of the

matters agreed by the parties and shall reflect the payment structure contained in this Agreement.

- 30.3.3 If the parties are unable to agree any of the matters set out in the Market Testing Proposal or if the Authority reasonably considers that the Contractor has made a material error or omission in the Market Testing Proposal, the Authority may (subject to **clause 30.3.4** (Market Testing Procedure)) amend the provisions of the Market Testing Proposal to accord with statutory and government requirements at its sole discretion.
- 30.3.4 The Contractor may upon receiving any amendments made by the Authority in accordance with **clause 30.3.3** (Market Testing Procedure) refer the matter to the Dispute Resolution Procedure.
- 30.3.5 The Contractor shall manage (or procure the management by the Housing Management Contractor of) the Market Testing tendering process in accordance with the Market Testing Proposal agreed or determined in accordance with this **clause 30.3** (Market Testing Procedure).
- 30.3.6 The Contractor shall bear all of its own costs, fees and expenses associated with the Market Testing.
- 30.3.7 The Contractor shall provide to the Authority as soon as reasonably practicable a copy of the Tender Documents and each response to the Tender Documents.
- 30.3.8 Subject to **clause 30.3** (Market Testing Procedure), following the expiry of the tender period for the return of responses to the Tender Documents the Contractor shall determine, following consultation with the Authority, which tender to select, if any, in respect of each relevant Market Tested Services.
- 30.3.9 The Contractor shall select:
 - 30.3.9.1 in respect of tenders for the provision of an individual Market Tested Service, the most economically advantageous tender received in respect of the provision of that Market Tested Service; and
 - 30.3.9.2 in respect of tenders for the provision of more than one (1) Market Tested Services, the most economically advantageous tender in respect of the provision of those Market Tested Services,

provided that nothing in this **clause 30.3.9** (Market Testing Procedure) shall oblige the Contractor to accept the lowest tender.

30.3.10 Any dispute under **clause 30.3.9** (Market Testing Procedure) shall be determined in accordance with the Dispute Resolution Procedure.

30.3.11 The Authority shall have the right to object to the selection of a tenderer where the tenderer has committed a Prohibited Act and such tenderer shall not be selected.

30.4 **Adjustments to Unitary Charge**

With effect from the relevant Market Testing Review Date the Unitary Charge shall be adjusted to reflect the cost difference between the Successful Tenderer's tender price and the element within the Base Case (as such element may have been adjusted as a result of being indexed or as a result of previous adjustments made pursuant to this **clause 30** (Market Testing) in accordance with **clause 69** (Financial Adjustments).

31. **HOUSING PROVISIONS**

31.1 **Leaseholders**

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

31.1.2 The Contractor shall be responsible for all costs in connection with exercising the functions referred to in **clause 31.1.1** (Leaseholders), and shall release and indemnify the Authority on demand from and against all liability arising from or in connection with the performance or non-performance of those functions.

31.1.3 The Contractor shall be entitled to receive and retain for its own benefit amounts paid by the Leaseholders pursuant to the Leaseholder Leases and the Authority shall account to the Contractor for any such amounts received by the Authority.

31.1.4 The Contractor shall in exercising the functions referred to in **clause 31.1.1** (Leaseholders) ensure:

- 31.1.4.1 that the Works and such other works are carried out and the Services or such other services are provided as are necessary to comply with the landlord's covenants in the Leaseholder Leases;
 - 31.1.4.2 compliance with all provisions in Sections 19 and 20 of the Landlord and Tenant Act 1985 (as amended by Section 151 of the Commonhold and Leasehold Reform Act 2002) in carrying out any works (including the Works), providing any services (including the Services) and making any service charge demands in relation to the Leasehold Dwellings; and
 - 31.1.4.3 ensure that the Works and Services and any other Services or Works are phased to ensure the full cost of the Works and Services or any other Works or Services potentially recoverable under terms of the Leaseholder Leases is lawfully recoverable from Leaseholders provided that where such full cost is not recoverable the Contractor shall have no recourse to the Authority for such irrecoverable amounts.
- 31.1.5 The Contractor shall provide insurance cover for Leasehold Dwellings for each Contract Year in accordance with **clause 60** (Insurance) and the Contractor shall be responsible for collecting the insurance premia from Leaseholders.
- 31.1.6 The provisions of **clause 31.6** (Change to Numbers of Dwellings by Tenure) shall apply in re-calculating the Unitary Charge on any change from a Rented Dwelling to a Leasehold Dwelling or where a Rented Dwelling or Leasehold Dwelling is subject to a disposal of the freehold.
- 31.1.7 The Contractor may take steps to enforce the terms of any Leaseholder Lease in accordance with the Tenant and Leaseholder Enforcement Policy.
- 31.1.8 **Like for Like Properties**
- 31.1.8.1 The Parties shall comply with their respective obligations in relation to the Like for Like Properties and Existing Owners set out in **Schedule 41** (Like for Like Properties).
 - 31.1.8.2 Subject to paragraph 1 of Part 1 of **Schedule 41** (Like for Like Properties), the Contractor shall ensure that it is able to offer each Existing Owner a replacement new build Dwelling on a like for like number of bedrooms and tenure

in exchange for the Like for Like Property in accordance with the Programme and **Schedule 41** (Like for Like Properties).

- 31.1.8.3 Where an Existing Owner accepts the offer of a replacement property in exchange for the Existing Owner's Like for Like Property then the Authority shall either transfer the freehold (if the Existing Owner holds a freehold interest) or grant a lease (if the Existing Owner holds a leasehold interest) in the Agreed Form of the relevant replacement property to such owner (as relevant) and such replacement properties shall be deemed to be included as part of the Services and Service Works for the purposes of this Agreement.
- 31.1.8.4 Where an Existing Owner does not accept the offer of a replacement property in exchange for the Existing Owner's Like for Like Property then the provisions of Part 2 of **Schedule 41** (Like for Like Properties) shall apply.
- 31.1.8.5 Where an Existing Owner accepts the freehold interest in a replacement property in exchange for the Existing Owner's Like for Like Property pursuant to **clause 31.1.8.3**, that freehold replacement property will no longer be included within the Project and the Contractor will not be obliged to provide the Services to that property.

31.2 Management Agreements

- 31.2.1 In accordance with an approval dated 25 April 2012 given by the Secretary of State under Section 27 (the "**Section 27 Consent**"), the Authority agrees that the Contractor shall exercise, such of the Authority's housing management functions in relation to Dwellings and Blocks as shall be set out in **Schedule 16** (Housing Management Functions) and such other housing management functions as shall be necessary to enable the Contractor properly to perform its obligations under this Agreement (the "**Housing Management Functions**") (and this Agreement shall be a "**Management Agreement**" for the purpose of Section 27).
- 31.2.2 The Authority agrees that from the date of the Section 27 Consent that the Contractor is authorised to appoint the Sub-Contractors to exercise any Housing Management Function exercisable by the Contractor in relation to the Dwellings or Blocks under this Agreement (and any Sub-Contract, whether those to which the Sub-Contractors are party or

whether a replacement of the Sub-Contracts or a replacement of replacement Sub-Contracts containing Housing Management Functions shall be a "**Sub-Agreement**" for the purposes of this Agreement and Section 27).

31.2.3 Notwithstanding **clauses 30** (Market Testing) and **67.3** (Assignment and Sub-Contracting) but subject to **clause 31.2.5** (Management Agreements) the approval of the Authority (such approval not to be unreasonably withheld or delayed) and of the Secretary of State will be required for:

31.2.3.1 any variations or amendments to the provisions of this Agreement or a Sub-Agreement which are of a description specified in the Section 27 Consent;

31.2.3.2 the making of any new Management Agreement or Sub-Agreement; and

31.2.3.3 any other matter stipulated by the Secretary of State in the Section 27 Consent

and the Authority shall determine which Tenants with whom it is necessary to consult and shall undertake all consultation required by Legislation.

31.2.4 As stipulated by the Secretary of State in the Section 27 Consent the moratorium period for the purposes of Section 27 shall be 6 months commencing upon the termination of a Sub-Agreement (which shall be an emergency for the purposes of the RRO) and such additional period as may be further stipulated by the Secretary of State from time to time (the "**Moratorium Period**").

31.2.5 The Contractor may make a new Sub-Agreement for a period no longer than a Moratorium Period without the approval of the Secretary of State but with the approval of the Authority (such approval not to be unreasonably withheld or delayed).

31.2.6 No later than five (5) Business Days after the termination of any Sub-Agreement where approval of the Secretary of State is required under Section 27, the Contractor shall provide to the Authority a copy of the proposed Sub-Agreement and the identity of the proposed new sub-contractor and all other necessary information which the Secretary of State will require to consider such an approval in accordance with applicable Guidance.

- 31.2.7 The Authority shall within ten (10) Business Days of receipt of the proposed Sub-Agreement and identity of the proposed sub-contractor and other information referred to in **clause 31.2.6** commence to carry out the consultation of Tenants in accordance with Section 105 Housing Act 1985 and after the completion of such consultation the Authority shall (provided it has given its approval in accordance with **clause 31.2.3**) submit an application for the approval for consideration by the Secretary of State.
- 31.2.8 The Authority shall within ten (10) Business Days of receipt by the Authority of a request for any matter for which an approval of the Secretary of State is required, in accordance with **clause 31.2.3** commence to carry out the consultation in so far as such consultation is required of Tenants in accordance with Section 105 Housing Act 1985 and after the completion of such consultation then provided all necessary information has been given to the Authority (in accordance with Guidance or otherwise) to enable the Secretary of State to consider the grant of an approval and that the Authority has itself given its approval in accordance with **clause 31.2.3**, the Authority shall submit the request to the Secretary of State.
- 31.2.9 If by the expiry of the Moratorium Period the Secretary of State has not given an approval to the matters contained in **clause 31.2.3** then the Authority shall apply to the Secretary of State for an extension of the Moratorium Period and the Contractor shall be entitled to continue with the existing Sub-Agreement or make a new Sub-Agreement for a period no longer than the new Moratorium Period, and the procedure for obtaining such consent set out in this **clause 31.2** shall re-apply.
- 31.2.10 If the Secretary of State fails to grant an extension of the Moratorium Period or if any Moratorium Period expires without having been extended and the Secretary of State has not given an approval to the matters contained in **clause 31.2.3.2** or where the Secretary of State has not (where such has a material adverse affect upon the sub-contractor performing of its obligations under the Sub-Agreement) given an approval to the matters contained in **clauses 31.2.3.1** or **31.2.3.3** then either the Authority or the Contractor may terminate this Agreement by 20 Business Days' written notice to the other and the Authority shall pay to the Contractor compensation in accordance with the provisions of **clauses 45** (Force Majeure Compensation), **51.1** (Gross Up), **51.2** (Set Off on Termination and Exclusivity) and **52** (Method of Payment).

31.3 Authority Functions

31.3.1 **Authority Allocations**

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

31.3.2 **Allocations and Nominations Protocol**

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

31.3.3 **Housing Benefit Administration**

The Authority shall administer and process applications and determinations for housing benefit so as to avoid the occurrence of a Housing Benefit Failure Event.

31.3.4 **Tenancy Agreement and Leases**

The Authority shall not vary a Tenancy Agreement or Leaseholder Lease without the consent of the Contractor.

31.4 **Repair and condition of the accommodation**

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

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

31.4.2.1 actions, claims, demands, cost, charges, damages, compensation and expenses (including legal expenses on an indemnity basis); and

31.4.2.2 fines and penalties

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

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

31.4.3.1 actions, claims, demands, costs, charges, damages, compensation and expenses (including legal expenses on an indemnity basis); and

31.4.3.2 fines and penalties,

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

31.4.4 The Contractor shall undertake the remedial works required to satisfy the requirements of a Disrepair Action in a manner so as to mitigate all liabilities of the Authority arising from the Disrepair Action.

31.4.5 The Authority and the Contractor shall comply with these respective obligations under the Disrepair Transitional Arrangements Protocol.

31.5 Right to buy etc.

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

31.5.2 Each of the Authority and the Contractor shall as soon as reasonably practical notify the other if it receives a written notice from a Tenant under Section 122 of the 1985 Act claiming to exercise (or that such Tenant intends to pursue his claim or that he withdraws his claim to) Right to Buy or the Right to Acquire on Rent to Mortgage Terms and shall at the same time provide a copy of the Tenant's notice to that effect.

31.5.3 The Contractor shall at the Authority's written request provide to the Authority such information as is (or ought to be if the Contractor is complying with the terms of this Contract) within its possession to enable the Authority to assess the following: -

31.5.3.1 whether or not the Tenant is entitled to exercise (and whether the Authority should or should not admit the claim to) the Right to Buy or the Right to Acquire on Rent to Mortgage Terms and, if not, the reasons why;

31.5.3.2 whether or not any person who is mentioned in the Tenant's notice but is not a joint tenant should share the Right to Buy with the Tenant;

31.5.3.3 the contents of the notice required to satisfy section 125 of the Housing Act 1985;

- 31.5.3.4 (where applicable) the contents of the notice or notices required to satisfy sections 125A, 125B and 125C of the Housing Act 1985;
- 31.5.3.5 any other information in the possession or control of the Contractor as is required by the Authority to comply with its duties under the Housing Act 1985.
- 31.5.4 The Contractor shall undertake all the steps referred to in **clause 31.5.2** in sufficient time to enable the Authority to be able to comply with any time limits imposed on it by or by virtue of Part V of the Housing Act 1985.
- 31.5.5 The Contractor shall keep (and make available to the Authority on written request) written records of those costs attributable to any Dwelling which have been incurred by it on behalf of the Authority pursuant to the Contractor's obligations under this Agreement and which are or may be relevant costs for determining the cost floor for the purposes of section 131(1) of the Housing Act 1985 such records to be in a form to enable such costs to be readily ascertainable for such purposes.

31.6 **Changes to Numbers of Dwellings By Tenure**

- 31.6.1 The Authority may at any time serve a CNDT Notice on the Contractor for any number of Dwellings. The CNDT Notice shall specify:
 - 31.6.1.1 each Dwelling that will be the subject of a CNDT;
 - 31.6.1.2 the proposed CNDT Date for each Dwelling (the "Proposed CNDT Date") providing that any such date shall be not less than 10 Business Days and not more than 40 Business Days after the date of service of the CNDT Notice; and
 - 31.6.1.3 those Dwellings which will become Leasehold Dwellings on the CNDT Date;
- 31.6.2 The Authority may at any time before the Proposed CNDT Date in respect of a Dwelling vary the CNDT Notice by removing that Dwelling from the CNDT Notice or by delaying its Proposed CNDT Date;
- 31.6.3 The Authority may at any time before the Proposed CNDT Date withdraw that CNDT Notice in its entirety;
- 31.6.4 The Contractor shall (subject to any other provision of this Agreement) continue to provide the Works and the Services in accordance with this

Agreement in respect of all Dwellings specified in a CNDT Notice up to but not including the CNDT Date;

- 31.6.5 The Contractor shall cease to provide the Works and the Services in relation to a particular Dwelling with effect from the beginning of the CNDT Date;
- 31.6.6 Not earlier than three (3) months prior to any Proposed CNDT Date, the Authority shall be entitled to carry out a survey (a “**CNDT Survey**”) of the Dwellings which are the subject of a CNDT, to assess whether at the relevant CNDT Date they will meet the Output Specification, provided that for this purpose the Authority shall disregard any defects that would be cured by any Works which have not at the time been carried out and which are overdue for completion in accordance with the Works Programme or any Planned Maintenance or Cyclical Maintenance and Renewal Works set out in the current Planned Maintenance Programme or Cyclical Maintenance and Replacement Programme or as agreed by the Authority and Contractor which the Contractor had properly programmed to carry out after the CNDT Date (the “**CNDT Standard**”), unless they can be made good by repair;
- 31.6.7 The Authority shall notify the Contractor in writing a minimum of 5 Business Days prior to the date it wishes to carry out the CNDT Survey. The Authority shall consider in good faith any reasonable request by the Contractor for the CNDT Survey to be carried out on a different date if such request is made at least 3 Business Days prior to the notified date and the Contractor (acting reasonably) is able to demonstrate that carrying out the CNDT Survey on the notified date would materially prejudice the Contractor's ability to provide the Works and/or the Services.
- 31.6.8 When carrying out the CNDT Survey, the Authority shall use reasonable endeavours to minimise any disruption caused to the provision of the Works and/or the Services by the Contractor. The Contractor without being required to incur additional material expense shall afford the Authority, its servants and agents and authorised representatives free of charge any reasonable assistance required by the Authority in carrying out the CNDT Survey. The cost of the CNDT Survey shall be borne by the Authority.
- 31.6.9 If the CNDT Survey shows that any Dwelling which is the subject of a CNDT does not meet the CNDT Standard or if at any date after the CNDT Survey and before the CNDT Date the relevant Dwelling does not meet the CNDT Standard, the Authority may either:

- 31.6.9.1 notify the Contractor of the rectification work which is required to bring the condition of the CNDT Dwellings to the CNDT Standard, specify a reasonable period expiring on or before the CNDT Date of the relevant Dwelling within which the Contractor must carry out such work, and recover the cost of the survey from the Contractor by means of a deduction from the next payment of the Unitary Charge; or
 - 31.6.9.2 at its absolute discretion require the Contractor to pay to the Authority within 10 Business Days of the relevant CNDT Date such amount as is agreed by the parties or determined under the Dispute Resolution Procedure as being the reasonable cost of the rectification works specified in **clause 31.6.9.1** (Changes to Number of Dwellings by Tenure) if they were to be carried out by a third party as soon as reasonably practicable after the relevant CNDT Date.
- 31.6.10 If so required by the Authority, the Contractor shall carry out the rectification work referred to in **clause 31.6.9.1** (Changes to Number of Dwellings by Tenure) to the CNDT Standard within the period specified in **clause 31.6.9.1** (Changes to Number of Dwellings by Tenure) and any costs the Contractor incurs in carrying out such rectification and/or maintenance work shall be at its expense.
- 31.6.11 If and to the extent that the Contractor fails to carry out the rectification work in accordance with **clause 31.6.9.1** (Changes to Number of Dwellings by Tenure), the Authority shall be entitled to carry out such rectification work itself or procure such rectification work at the Contractor's expenses and shall be entitled to deduct the cost of such rectification work from any payment due to the Contractor under this Agreement.
- 31.6.12 If there is not a reasonable period for carrying out the rectification work before the CNDT Date of the relevant Dwelling or the Contractor fails to complete such rectification work before the CNDT Date or if it is not practical for the Authority to procure the completion of such rectification work on or prior to the relevant CNDT Date, the Contractor shall pay to the Authority within 10 Business Days of the CNDT Date such amount as is agreed by the Parties or determined under the Dispute Resolution Procedure as being the reasonable cost of the rectification works specified in **clause 31.6.9.1** (Changes to Number of Dwellings by Tenure) if they were to be carried out by a third party as soon as reasonably practicable after the relevant CNDT Date. For

the avoidance of doubt, the Contractor shall have no right or obligation under this Agreement to carry out any such rectification and/or maintenance work after the relevant CNDT Date.

31.6.13 On each CNDT Adjustment Date, the CNDT Compensation shall be calculated in respect of a Dwelling from the CNDT Date for that relevant Dwelling in accordance with the following sub-clauses:

31.6.13.1 the CNDT Model shall be adjusted to reflect the actual rate of inflation (measured by reference to RPIx) since the last CNDT Adjustment Date,

31.6.13.2 the Relevant Part of the Unitary Charge (as referred to in this **clause 31.6**) shall be:

(a) where a Rented Dwelling has become a Leasehold Dwelling before the date of issue of a Certificate of Availability (Full Standard) for that Dwelling, the whole of the applicable Initial Annual Rented Delivery Charge for Rented Dwellings;

(b) where a Rented Dwelling has become a Leasehold Dwelling on or after the date of issue of a Certificate of Availability (Full Standard), the whole of the applicable Full Annual Rented Delivery Charge for Rented Dwellings;

(c) where a Rented Dwelling is subject to a disposal of the freehold before the date of issue of a Certificate of Availability (Full Standard) for that Dwelling, the whole of the applicable Initial Annual Rented Delivery Charge for Rented Dwellings;

(d) where a Rented Dwelling is subject to a disposal of the freehold on or after the date of issue of a Certificate of Availability (Full Standard), the whole of the applicable Full Annual Rented Delivery Charge for Rented Dwellings;

31.6.13.3 on each CNDT Review Date the savings in Variable Costs and Semi-Variable Costs being the aggregate of the costs applicable to the relevant Dwelling as shown in **Schedule 15** in relation to each Dwelling which has been the subject of CNDT shall be calculated with effect from the relevant CNDT Date for that Dwelling;

31.6.13.4 when the relevant number of Dwellings which are subject of CNDT attains 50 and on each occasion afterwards that a

further 50 Dwellings are the subject of CNDT the Parties shall carry out a review of the service and performance regime, seeking opportunities to secure savings through increasing off-site resourced solutions and/or a reduction in resource overall. Each may require some response times to be reviewed accordingly, so that each Party is in no better and no worse position. Any such review may result in changes to the Output Specification and the Contractor's Proposals and **Schedule 15**;

31.6.13.5 the costs as set out in **Schedule 15** of those component parts of the Refurbishment Works which have not commenced on the CNDT Date shall only be reflected in the amount of CNDT Compensation in the month in which that Dwelling is scheduled to receive a Certificate of Availability Rented (Full Standard) in the Construction and Refurbishment Programme;

31.6.13.6 the amount of CNDT Compensation for a Dwelling which has been the subject of a CNDT shall be calculated from the relevant CNDT Date for that Dwelling as follows:

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

Where:

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

RPUC – is the Relevant Part of the Unitary Charge defined in **clause 31.6.13.2**

VCS – are the savings in Variable Costs established in accordance with **clause 31.6.13.3**

SVCS – are the savings in Semi-Variable Costs established in accordance with **clauses 31.6.13.3** and **31.6.13.4**

IWCS – are the savings in the costs of the Refurbishment Works specified in **Schedule 15** subject to **clause 31.6.13.5**.

31.6.14 The reduction in the Unitary Charge (subject to and in accordance with **Schedule 4** (Payment Mechanism)) and the payment of the CNDT Compensation shall commence from the month following the first CNDT Review Date to occur after the CNDT Date for each Dwelling.

31.6.15 On each CNDT Review Date, the CNDT Compensation shall be re-calculated in respect of a Dwelling for the month in which the CNDT Review Date occurs for that relevant Dwelling in accordance with the following sub-clauses:

31.6.15.1 the amount of CNDT Compensation for a Dwelling shall be re-calculated on the relevant CNDT Review Date for that Dwelling as follows:

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

Where:

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

RPUC – is the Relevant Part of the Unitary Charge defined in **clause 31.6.13.2**

VCS – are the savings in Variable Costs calculated in accordance with **clause 31.6.13.3**

SVCS – are the savings in Semi-Variable Costs calculated in accordance with **clause 31.6.13.3**

IWCSB – is any balance of the savings in the costs of the Refurbishment Works specified in **Schedule 15** to the extent not previously taken into account as a result of **clause 31.6.13.5**.

31.6.16 The adjustment to the amount of CNDT Compensation for a Dwelling shall commence from the month following the CNDT Review Date.

31.6.17 Any dispute relating to the amount of CNDT Compensation payable shall be resolved without prejudice to either party's rights in clause 63 (Dispute resolution) in accordance with the relevant calculations set out in the Base Case.

31.7 Tenants Improvements

31.7.1 The Authority and the Contractor shall make arrangements such that the Contractor shall receive all requests to exercise their Right to Carry Out Improvements direct from the Tenants.

31.7.2 The Contractor, acting on behalf of the Authority shall:

31.7.2.1 refuse permission to exercise the Right to Carry Out Improvements; or

31.7.2.2 give permission to exercise the Right to Carry Out Improvements subject to such conditions as the Contractor may reasonably require,

within 10 Business Days of the Contractor's receipt of such a request as provided for in **clause 31.7.1**, and all supporting information required to be provided by the Tenant such refusal or giving of permission under this **Clause 31.7.2** to be in accordance with any Legislation and such that the Authority would not be unreasonable in withholding its consent.

31.7.3 Where the Contractor is in breach of **clause 31.7.2** the Authority shall be entitled to serve a notice upon the Contractor demanding that it take such steps to rectify such breach.

31.7.4 If the Contractor fails to rectify the breach of **clause 31.7.2** within 10 Business Days of receipt of a notice from the Authority pursuant to **clause 31.7.3** then the Authority shall be entitled to take such steps as it reasonably considers necessary to determine its response to a request from a Tenant received in accordance with **clause 31.7.1**.

31.7.5 In acting on behalf of the Authority under this clause, the Contractor agrees that it will not place the Authority in breach of any statutory duty or obligation and both Parties shall at all times comply with their respective obligations in the Tenant Improvements Policy and Tenant Waiver Protocol.

31.7.6 For the avoidance of doubt, the Contractor shall be under no obligation to maintain, or otherwise carry out any Services or Works in relation to Tenant Improvements unless any failure to maintain or otherwise to carry out any Services or Works in relation to Tenant Improvements would put the Authority or Authority Related Party or the Contractor or any Contractor Related Party in breach of or contravene:

31.7.6.1 any Legislation or the common law;

31.7.6.2 the landlord's obligations relating to that Tenant; or

31.7.6.3 the Availability Standards Rented (Initial)

and then only to the extent required by the matters referred to in **clauses 31.7.6.1 to 31.7.6.3** (inclusive).

31.7.7 The Authority shall on or prior to the Services Commencement Date provide the Contractor with a list of Tenant Improvements that have been approved by the Authority since the date of the Stock Condition Survey (the "**Prior Approved Tenant Improvements**").

31.7.8 The Authority shall indemnify the Contractor against any Losses incurred in complying with any of its obligations under this Agreement as a result of a Prior Approved Tenant Improvement (whether or not recorded on the list referred to in **clause 31.7.7**) to the extent such Losses are attributable to a failure by the Authority to take reasonable skill, care and attention in inspecting (where normal housing management practice would necessitate an inspection) and otherwise approving such Prior Approved Tenant Improvements having regard to the standard of skill, care and attention which would reasonably be expected of a person who would normally undertake such approval and inspection.

31.8 **Right to Manage**

Where the Right to Manage is exercised the Authority shall elect as to which of **clause 56** (Authority and Contractor Changes) or **clause 31.6** (Changes to Number of Dwellings by Tenure) shall apply and shall notify the Contractor of that election.

31.9 **Right to Repair**

31.9.1 The Contractor shall procure that all Dwellings are kept in such repair as to ensure that no Tenant is in a position to serve on the Authority an application for a qualifying repair to be carried out pursuant to Right to Repair.

31.9.2 Where the Contractor is in breach of **clause 31.9.1** the Authority shall be entitled to serve a notice upon the Contractor requiring that the Contractor takes such steps reasonably required by the Authority to rectify the breach within such period as the Authority reasonably requires.

31.9.3 If the Contractor fails to comply with the Authority's notice referred to in **clause 31.9.2** then the Authority shall be entitled to take such steps as it reasonably considers necessary to enable it to comply with section 96 of the 1985 Act and any regulations made pursuant thereto.

31.9.4 The Contractor shall indemnify the Authority against any Losses incurred as a result of any failure by the Contractor to comply with **clause 31.9.1** or Losses to the Authority resulting from any actions of the Authority under **clause 31.9.3**.

32. **TRANSFER OF EMPLOYEES**

32.1 The parties acknowledge that no Authority employees are currently employed in the provision of the Services and that, as a result, no employees of the Authority will transfer from the Authority to the Contractor as a result of TUPE on the Service Transfer Date. All Relevant Employees are employed by the Estate TMO.

32.2 **Relevant Transfers**

32.2.1 The Authority and the Contractor agree that the following events:

32.2.1.1 the Service Transfer Date;

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

shall constitute a Relevant Transfer and that the contracts of employment of any Relevant Employees shall have effect (subject to Regulation 4(7) of TUPE) thereafter as if originally made between those employees and the new provider except insofar as such contracts relate to those parts of an occupational pension scheme relating to the old age, invalidity and survivors' benefits. On the occasion of a Relevant Transfer (save on expiry or termination of this Agreement) the Contractor shall procure that the former and the new sub-contractor shall both comply with their obligations under TUPE.

32.2.2 The Authority shall use and shall use its reasonable endeavours to procure that its sub-contractors and the Estate TMO shall comply with their obligations under TUPE in respect of each Relevant Transfer pursuant to this Agreement and the Contractor shall comply and shall procure that each sub-contractor shall comply with its obligations (including without limitation the obligation under Regulation 13(4) of TUPE) in respect of each Relevant Transfer pursuant to this Agreement and each of the Authority and the Contractor shall indemnify the other against any Direct Losses sustained as a result of any breach of this **clause 32.2.2** by the party in default save that there shall be no obligation on the Authority to indemnify the Contractor for any breach by the Authority of its obligations under Regulation 13 of TUPE or any award of compensation under Regulation 15 where such failure arises from the failure of the Contractor or any sub-contractor of the Contractor to comply with its or their duties under Regulation 13 of TUPE. The provisions of these **clauses 32.2.1.1** and **32.2.1.2** (Relevant Transfers) shall not apply to the Market Testing

Procedure which shall be governed by the provisions of **clause 30** (Market Testing).

32.3 **Emoluments and Outgoings**

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

32.4 **Employment Costs**

- 32.4.1 The Authority will use its reasonable endeavours to supply to the Contractor the information, which is contained in **Part 3 of Schedule 9** (Employee Information) (the "**First Employee List**") regarding the identity, number, age, sex, length of service, job title, grade and terms and conditions of employment of and other matters; affecting each of those employees of the Authority, the Estate TMO and any sub-contractor of the Authority who it is expected, if they remain in the employment of the Authority, the Estate TMO or the sub-contractor of the Authority as the case may be until immediately before the Service Transfer Date, would be Relevant Employees but the Authority gives no warranty as to the accuracy or completeness of this information.
- 32.4.2 The Authority will use its reasonable endeavours to supply to the Contractor an update of the First Employee List at three monthly intervals from the date of this Agreement and an updated list ten (10) Business Days before the Service Transfer Date. The Authority will use its reasonable endeavours to supply to the Contractor within five (5) Business Days after the Service Transfer Date information, as at the Service Transfer Date, in respect of the Relevant Employees on all the

same matters as should be provided in the First Employee List. This list is the “**Final Employee List**”. The Authority gives and shall give no warranty as to the accuracy or completeness of any information contained in any update of the First Employee List or in the Final Employee List.

32.4.3 Without prejudice to **clauses 32.4.1, 32.4.2 and 32.11**, the Authority shall or shall procure that if it has the legal power to do so and shall otherwise use all reasonable endeavours to procure that every relevant sub-contractor of the Authority shall:

32.4.3.1 provide the Employee Liability Information to the Contractor at such time as are required by TUPE; and

32.4.3.2 update the Employee Liability Information to take account of any changes as required by TUPE. The Authority gives and shall give no warranty as to the accuracy or completeness of the Employee Liability Information supplied by the Authority or any of its relevant sub-contractors.

32.4.4 The Contractor has provided to the Authority, and the Authority has agreed, the details set out in **Schedule 9** (Employee Information) which show, in respect of each of the Services, the following information:

32.4.4.1 the workforce which the Contractor proposes to establish to provide the Services (the “**Proposed Workforce**”) classified by reference to grade, job description, hours worked, shift patterns, pay scales, rates of pay, terms and conditions and pension arrangements;

32.4.4.2 the monthly costs of employing the Relevant Employees who are expected to be engaged in the provision of the Services. These costs (the “**Remuneration Costs**”) have been calculated on the basis of (amongst other things) the information contained in the First Employee List; and

32.4.4.3 the costs, including any lump sum payments, which have been agreed between the Parties for the purposes of any reorganisation which may be required to establish the Proposed Workforce or a workforce which is as close as reasonably practicable to the Proposed Workforce. These costs (the “**Reorganisation Costs**”) have been calculated by the Contractor and the sub-contractors on the basis of

(amongst other things) the information contained in the First Employee List.

- 32.5 If at any time (including, for the avoidance of doubt, after the submission of the Final Employee List) the Remuneration Costs and/or the Reorganisation Costs require to be adjusted on account of any differences between the information contained in the First Employee List and that contained in the Final Employee List, or on account of any inaccuracies in or omissions from the information contained in the First Employee List or the Final Employee List then (subject to **clauses 32.6, 32.7 and 32.8**) there shall be a corresponding adjustment to the Unitary Charge to compensate for any such difference.
- 32.6 If the circumstances described in **clause 32.5** arise:
- 32.6.1 in circumstances where there are more Relevant Employees than shown on the Final Employee List then the parties shall discuss the implications for the provision of Services; and
- 32.6.2 the Contractor and the relevant sub-contractor shall take all reasonable steps to mitigate any additional costs and any adjustment to the Unitary Charge shall be calculated as if they had done so.
- 32.7 In calculating any adjustment to be made to the Unitary Charge pursuant to **clause 32.5**:
- 32.7.1 no account shall be taken of a decrease in the Remuneration Costs or Reorganisation Costs to the extent that it arises from a reduction in the number of Relevant Employees or their whole time equivalent such that there are, immediately after the Service Transfer Date, fewer suitably qualified persons available than are required in order to establish the Proposed Workforce and to the extent that the Contractor has employed replacement staff on equivalent remuneration and has used all reasonable endeavours to mitigate all expenses in recruiting and employing such replacement staff;
- 32.7.2 to avoid double counting, no account shall be taken of any change to the Remuneration Costs or the Reorganisation Costs to the extent that the Contractor has been or will be compensated as a result of any indexation of the Unitary Charge under this Agreement;
- 32.7.3 to avoid doubt any changes in costs which fall to be dealt with under **clause 32.5** and which arise from a Change in Law shall be dealt with in accordance with the provisions of **clause 32.5** and shall not be taken into account for the purposes of **clause 55** (Change in Law);

- 32.7.4 no adjustments under **clause 32.5** shall be made in respect of overpayments made by the Contractor or a Sub-Contractor to Relevant Employees which arise from reliance on the Final Employee List to the extent that the Contractor or the Sub-Contractor is unable to correct overpayments in respect of continuing employment having taken reasonable steps to do so;
- 32.7.5 if there are underpayments by the Contractor or a Sub-Contractor to Relevant Employees, whether claimed or established as unlawful deductions from wages or as a breach of contract, which arise from reliance on the Final Employee List, there shall be an immediate increase to the Unitary Charge in respect of all such liabilities of the Contractor or the Sub-Contractor for all such underpayments which are retrospective (save that any such liabilities which relate to the period prior to the Service Transfer Date shall be dealt with in accordance with **clauses 32.3.1** or **32.12.1**) and an appropriate increase in respect of such liabilities of the Contractor which represent ongoing costs;
- 32.7.6 in order to prevent duplication, no adjustment shall be made under this **clause 32.7** if any indemnity given by the Authority under any other provision of this Agreement would apply; and
- 32.7.7 no adjustments under **clause 32.4** (Employment Costs) shall be made to the extent that any payment is made to the Contractor or sub-contractor under Regulation 12 of TUPE.
- 32.8 Either party may propose an adjustment to Unitary Charge pursuant to **clause 32.5** by giving not less than ten (10) Business Days notice to the other. Each party will provide or procure the provision to the other, on an open book basis, access to any information or data which the other party reasonably requires for the purpose of calculating or confirming the calculation of any adjustment pursuant to **clause 32.5**.
- 32.9 In relation to all matters described in **clauses 32.6**, and **32.7** the Contractor and the Authority shall, and the Contractor shall procure that the relevant sub-contractor shall, co-operate with the other or others and take all reasonable steps to mitigate any costs and expenses and any adverse effect on industrial or employee relations.
- 32.10 The Authority shall and the Contractor shall and shall procure that each and every sub-contractor shall take all reasonable steps, including co-operation with reasonable requests for information, to ensure that each and every Relevant Transfer pursuant to this Agreement takes place smoothly with the least possible

disruption to the services of the Authority including the Services and to the employees who transfer.

32.11 Union Recognition

32.11.1 The Authority shall and shall procure if it has the contractual or legal powers to do so and shall otherwise use all reasonable endeavours to procure that every relevant sub-contractor of the Authority and the Authority's Tenant Management Organisation shall supply to the Contractor no later than five (5) Business Days prior to the Service Transfer Date true copies of its union recognition agreement(s) and the Contractor shall and shall procure that each and every sub-contractor shall in accordance with TUPE recognise the trade unions representing Relevant Employees (as relevant to each sub-contractor) after the transfer to the same extent as they were recognised by the Authority, the Authority's Tenant Management Organisation or relevant sub-contractor of the Authority before the Service Transfer Date.

32.11.2 The Contractor shall procure that, on each occasion on which the identity of a sub-contractor changes pursuant to this Agreement, in the event that there is a Relevant Transfer, the new sub-contractor shall in accordance with TUPE recognise the trade unions representing the employees whose contracts of employment transfer to the new sub-contractor to the same extent as they were recognised before the change of identity of the sub-contractor in respect of the provision of the Services at the Authority's premises. The provisions of this **clause 32.11** do not apply to the Market Testing Procedure which shall be governed by the provisions of **clause 30** (Market Testing Procedure).

32.12 Indemnities

32.12.1 The Authority shall indemnify and keep indemnified in full the Contractor (for itself and for the benefit of each relevant sub-contractor) against all Direct Losses incurred by the Contractor or any relevant sub-contractor in connection with or as a result of:

32.12.1.1 a breach by the Authority of its obligations under **clause 32.3.1** above;

32.12.1.2 subject to **clause 32.12.3** any claim or demand by any Relevant Employee arising out of the employment of any Relevant Employee provided that this arises from any act, fault or omission of the Authority in relation to any Relevant Employee prior to the date of the Relevant Transfer (save where such act, fault or omission arises as

a result of the Contractor's or any relevant sub-contractor's failure to comply with Regulation 13 of TUPE and any such claim is not in connection with the Relevant Transfer);

32.12.1.3 all Direct Losses incurred by the Contractor or any of its sub-contractors in connection with or as a result of any claim by any trade union or staff association or employee representative (whether or not recognised by the Authority) arising from or connected with any failure by the Authority or the Estate TMO to comply with any legal obligation to such trade union, staff association or other employee representative whether under Regulation 13 or 14 of TUPE or any award of compensation under Regulation 15 under the Acquired Rights Directive or otherwise and whether such claim arises or has its origin before or after the Service Transfer Date.

32.12.2 The Contractor shall indemnify and keep indemnified in full the Authority, and at the Authority's request each and every service provider who shall provide any service equivalent to any of the Services after expiry or earlier termination of this Agreement (**Future Contractor**) against:

32.12.2.1 all Direct Losses incurred by the Authority or any Future Service Provider in connection with or as a result of any claim or demand against the Authority or any Future Service Provider by any person who is or has been employed or engaged by the Contractor or any sub-contractor in connection with the provision of any of the Services where such claim arises as a result of any act, fault or omission of the Contractor and/or any sub-contractor after the Service Transfer Date;

32.12.2.2 all Direct Losses incurred by the Authority or any Future Service Provider in connection with or as a result of a breach by the Contractor of its obligations under **clause 32.3.2** above; and

32.12.2.3 all Direct Losses incurred by the Authority or any Future Service Provider in connection with or as a result of any claim by any trade union or staff association or employee representative (whether or not recognised by the Contractor and/or the relevant sub-contractor in respect of all or any of the Relevant Employees) arising from or

connected with any failure by the Contractor and/or any sub-contractor to comply with any legal obligation to such trade union, staff association or other employee representative whether under Regulation 13 or 14 of TUPE or any award of compensation under Regulation 15, under the Acquired Rights Directive or otherwise and, whether any such claim arises or has its origin before or after the date of the Service Transfer Date.

32.12.3 The Contractor shall indemnify and keep indemnified in full the Authority, against all Direct Losses incurred by the Authority in connection with or as a result of:

32.12.3.1 the change of identity of employer occurring by virtue of TUPE to the Contractor or the relevant sub-contractor being significant and detrimental to any of the Relevant Employees or to any person who would have been a Relevant Employee but for their resignation (or decision to treat their employment as terminated under Regulation 4(9) of TUPE) on or before the Service Transfer Date as a result of the change in employer and whether such claim arises before or after the Service Transfer Date;

32.12.3.2 any proposed or actual change by the Contractor or any sub-contractor to the Relevant Employees' working conditions, terms or conditions or any proposed measures of the Contractor or the relevant sub-contractor which are to any of the Relevant Employee's material detriment or to the material detriment of any person who would have been a Relevant Employee but for their resignation (or decision to treat their employment as terminated under Regulation 4(9) of TUPE) on or before the Service Transfer Date as a result of any such proposed changes or measures and whether such claim arises before or after the Service Transfer Date; and

32.12.3.3 any claim arising out of any misrepresentation or misstatement whether negligent or otherwise made by the Contractor or sub-contractor to the Relevant Employees or their representatives whether before on or after the Service Transfer Date and whether liability for any such claim arises before on or after the Service Transfer Date.

32.12.4 For the avoidance of doubt, the indemnities in **clauses 32.12.2 and 32.12.3** shall not apply in respect of any sum for which the Authority

is to indemnify the Contractor or a relevant sub-contractor pursuant to **clause 32.12.1** or as a result of any adjustment to the Unitary Charge in accordance with **clause 32.5** or to the extent that the claim arises from a wrongful act or omission of the Authority.

32.12.5 **clause 59.8** (Conduct of Claims) of this Agreement shall apply where any claim is made in respect of the indemnities given under **clause 32.12**.

32.13 **Provision of Details and Indemnity**

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

32.14 **Compliance with Voluntary Principles**

The Contractor shall and shall procure that any relevant sub-contractor shall comply with the Voluntary Principles.

32.15 **Retendering**

32.15.1 The Contractor shall (and shall procure that any sub-contractor shall) within the period of twelve (12) months immediately preceding the expiry of this Agreement or following the service of a notice under **clause 32.16** (Termination of Agreement) or as a consequence of the Authority notifying the Contractor of its intention to retender this Agreement:

32.15.1.1 on receiving a request from the Authority provide in respect of any person engaged or employed by the Contractor or any sub-contractor in the provision of the Services ("**the Assigned Employees**") full and accurate details regarding the identity, number, age, sex, length of service, job title, grade and terms and conditions of employment of and other matters affecting each of those Assigned Employees who it is expected, if they remain in the employment of the Contractor or of any sub-contractor as the case may be until immediately before the Termination Date, would be Returning Employees (the "**Retendering Information**");

- 32.15.1.2 provide the Retendering Information promptly and at no cost to the Authority;
 - 32.15.1.3 notify the Authority forthwith in writing of any material changes to the Retendering Information promptly as and when such changes arise;
 - 32.15.1.4 be precluded from making any material increase or decrease in the numbers of Assigned Employees;
 - 32.15.1.5 be precluded from making any increase in the remuneration or other change in the terms and conditions of the Assigned Employees other than in the ordinary course of business and with the Authority's prior written consent; and
 - 32.15.1.6 be precluded from transferring any of the Assigned Employees to another part of its business or moving other employees from elsewhere in its or their business who have not previously been employed or engaged in providing the Services to provide the Services save with the Authority's prior written consent.
- 32.15.2 Without prejudice to **clauses 32.15.1** and **32.15.3** the Contractor shall provide and shall procure that any sub-contractor shall provide the Employee Liability Information to the Authority at such time or times as are required by TUPE, and shall warrant at the time of providing such Employee Liability Information, that such information will be updated to take account of any changes to such information as is required by TUPE.
- 32.15.3 The Contractor shall and shall keep indemnified in full the Authority and at the Authority's request any Future Service Provider against all Direct Losses arising from any claim by any party as a result of the Contractor or sub-contractor failing to provide or promptly to provide the Authority and/or any Future Service Provider where requested by the Authority with any Retendering Information and/or Employee Liability Information or to provide full Retendering Information and/or Employee Liability Information or as a result of any material inaccuracy in or omission from the Retendering Information and/or Employee Liability Information provided that this indemnity shall not apply in respect of the Retendering Information to the extent that such information was originally provided to the Contractor by the Authority and was materially inaccurate or incomplete when originally provided.

32.16 Termination of Agreement

- 32.16.1 On the expiry or earlier termination of this Agreement, the Authority and the Contractor agree that it is their intention that TUPE shall apply in respect of the provision thereafter of any service equivalent to a Service but the position shall be determined in accordance with the Legislation at the date of expiry or termination as the case may be and this clause is without prejudice to such determination.
- 32.16.2 For the purposes of this **clause 32.16** (Termination of Agreement) "**Returning Employees**" shall mean those employees wholly or mainly engaged in the provision of the Services as the case may be as immediately before the expiry or termination of this Agreement whose employment transfers to the Authority or a Future Service Provider pursuant to TUPE. Upon expiry or termination of this Agreement for whatever reason (such date being termed the "**Return Date**"), the provisions of this **clause 32.16** (Termination of Agreement) will apply:
- 32.16.2.1 the Contractor shall or shall procure that all wages, salaries and other benefits of the Returning Employees and other employees or former employees of the Contractor or the sub-contractors (who had been engaged in the provision of the Services) and all PAYE tax deductions, pension contributions and national insurance contributions relating thereto in respect of the employment of the Returning Employees and such other employees or former employees of the Contractor or sub-contractors up to the Return Date are satisfied;
- 32.16.2.2 Without prejudice to **clause 32.16.2.1(a)**, the Contractor shall:
- (a) remain (and procure that sub-contractors shall remain) (as relevant) responsible for all the Contractor's or sub-contractor's employees (other than the Returning Employees) on or after the time of expiry or termination of this Agreement and shall indemnify the Authority and any Future Service Provider against all Direct Losses incurred by the Authority or any Future Service Provider resulting from any claim whatsoever whether arising before on or after the Return Date by or on behalf of any of the Contractor's or sub-contractor's employees who do not constitute the Returning Employees;
- (b) in respect of those employees who constitute Returning Employees the Contractor shall indemnify the Authority and any Future Service Provider against all Direct Losses

incurred by the Authority or any Future Service Provider resulting from any claim whatsoever by or on behalf of any of the Returning Employees in respect of the period on or before the Return Date (whether any such claim, attributable to the period up to and on the Return Date, arises before, on or after the Return Date) including but not limited to any failure by the Contractor or any sub-contractor to comply with its or their obligations under Regulation 13 and 14 of TUPE and any award of compensation under Regulation 15 of TUPE and/or Article 6 of the Directive as if such legislation applied, even if it does not in fact apply save to the extent that any such failure to comply arises as a result of an act or omission of the Authority or any Future Service Provider.

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

32.16.4 The Authority shall or shall procure that all wages, salaries and other benefits of the Returning Employees and all PAYE tax deductions, pension contributions and national insurance contributions relating thereto in respect of the employment of the Returning Employees from and including the Return Date are satisfied.

32.17 Offer of Employment on Expiry or Termination

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

32.17.2 If an offer of employment is made in accordance with **clause 32.17.1**, the employment shall be on the same terms and conditions (except for entitlement to membership of an occupational pension scheme, which shall be dealt with in accordance with **clause 33** (Pensions) as applied immediately before the expiry or earlier termination of this Agreement including full continuity of employment, except that the Authority or Future Service Provider may at its absolute discretion not offer such terms and conditions if there has been any change to the terms and conditions of the persons concerned in breach of **clause 32.15**.

32.17.3 Where any such offer as referred to in **clause 32.17.1** is accepted, the Contractor shall indemnify and keep indemnified in full the Authority and/or any Future Service Provider on the same terms and conditions

as those set out in **clause 32.12** of this Agreement as if there had been a Relevant Transfer in respect of each and every employee who has accepted any such offer and for the purposes of this **clause 32** each and every such employee shall be treated as if they were a Returning Employee.

32.17.4 For the avoidance of doubt, where any such offer as referred to in **clause 32.17.1** is not accepted and TUPE does not apply, the employee shall remain an employee of the Contractor or sub-contractor as appropriate.

32.18 **Sub-Contractors**

In the event that the Contractor enters into any Sub-Contract in connection with this Agreement, it shall impose obligations on its Sub-Contractors in the same terms as those imposed on it pursuant to **clauses 32 (Transfer of Employees), 33 (Pensions) and 34 (Employees – General)** and shall procure that the Sub-Contractor complies with such terms. The Contractor shall indemnify and keep the Authority indemnified in full against all Direct Losses, incurred or by the Authority or any Future Service Provider as a result of or in connection with any failure on the part of the Contractor to comply with this clause and/or the sub-contractor's failure to comply with such terms.

33. **PENSIONS**

Where the Contractor or a sub-contractor employs any Relevant Employees from a Relevant Transfer Date, the Contractor shall procure that it and/or each relevant sub-contractor shall offer those Relevant Employees access to a pension arrangement under which the Contractor and/or each relevant sub-contractor shall pay employer contributions at a rate of no less than 10% of the Relevant Employees pensionable salary.

34. **EMPLOYEES - GENERAL**

34.1 **Criminal Records Bureau**

34.1.1 The Contractor shall procure that in respect of all potential staff or persons performing any of the Services (other than Relevant Employees) (each a "**Named Employee**") before a Named Employee begins to attend the Project Site to perform any of the Services:

34.1.1.1 each Named Employee is questioned as to whether he or she has any convictions; and

34.1.1.2 the results are obtained of a check of the most extensive available kind made with the Criminal Records Bureau in respect of each Named Employee; and

34.1.1.3 a copy of the results of such check are notified to the Authority

provided that the Contractor shall not be obliged to comply with this **clause 34.1.1** in respect of out-of-hours emergency contractors attending the Project Site who are at all times accompanied by a Named Employee.

34.1.2 The Contractor shall procure that no person who discloses any Convictions, or who is found to have any Convictions following the results of a Criminal Records Bureau check, is employed or engaged without the Authority's prior written consent (such consent not to be unreasonably withheld or delayed).

34.2 **Conduct of Staff**

Whilst engaged at the Project Site the Contractor shall and shall procure that any sub-contractor shall comply with the Authority's Policies relating to the conduct of staff and security arrangements. The Authority (acting reasonably) may:

34.2.1 instruct the Contractor that disciplinary action is taken against any employee of the Contractor or any sub-contractor involved in the provision of the Services (in accordance with the terms and conditions of employment of the employee concerned) where such employee misconducts himself or is incompetent or negligent in his duties (in which case the Authority shall co-operate with any disciplinary proceedings and shall be advised in writing of the outcome); or

34.2.2 where the Authority has reasonable grounds for considering that the presence or conduct of an employee at any location relevant to the performance of the Services is undesirable, require the exclusion of the relevant employee from the relevant location(s).

34.3 **Admission to the Project Site**

The Contractor shall at least twenty (20) Business Days before the date on which the Contractor first carries out any of the Works or provides any of the Services provide the Authority with a written list of the names and addresses of all employees or other persons who it expects may require admission to the Project Site in connection with the carrying out of the Works or provision of the Services, specifying the capacities in which those employees or other persons are concerned with the Works or Services and giving such other particulars as

the Authority may require. The Contractor shall update this information as and when any such individuals are replaced or complemented by others, not less than five (5) Business Days before their inclusion. The decision of the Authority on whether any person is to be refused admission to the Project Site shall be final and conclusive and the Authority shall not be obliged to give reasons for its decision. For the avoidance of doubt, the provisions of this **clause 34.3** shall not apply to those individuals who shall be required by the Contractor or any sub-contractor to attend the Project Site to provide emergency reactive services. In the case of such individuals, the Contractor shall or shall procure that any sub-contractor shall ensure that such individuals are accompanied at all times while on the Project Site by a member of the Contractor or sub-contractor's staff who has been properly notified to the Authority in accordance with the terms of this **clause 34.3**.

34.4 Refusal of Admission

The Authority reserves the right to refuse to admit to the Project Site any person, employed or engaged by the Contractor or a sub-contractor, whose admission would, in the opinion of the Authority, present a risk to themselves or an Authority Related Party, Tenant or Leaseholder or property, and shall not be obliged to give any reasons for such refusal.

34.5 Decision to Refuse Admission

The decision of the Authority as to whether any person is to be refused admission to the Project Site pursuant to **clause 34.4** (Refusal of Admission) shall be final and conclusive. If the Authority declines to give reasons and/or where reasons are given are found to be unreasonable for exercising its rights under **clause 34.2** (Conduct of Staff) **clause 34.3** (Admission to the Project Site), **clause 34.4** (Refusal of Admission) and **clause 34.6** (Removal from the Project Site) the Authority shall indemnify the Contractor and keep the Contractor indemnified from and against any injury, claims, costs and expenses (including legal expenses) and or damage suffered or incurred by the Contractor, provided that the Contractor or the relevant sub-contractors has used its reasonable endeavours to re-deploy that person elsewhere and/or to mitigate the claim.

34.6 Removal from the Project Site

The Contractor shall comply with and/or procure compliance with any notice issued by the Authority from time to time requiring the removal from any of the Project Site of any person employed thereon who in the opinion of the Authority (acting reasonably) is not acceptable on the grounds of risk to themselves or an Authority Related Party or property and that such persons shall not be employed again upon the Project without the written consent of the Authority

34.7 Relief from Deductions

Where the Authority exercises its rights under their **clause 34** and it can be shown that:

- 34.7.1 the Contractor or any sub-contractor has acted in accordance with the relevant provisions of this **clause 34.7**; or
- 34.7.2 the Authority did not act reasonably in instructing the Contractor not to employ and/or in requesting any removal and/or in refusing admission;

then the Authority shall give the Contractor such relief from deductions for a reasonable period to allow the Contractor or any sub-contractor to make alternative arrangements to replace the person whose employment has been refused or whose removal has been requested. For the avoidance of doubt, any relief from deductions given under this **clause 34.7** shall only be in respect of those Services in which such person is or would have been engaged.

34.8 Resources and Training

The Contractor shall procure that:

- 34.8.1 there shall be at all times a sufficient number of staff (including all relevant grades of supervisory staff) engaged in the provision of the Services with the requisite level of skill and experience. This obligation shall include ensuring that there are sufficient staff to cover periods of holiday, sickness, other absences and anticipated and actual peaks in demand for each of the Services; and
- 34.8.2 all staff receive such training and supervision as is necessary to ensure the proper performance of the Services under this Agreement.

34.9 Personnel Policies and Procedures

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

34.10 Operating Manual

- 34.10.1 The Contractor shall throughout the Services Period maintain and update an operating and maintenance manual setting out the procedures for providing the Services (the "**Operating Manual**").
- 34.10.2 The Contractor shall at the request of the Authority provide the Authority with access to the Operating Manual in order to demonstrate that the Contractor has complied with its obligation to maintain and update the Operating Manual under **clause 34.10.1** (Maintenance of Manual).
- 34.10.3 On termination of this Agreement (howsoever arising including expiry), the Contractor shall within ten (10) Business Days provide a copy of the Operating Manual to the Authority.

34.11 **Quality Assurance**

- 34.11.1 The Contractor shall procure that all aspects of the Works and the Services are the subject of, and are conducted in accordance with the approved quality assurance systems as set out in **clauses 34.2** and **34.3** below.
- 34.11.2 Not later than ten (10) Business Days following the Commencement Date, the Contractor shall submit to the Authority's Representative a proposed quality assurance system for the Works complying with ISO 9001 or, where it does not so comply, the system set out in the Contractor's Proposals.
- 34.11.3 The Contractor shall procure that the Building Contractor is registered pursuant to BS 5750 or ISO 9001 (or such other quality standard as may replace or supersede the same or, in the absence of a replacement or a superseding quality standard or equivalent or such other quality assurance system acceptable to the Authority (acting reasonably) in relation to the Works.
- 34.11.4 The Contractor shall appoint (or shall procure the appointment of) as soon as reasonably practicable following the date of this Agreement a quality manager, who may be directly involved in the day-to-day performance of the Works and Services, and who shall in respect of the Works:
- 34.11.4.1 ensure the effective operation of and implementation of the aforementioned quality assurance system;
 - 34.11.4.2 audit the aforementioned quality assurance system at regular intervals and report the findings of such audit to the Contractor and the Authority;

- 34.11.4.3 review the aforementioned quality assurance system at intervals agreed with the Authority to ensure their continued suitability and effectiveness; and
- 34.11.4.4 liaise with the Authority on all matters relating to quality assurance.
- 34.11.5 The Authority may carry out periodic audits of the aforementioned quality assurance systems at approximate intervals of three (3) months and may carry out other periodic monitoring, spot checks and auditing of the Contractor's quality systems. The Contractor shall procure that the Authority shall have a like right in respect of any relevant sub-contractors. The Contractor shall co-operate and shall procure that any relevant sub-contractor co-operates with the Authority including providing it with all information and documentation which it reasonably requires in connection with its right under this **clause 34.11**.

34.12 Co-operation for Investigation and Security

- 34.12.1 The Contractor shall co-operate with any investigation relating to a breach of security which is carried out by or on behalf of the Authority and:
 - 34.12.1.1 shall use its reasonable endeavours to make its employees (and other Contractor Related Parties) identified by the Authority available to be interviewed by the Authority for the purposes of the investigation; and
 - 34.12.1.2 shall, subject to any legal restriction on their disclosure, provide all copies of documents, records or other material of any kind which may reasonably be required by the Authority for the purposes of the investigation. The Authority shall have the right to retain copies of any such material for use in connection with the investigation.
- 34.12.2 The Authority shall, insofar as is practical, inform the Contractor of any specific or general security information which would reasonably be expected to affect the security of the Contractor or any Contractor Related Party or their property.
- 34.12.3 The Contractor shall comply with the Authority's reasonable reporting requirements relating to infectious and notifiable diseases to the extent made known to the Contractor.

35. **INFORMATION TECHNOLOGY**

35.1 **ICT Protocol**

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

35.2 **IT Specification, Policies and Plans**

Without prejudice to any other provisions of this Agreement, the Contractor shall, and shall procure that the Sub-contractor shall, at all appropriate times during the Contract Period (and, where appropriate, thereafter), comply with the requirements of:

35.2.1 the IT Output Specification set out in Part 4 of **Schedule 28** (ICT Protocol);

35.2.2 the IT Policies and Procedures operated by the Authority as set out in **Schedule 12** (Authority Policies) and any revised or alternative policies and procedures as may be notified in writing to the Contractor by the Authority from time to time; and

35.2.3 the ICT Transition Plan set out in Part 3 of **Schedule 28** (ICT Protocol).

PART 5 - PAYMENT

36. PAYMENT PROVISIONS

36.1 Payment of the Unitary Charge

The Authority shall pay the Contractor the Unitary Charge in respect of each Contract Month, calculated in accordance with **Schedule 4** (Payment Mechanism).

36.2 Report and Invoice

Within 10 Business Days of the end of each Contract Month the Contractor shall submit to the Authority:

36.2.1 a report showing for that Contract Month:

36.2.1.1 the Adjusted Gross Monthly Unitary Charge;

36.2.1.2 the Monthly Unavailability Deduction for the relevant Contract Month which falls to be made in accordance with **Schedule 4** (Payment Mechanism) together with details required pursuant to **paragraph 4** of **Schedule 4** (Payment Mechanism);

36.2.1.3 the Aggregate Performance Deduction for the relevant Contract Month which falls to be made in accordance with **Schedule 4** (Payment Mechanism);

36.2.1.4 any Reporting Failure Deductions for the relevant Contract Month which fall to be made in accordance with **Schedule 4** (Payment Mechanism);

36.2.1.5 any Authority Alternative Accommodation Deductions for the relevant Contract Month which fall to be made in accordance with **Schedule 4** (Payment Mechanism);

36.2.1.6 any Quarterly Rent Collection Adjustments and/or Annual Rent Collection Adjustments for the relevant Contract Month which fall to be made in accordance with **Schedule 4** (Payment Mechanism);

36.2.1.7 any adjustments to the Unitary Charge which fall to be made in accordance with **clause 69** (Financial Adjustments);

- 36.2.1.8 any undisputed amounts owed by either party to the other in accordance with **clause 59** (Indemnities, guarantees and Contractual Claims);
- 36.2.1.9 any amounts owed to the Contractor by the Authority in accordance with **clause 28** (Emergencies);
- 36.2.1.10 any amounts owed by the Contractor to the Authority under **clause 24** (Delays Indemnity);
- 36.2.1.11 any amounts owed by either party to the other under **Schedule 4** (Payment Mechanism);
- 36.2.1.12 any amounts to be deducted pursuant to **clause 44** (Surveys on Termination and Retention Fund);
- 36.2.1.13 the amount of any Pass Through Costs for the previous Contract Month;
- 36.2.1.14 the amount of any CNDT Compensation;
- 36.2.1.15 the Dwellings receiving a Certificate of Availability in that month; and
- 36.2.1.16 the Dwellings subject to a CNDT in that month.
- 36.2.2 an invoice for the amount of the Net Monthly Unitary Payment (if any) shown by the report as owing by the Authority to the Contractor and for any VAT payable by the Authority in respect of that amount.

36.3 **Payment**

- 36.3.1 Subject to **clause 36.4** (Disputed Amounts), the Authority shall pay the amount stated in any invoice submitted under **clause 36.2** (Report and Invoice) with 15 Business Days of its submission
- 36.3.2 Where a report shows a net amount owed by the Contractor to the Authority, the Contractor shall pay that amount to the Authority within 15 Business Days of the report or, at the option of the Authority, carry forward that amount to the next report in reduction of accounts which would otherwise have been owed by the Authority to the Contractor.

36.4 **Disputed Amounts**

- 36.4.1 If the Authority disputes the Contractor's entitlement to any part of the amount claimed by the Contractor pursuant to **clause 36.2** (Report

and Invoice) in respect of any Contract Month the provisions of this **clause 36.4** (Disputed Amounts) shall apply.

36.4.2 The Authority shall notify the Contractor in writing within 10 Business Days of receipt by the Authority of the relevant invoice and supporting report of that part of the amount (insofar as at the time of such notice the Authority is reasonably able to quantify it) which the Authority (acting in good faith) disputes (a "Disputed Amount") and submit to the Contractor such supporting evidence as the Authority may have.

36.4.3 The Authority may withhold payment of any Disputed Amount pending agreement or determination of the Contractor's entitlement in relation to the Disputed Amount but shall pay on the due date any undisputed amounts.

36.5 **Response to Authority Notice**

Within 10 Business Days following receipt by the Contractor of any notice served by the Authority pursuant to **clause 36.4.2** (Disputed Amounts), the Contractor shall respond by notifying the Authority as to whether or not it agrees with the statements made in that notice. If the Contractor indicates that it does agree, or if the Contractor fails to make such a response within that time limit, the Authority shall be entitled:

36.5.1 to retain on a permanent basis any amounts withheld pursuant to **clause 36.4.3** (Disputed Amounts); and

36.5.2 to reclaim from the Contractor the amount of any over-payment which may have been made to the Contractor together with interest on any such amount at the Prescribed Rate calculated on a daily basis and compounded quarterly from the date on which the over-payment was made until that amount has been paid in full and whether before or after judgment.

36.6 **Dispute**

If the Contractor responds (pursuant to **clause 36.5** (Response to Authority Notice)) that it does not agree with all or any of the statements made in any notice served by the Authority pursuant to **clause 36.4.2** (Disputed Amounts), the matter or matters in question shall be determined under the Dispute Resolution Procedure.

36.7 **Determination of Dispute**

If the determination of any dispute conducted pursuant to **clause 36.6** (Dispute) shows that:

36.7.1 the Authority has withheld any amount which the Contractor was entitled to be paid; or

36.7.2 the Contractor has claimed under **clause 36.2** (Report and Invoice) any amount which it was not entitled to be paid,

the Authority shall pay such amount to the Contractor or the Contractor shall repay such amount to the Authority with interest in each case on that amount at the Prescribed Rate calculated on a daily basis and compounded quarterly from the date on which payment should have been made (in the case of failure to pay by the Authority) or from the date on which over payment was made (in the case of excessive claims by the Contractor) until all relevant monies have been paid in full and whether before or after judgment.

36.8 **Rights of Set Off**

The Contractor shall not be entitled to retain or set off any amount due to the Authority by it, but the Authority may (subject to **clause 51.2** (Set Off on Termination)) retain or set off any amount owed to it by the Contractor under this Agreement which has fallen due and payable against any amount due to the Contractor under this Agreement.

36.9 **Set Off and Disputed Amounts**

If the payment or deduction of any amount referred to in **clause 36.8** (Rights of Set Off) is disputed then any undisputed element of that amount shall be paid and the disputed element shall be dealt with in accordance with the Dispute Resolution Procedure.

36.10 **VAT on Payments**

36.10.1 All amounts due under this Agreement are exclusive of VAT.

36.10.2 If any supply made or referred to in this Agreement is or becomes chargeable to VAT then the person receiving the supply (the "**Recipient**") shall in addition pay the person making the supply (the "**Supplier**") the amount of that VAT against receipt by the Recipient from the Supplier of a proper VAT invoice in respect of that supply.

36.10.3 Where under this Agreement any amount is calculated by reference to any sum which has or may be incurred by any person, the amount shall include any VAT in respect of that amount only to the extent that such VAT is not recoverable as input tax by that person (or a member of the same VAT group), whether by set off or repayment.

36.10.4 The Contractor shall provide the Authority with any information reasonably requested by the Authority in relation to the amount of VAT

chargeable in accordance with this Agreement and payable by the Authority to the Contractor.

36.11 **European Monetary Union**

36.11.1 Without prejudice to Article 3 of Regulation (EC) No. 1103/97 of 17th June 1997 of the Authority of Ministers of the European Union, the introduction of the euro shall not, of itself:

36.11.1.1 have the effect of altering any provision of, or (in whole or in part) of discharging, cancelling, rescinding, terminating or otherwise excusing performance under, any of the Project Documents; or

36.11.1.2 give any of the parties to the Project Documents the right unilaterally to alter any provision of, or (in whole or in part) to discharge, cancel, rescind, terminate or otherwise avoid its obligations under, any of the Project Documents.

36.11.2 If as a result of the implementation of European economic and monetary union ("**Monetary Union**"):

36.11.2.1 sterling ceases to be the lawful currency of the United Kingdom and is replaced by the euro; or

36.11.2.2 sterling and the euro are at the same time recognised by the Bank of England as the lawful currency of the United Kingdom, and the Authority so requires,

then reference in the Project Documents to sterling shall be construed as reference to the euro translated at the Exchange Rate (as hereinafter defined).

36.11.3 For the purposes of this **clause 36.10.4**, "**Exchange Rate**" means the rate of exchange recognised by the European Central Bank for the conversion of Sterling into the euro for the purposes of implementation of Monetary Union.

36.11.4 If, following the implementation of Monetary Union in the United Kingdom, or any part thereof, the Authority or the Contractor so require, the Project Documents will be amended to the extent reasonably necessary to reflect the implementation of Monetary Union and to put the Parties in the same position, so far as possible, that they would have been in had Monetary Union not occurred.

37. INDEXATION

On each Review Date, the Unitary Charge shall be adjusted for the Contract Year commencing on that Review Date in accordance with **paragraph** Error! Reference source not found. of **Schedule 4** (Payment Mechanism).

38. BEST VALUE

38.1 Authority's Best Value Duty

38.1.1 The Contractor acknowledges that:

38.1.1.1 the Authority is subject to the Best Value Duty;

38.1.1.2 the provisions of this **Clause 38** (Best Value) are intended to assist the Authority in discharging its Best Value Duty in relation to the Services; and

38.1.1.3 the provisions of this **Clause 38** (Best Value) shall apply in respect of the obligations of the Contractor and the Authority concerning the Best Value Duty and the 1999 Act generally.

38.1.2 The Contractor shall, throughout the Contract Period, but only to the extent of its obligations in this Agreement, make arrangements to secure continuous improvement in the way in which the Services are provided, having regard to a combination of economy, efficiency and effectiveness.

38.1.3 The Contractor shall undertake or refrain from undertaking such actions as the Authority shall reasonably request to enable the Authority to comply with Part 1 of the 1999 Act, including:

38.1.3.1 complying with requests for information, data or other assistance made by the Authority in pursuance of its Best Value Duty including to:

(a) facilitate any assessment, inspection or audit undertaken by any Relevant Authority in connection with the Best Value Duty in respect of the Services, including any assessment or inspection undertaken with a view to verifying the Authority's compliance with its Best Value Duty pursuant to Sections 10 and 11 of the 1999 Act;

(b) facilitate the Authority preparing any statement, in response to an Authority auditor's report;

- (c) assist the Authority in relation to any action taken by the Secretary of State under Section 15 of the 1999 Act;
 - (d) enable the Authority to report on the National Performance Indicators that apply to the Services and any other data requirements that may be prescribed by any Relevant Authority; and
 - (e) complying with all requests by the Authority to procure the attendance of specific officers or employees of the Contractor or any sub-contractor (or to procure attendance of any of its or their sub-contractors) at any meetings of the Authority at which the Services are to be discussed (but not, otherwise than in exceptional circumstances, more than four (4) in any one (1) Contract Year);
- 38.1.4 co-operating in audits and other Best Value Inspections;
- 38.1.5 permitting any Best Value Inspector, in connection with the exercise of his statutory powers and duties, at all reasonable times and upon reasonable notice, access to:
- 38.1.5.1 the Blocks;
 - 38.1.5.2 any document or data relating to the Services; and
 - 38.1.5.3 any sub-contractor, agent or employee of the Contractor.
- 38.1.6 providing any Best Value Inspector, in connection with the exercise of his statutory powers and duties, at all reasonable times and upon reasonable notice:
- 38.1.6.1 with a legible printed copy of any document relating to the Services which is stored in electronic form;
 - 38.1.6.2 access to inspect any computer and associated apparatus or material which the Best Value Inspector considers has been used in connection with such an electronic document as described in **clause 38.1.6.1**; and
 - 38.1.6.3 the procurement of reasonable assistance from any person whom or on whose behalf the computer described in **clause 38.1.6.2** has been used and any person having charge of or being otherwise concerned with the operation of such a computer.

38.2 Customer Satisfaction Survey

38.2.1 The Contractor shall, on each Customer Satisfaction Survey Date undertake (or procure the undertaking of) a customer satisfaction survey ("**Customer Satisfaction Survey**") the purpose of which shall include:

38.2.1.1 assessing the level of satisfaction among Service Users with the Services (including the way in which the Services are provided, performed and delivered) and, in particular, with the quality, efficiency and effectiveness of the Services;

38.2.1.2 assisting in the preparation of the Contractor's Annual Service Report;

38.2.1.3 monitoring the compliance by the Contractor with the Output Specification,

and the Customer Satisfaction Survey shall be undertaken by means of distributing to Service Users within ten (10) Business Days of each Customer Satisfaction Survey Date a questionnaire or other survey method as agreed between the parties in a form to be agreed with the Authority (acting reasonably).

38.2.2 The content of the questionnaire or other material to be used for any other survey method referred to in **clause 38.2** (Customer Satisfaction Survey) and the method of undertaking the Customer Satisfaction Survey shall comply with all applicable Legislation and Guidance.

38.2.3 The Authority shall provide reasonable assistance and information (subject to compliance with all Legislation) to the Contractor to enable the Contractor to undertake the Customer Satisfaction Survey.

38.2.4 Within one month of each Customer Satisfaction Survey Date, the Contractor shall prepare a summary of the results of the Customer Satisfaction Survey in such form as the Authority shall reasonably require and promptly upon a written request from the Authority provide such further details (including copies of all returned questionnaires and/or any other survey material used by the Contractor) as the Authority shall reasonably require.

38.3 Annual Service Report

- 38.3.1 Without prejudice to any other provision in this Contract the Contractor shall, no later than the 28 February in each Contract Year, at its own cost provide to the Authority a written report (the "Annual Service Report") in accordance with the requirements of the Output Specification.
- 38.3.2 The Contractor shall upon a written request from the Authority promptly provide such written evidence or other supporting information as the Authority may reasonably require to verify and audit the information and other material contained in the Annual Service Report.
- 38.3.3 If, in the Authority's reasonable opinion, the provision, performance or delivery of the Services (or any part) may be more effective, efficient and economic having regard to the Annual Service Report and the Best Value Duty, then the Authority may serve a Low Value Change Request or an Authority Change Notice (as the case may be) upon the Contractor, stating the nature and timing of the changes to the provision, performance or delivery of the Services (or the relevant part) which the Authority desires, and the provisions of **Schedule 43** (Change Protocol) shall apply.
- 38.3.4 The Contractor shall take all reasonable steps to mitigate any costs and maximise any savings arising as a consequence of a Low Value Change Request or an Authority Change Notice (as the case may be) issued pursuant to **clause 38.3.3** above.

38.4 **Performance Standard Benchmarking**

- 38.4.1 Not less than twenty-four months before the second anniversary of the Services Commencement Date and then six (6) months before each Market Testing Review Date, the Authority shall instigate a Performance Standard Benchmarking Exercise in relation to the Performance Standards numbered 5 (Customer Care), 8 (Customer Care), 13 (Customer Satisfaction), 14 (Customer Satisfaction), 21 (Voids), 22 (Repairs), 24 (Repairs) and 54 (Income) in the Output Specification and thereafter the following provisions of this **clause 38.4** (Performance Standard Benchmarking) shall apply.
- 38.4.2 The Parties agree that any Performance Standard Benchmarking Exercise shall be carried out in good faith and each party shall act reasonably in relation to any such Performance Standard Benchmarking Exercise.

- 38.4.3 The Performance Standard Benchmarking Exercise shall be carried out in relation to the Authority's overall housing provision and housing management functions.
- 38.4.4 The Performance Standard Benchmarking Exercise shall be carried out by the Authority at its own cost.
- 38.4.5 The purpose of the Performance Standard Benchmarking Exercise shall be to undertake an objective comparison of the relevant Performance Standard in relation to the Services with the attainment of the Performance Standard in relation to the same or similar service by top quartile local authorities, arms length management organisations or similar in England.
- 38.4.6 If, in the Authority's reasonable opinion, the results of the Performance Standard Benchmarking Exercise disclose the Performance Standards may be improved having regard to the Best Value Duty then the Authority may serve a Low Value Change Request or an Authority Change Notice (as the case may be) upon the Contractor, stating the nature of the change to the Performance Standards which the Authority desires, and the provisions of **Schedule 43** (Change Protocol) shall apply.

PART 6 - TERMINATION

39. DIRECT AGREEMENT

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

40. TERMINATION OF THIS AGREEMENT

40.1 Voluntary Termination by the Authority

40.1.1 The Authority may terminate this Agreement at any time on or before the Expiry Date by complying with its obligations under **clause 40.1.2** and **40.1.4** (Voluntary Termination by the Authority).

40.1.2 If the Authority wishes to terminate this Agreement under **clause 40.1.1** (Voluntary Termination by the Authority) it must give notice to the Contractor stating:

40.1.2.1 that the Authority is terminating this Agreement under this **clause 40.1** (Voluntary Termination by the Authority);

40.1.2.2 that this Agreement will terminate on the date specified in the notice, which must be a minimum of twenty (20) Business Days after the date of receipt of the notice; and

40.1.2.3 whether the Authority has chosen to exercise its option under **clause 49** (Assets).

40.1.3 On termination, the Authority shall have the option to require the Contractor to transfer its right, title and interest in and to the Assets to the Authority or as directed by the Authority.

40.1.4 This Agreement will terminate on the date specified in the notice referred to in **clause 40.1.2** (Voluntary Termination by the Authority) above.

40.2 Termination on Authority Default

40.2.1 If an Authority Default has occurred and the Contractor wishes to terminate the Agreement, the Contractor must serve a termination notice (the "**Contractor Termination Notice**") on the Authority within 30 Business Days of becoming aware of the Authority Default.

40.2.2 The Contractor Termination Notice must specify the type of Authority Default which has occurred entitling the Contractor to terminate.

40.2.3 This Agreement will terminate on the day falling 30 Business Days after the date the Authority receives the Contractor Termination Notice, unless the Authority rectifies the Authority Default within 20 Business Days of receipt of the Contractor Termination Notice.

40.3 **Termination on Contractor Default**

Subject to **clause 13** (Development Works) and **clause 40.4** (Rectification of Contractor Default), the Authority shall be entitled to terminate this Agreement by notice in writing to the Contractor if a Contractor Default has occurred.

40.4 **Rectification of Contractor Default**

40.4.1 Subject to **clause 13** (Development Works) If a Contractor Default has occurred and the Authority wishes to terminate this Agreement, it must serve a Termination Notice on the Contractor.

40.4.2 The Termination Notice must specify:

40.4.2.1 the type and nature of the Contractor Default that has occurred, giving reasonable details; and

40.4.2.2 that in the case of any Contractor Default falling within paragraph (a), (g), (h), (i), or (o) of the definition for Contractor Default this Agreement will terminate on the day falling forty (40) Business Days after the date the Contractor received the Termination Notice unless:

(a) in the case of breach under limb (a) of the definition of Contractor Default the Contractor puts forward an acceptable rectification programme within 20 Business Days after the date the Contractor receives the termination notice (and implements such programme in accordance with its terms and rectifies the Contractor Default in accordance with the programme); or

(b) in the case of any Contractor Default falling within paragraphs (a), (g), (h), (i) or (o) of the definition of Contractor Default the Contractor rectifies the Contractor Default within forty (40) Business Days after the date on which the Contractor receives the Termination Notice; or

40.4.2.3 that in the case of any other Contractor Default (not being paragraphs (a), (g), (h), (i) or (o)), this Agreement will terminate on the date falling twenty (20) Business Days

after the date the Contractor receives the Termination Notice.

40.4.3 If the Contractor either rectifies the Contractor Default within the time period specified in the Termination Notice or implements the accepted rectification programme (if applicable) in accordance with its terms the Termination Notice will be deemed to be revoked and this Agreement will continue.

40.4.4 If:

40.4.4.1 in the case of a Contractor Default within paragraph (a) of the definition of Contractor Default, no acceptable rectification programme has been put forward pursuant to **Clause 40.4.2.2** above and the Contractor fails to rectify the Contractor Default within the time period specified in the Termination Notice; or

40.4.4.2 in the case of a Contractor default within paragraph (g), (h), (i) or (o) of the definition of Contractor Default, the Contractor fails to rectify the Contractor Default within the time period specified in the Termination Notice;

the Authority may give notice stating that this Agreement will, subject to the terms of the Direct Agreement, terminate on the date falling forty (40) Business Days after the date of receipt of such notice.

40.4.5 If the Contractor fails to implement any rectification programme in accordance with its terms, the Agreement will, subject to the terms of the Direct Agreement, terminate on the date falling five (5) Business Days after the date of notification by the Authority to the Contractor of such failure to implement the rectification programme in accordance with its terms.

40.5 Termination for Breach of Refinancing Provisions

40.5.1 If the Contractor wilfully breaches **clause 84.1** (Refinancing) then the Authority may terminate this Agreement at any time on or before the Expiry Date by complying with its obligations under **clause 40.5.2** (Termination for Breach of Refinancing Provisions).

40.5.2 If the Authority decides to terminate the Agreement under **clause 40.5.1** (Termination for Breach of Refinancing Provisions), it must give notice to the Contractor stating:

- 40.5.2.1 that the Authority is terminating the Agreement under **clause 40.5.1** (Termination for Breach of Refinancing Provisions);
 - 40.5.2.2 that the Agreement will terminate on the date falling 20 Business Days after the date of receipt of the notice; and
 - 40.5.2.3 whether the Authority has chosen to exercise its option under **clause 49** (Assets).
- 40.5.3 On termination, the Authority shall have the option to require the Contractor to transfer to the Authority all of its rights, title and interest in and to the Assets.
- 40.5.4 This Agreement shall terminate on the date falling 20 Business Days after the date of receipt of the notice referred to in **clause 40.5.2** (Termination for Breach of Refinancing Provisions).
- 40.6 Termination for Corrupt Gift and Fraud**
- 40.6.1 The Contractor warrants that in entering into this Agreement it has not committed any Prohibited Act.
- 40.6.2 If the Contractor or any Sub-Contractor (or anyone employed by or acting on behalf of any of them) or any of its or their agents or shareholders commits any Prohibited Act, then the Authority shall be entitled to act in accordance with the provisions of this **clause 40.6** (Termination for Corrupt Gift and Fraud).
- 40.6.2.1 Notwithstanding **clauses 40.6.2.3 to 40.6.2.6**, if a Prohibited Act is committed by the Contractor or by an employee not acting independently of the Contractor, then the Authority may terminate this Agreement by giving notice to the Contractor provided that, if the Prohibited Act is an offence under section 7(1) of the Bribery Act 2010, the Authority may not terminate the Agreement unless, acting reasonably, it considers termination of the Agreement to be in the best interests of the Project.
 - 40.6.2.2 Notwithstanding **clauses 40.6.2.3 to 40.6.2.6**, if the Prohibited Act is committed by an employee of the Contractor acting independently of the Contractor, then the Authority may give notice to the Contractor of termination and this Agreement will terminate, unless within 20 Business Days of receipt of such notice the Contractor terminates the employee's employment and (if

necessary) procures the carrying out of such part of the Works or the performance of such part of the and/or Services by another person.

- 40.6.2.3 If the Prohibited Act is committed by a Sub-Contractor or by an employee of that Sub-Contractor not acting independently of that Sub-Contractor then the Authority may give notice to the Contractor of termination and this Agreement will terminate, unless within 20 Business Days of receipt of such notice the Contractor terminates the relevant Project Document and procures the carrying out of such part of the Works and/or the performance of such part of the Services by another person provided that, if the Prohibited Act is an offence under section 7(1) of the Bribery Act 2010, the Authority may not terminate the Agreement unless, acting reasonably, it considers termination of the Agreement to be in the best interests of the Project.
- 40.6.2.4 If the Prohibited Act is committed by an employee of a Sub-Contractor acting independently of that Sub-Contractor, then the Authority may give notice to the Contractor of termination and this Agreement will terminate, unless within 20 Business Days of receipt of such notice the Sub-Contractor terminates the employee's employment and (if necessary) procures the carrying out of such part of the Works and/or the performance of such part of the Services by another person.
- 40.6.2.5 If the Prohibited Act is committed by any other person not specified in **clauses 40.6.2.1 to 40.6.2.4**, then the Authority may give notice to the Contractor of termination and this Agreement will terminate, unless within 20 Business Days of receipt of such notice the Contractor procures the termination of such person's employment and of the appointment of their employer (where not employed by the Contractor or the Sub-Contractors) and (if necessary) procures the carrying out of such part of the Works and/or the performance of such part of the Services by another person provided that, if the Prohibited Act is an offence under section 7(1) of the Bribery Act 2010, the Authority may not terminate the Agreement unless, acting reasonably, it considers termination of the Agreement to be in the best interests of the Project..

40.6.2.6 Any notice of termination under this **clause 40.6** (Termination for Corrupt Gift and Fraud) shall specify:

- (a) the nature of the Prohibited Act;
- (b) the identity of the party whom the Authority believes has committed the Prohibited Act;
- (c) the date on which this Agreement will terminate, in accordance with the applicable provision of this clause; and
- (d) the Authority's chosen option under **clause 52** (Method of Payment).

40.6.3 The Contractor undertakes to the Authority that it will throughout the duration of this Agreement use all reasonable endeavours to have in place adequate procedures (as referred to in section 7(2) of the Bribery Act 2010) designed to prevent persons associated with the Contractor from bribing any person with the intention of obtaining or retaining business for the Contractor or with the intention of obtaining or retaining advantage in the conduct of business for the Contractor.

41. **TERMINATION FOR PERSISTENT BREACH BY THE CONTRACTOR**

41.1 **Warning Notice**

If a particular breach, other than a breach arising directly from the execution of the Works or any breach for which Performance Deductions could have been awarded and/or unavailability deductions could have been made, has continued for more than 14 days or occurred more than three times in any six month period then the Authority may serve a notice on the Contractor:

- 41.1.1 specifying that the notice is a formal warning notice;
- 41.1.2 giving reasonable details of the breach; and
- 41.1.3 stating that the breach is a breach which, if it recurs frequently or continues, may result in a termination of this Agreement.

41.2 **Final Notice**

If, following service of a warning notice under **clause 41.1** (Warning Notice) the breach specified has continued beyond 30 days or recurred in two or more months within the six month period after the date of service of the warning notice, then the Authority may serve another notice (a "**Final Warning Notice**") on the Contractor:

- 41.2.1 specifying that it is a Final Warning Notice;
- 41.2.2 stating that the breach specified has been the subject of a warning notice served within the twelve month period prior to the date of service of the Final Warning Notice; and
- 41.2.3 stating that if the breach continues for more than 30 days or recurs in two or more months within the six month period after the date of service of the Final Warning Notice, this Agreement may be terminated.

41.3 **Currency of Warning Notices**

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

42. **TERMINATION ON FORCE MAJEURE**

42.1 **Relief from Obligations**

No party shall be entitled to bring a claim for a breach of obligations under this Agreement by the other party or incur any liability to the other party for any losses or damages incurred by that other party to the extent that a Force Majeure Event occurs and the Affected Party is prevented from carrying out obligations by that Force Majeure Event. For the avoidance of doubt, the Authority shall not be entitled to terminate this Agreement for a Contractor Default if such Contractor Default arises from a Force Majeure Event (but without prejudice to **clauses 42.5 and 42.7**).

42.2 **Ability to Make Deductions**

Nothing in **clause 42.1** (Relief from Obligations) shall affect any entitlement to make deductions or any deductions made as a result of **Schedule 4** (Payment Mechanism) in the period during which the Force Majeure Event is subsisting.

42.3 **Notification**

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

42.4 **Consultation**

As soon as practicable following such notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate

terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this Agreement.

42.5 Failure to Agree

If no such terms are agreed on or before the date falling eighty (80) Business Days after the date of the commencement of the Force Majeure Event and such Force Majeure Event is continuing or its consequence remains such that the Affected Party is unable to comply with its obligations under this Agreement for a period of more than one hundred and twenty (120) Business Days, then, subject to **clause 42.6** (Consequences of Termination), either party may terminate this Agreement by giving thirty (30) Business Days' written notice to the other party.

42.6 Consequences of Termination

If this Agreement is terminated under **clause 42.5** (Failure to Agree) or **clause 42.7** (Notice to Continue):

42.6.1 compensation shall be payable by the Authority in accordance with **clause 45** (Compensation on Termination for Force Majeure); and

42.6.2 the Authority may require the Contractor to transfer its title, interest and rights in and to any Assets to the Authority.

42.7 Notice to Continue

If the Contractor gives notice to the Authority under **clause 42.5** (Failure to Agree) that it wishes to terminate this Agreement, then the Authority has the option either to accept such notice or to respond in writing on or before the date falling 10 Business Days after the date of its receipt stating that it requires this Agreement to continue. If the Authority gives the Contractor such notice, then:

42.7.1 the Authority shall pay to the Contractor the Unitary Charge from the day after the date on which this Agreement would have terminated under **clause 42.5** (Failure to Agree) as if the Services were being fully provided; and

42.7.2 this Agreement will not terminate until expiry of written notice (of at least 30 Business Days) from the Authority to the Contractor that it wishes this Agreement to terminate.

42.8 Mitigation

The parties shall at all times following the occurrence of a Force Majeure Event use all reasonable endeavours to prevent and mitigate the effects of any delay and the Contractor shall at all times during which a Force Majeure Event is

subsisting take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

42.9 **Cessation of Force Majeure Event**

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

43. **CONSEQUENCES OF TERMINATION**

43.1 **Compensation Provisions**

If this Agreement is terminated pursuant to:

43.1.1 **clause 40.1** (Voluntary Termination by the Authority), the provisions of **clause 47** (Compensation on Termination for Authority Default) shall apply;

43.1.2 **clause 40.2** (Termination on Authority Default), the provisions of **clause 47** (Compensation on Termination for Authority Default) shall apply; or

43.1.3 **clause 40.3** (Termination on Contractor Default), the provisions of **clause 46** (Compensation on Termination for Contractor Default) shall apply;

43.1.4 **clause 40.5** (Termination for Breach of Refinancing Provisions), the provisions of **clause 48** (Compensation on Corrupt Gifts, Fraud and Refinancing Breaches) shall apply;

43.1.5 **clause 40.6** (Termination for Corrupt Gifts and Frauds), the provisions of **clause 48** (Compensation of Corrupt Gifts, Fraud and Refinancing Breaches).

43.1.6 **clause 82.3** (Failure to Issue a Certificate) the provisions of **clause 47** shall apply.

43.2 **Termination of Agreement**

Notwithstanding any other provisions of this Agreement, this Agreement shall only terminate in accordance with the express provisions of this Agreement.

43.3 **Continuing Obligations**

43.3.1 Save as otherwise expressly provided in this Agreement or as already taken into account in the calculation of any Termination Sum or other payment of compensation on termination pursuant to this Agreement and notwithstanding the provisions of **clause 85** (Sole Remedy):

43.3.1.1 termination of this Agreement shall be without prejudice to any accrued rights or obligations under this Agreement prior to termination; and

43.3.1.2 termination of this Agreement shall not affect the continuing rights and obligations of the Contractor and the Authority under **clause 8** (Nature of Land Interests), **clause 33** (TUPE and Employees), **clause 33** (Pensions), **clause 36** (Payment Provisions), **Part 7** (Compensation on Termination), **clause 58** (Information and Confidentiality), **clause 59** (Indemnities, Guarantees and Contractual Claims), **clause 60** (Insurance), **clause 61** (Reinstatement and Change of Requirement After Insured Event), **clause 63** (Risks that become Uninsurable), **clause 64** (Dispute Resolution), **clause 66** (Intellectual Property), **clause 73** (Notices), **clause 78** (Contractor's Records), **clause 83** (Governing Law and Jurisdiction) and **clause 83** (Capacity) or under any other provision of this Agreement which is expressed to survive termination or which is expressed to survive termination or which is required to give effect to such termination or the consequence of such termination.

43.3.2 The clauses of this Agreement which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

44. **SURVEYS ON TERMINATION AND RETENTION FUND**

44.1 **Final Survey**

No later than the date eighteen (18) months prior to the Expiry Date, the Authority shall be entitled to carry out or procure the carrying out of a final survey of the Dwellings and/or the Blocks and/or the Communal Areas to assess whether they have been and are being maintained by the Contractor in accordance with its obligations under **clause 26.1** (Maintenance).

44.2 **Notification**

The Authority shall notify the Contractor in writing a minimum of five (5) Business Days in advance of the date it wishes to carry out or procure the

carrying out of the final survey. The Authority shall consider in good faith any reasonable request by the Contractor for the final survey to be carried out on a different date if such request is made at least two (2) Business Days prior to the notified date and the Contractor (acting reasonably) is able to demonstrate that carrying out the final survey on the notified date would materially prejudice the Contractor's ability to provide the Services.

44.3 **Minimisation of Disruption**

When carrying out the final survey, the Authority shall use reasonable endeavours to minimise any disruption caused to the provision of the Services by the Contractor. The Contractor shall afford the Authority or any person carrying out the survey (free of charge) any reasonable assistance required by the Authority during the carrying out of the final survey. The cost of the final survey shall be borne by the Authority.

44.4 **Results of Survey**

If the final survey shows that the Contractor has not complied with or is not complying with its obligations under **clause 26.1** (Maintenance), the Authority shall:

- 44.4.1 notify the Contractor of the rectification and/or maintenance work which is required to bring the condition of the Dwellings and/or the Blocks and/or the Communal Areas to the standard they would have been in if the Contractor had complied or was complying with its obligations under **clause 26.1** (Maintenance) (the "**Required Standard**");
- 44.4.2 specify a reasonable period within which the Contractor must carry out such rectification and/or maintenance work; and
- 44.4.3 Where the non compliance is in respect of 5% of the Dwellings subject to the survey recover the cost of the survey from the Contractor by means of a withdrawal from the Retention Fund Account or deduction from the next payment of the Unitary Charge.

44.5 **Retention Fund**

If the Contractor has been notified under **clause 44.4.1** (Results of Survey) that rectification and/or maintenance work is required, then twelve (12) months prior to the Expiry Date the Authority shall (to the extent the outstanding works have not been carried out by the Contractor in the interim) deduct the costs of that work as quantified by the survey referred to in **clause 44.1** (Final Survey) from the next following instalment (or, if the amount of such instalment is insufficient, the next instalments as necessary) of Unitary Charge and pay such amount into

an interest bearing account (the "**Retention Fund Account**") subject to **clause 44.7** (Costs).

44.6 **Maintenance Work**

The Contractor shall carry out such rectification and/or maintenance work to the Authority's reasonable satisfaction within the period specified and any costs it incurs in carrying out such rectification and/or maintenance work shall be at its own expense.

44.7 **Costs**

If and to the extent that the Contractor carries out the necessary rectification and/or maintenance work to the Required Standard within the specified period as notified pursuant to **clause 44.4.1** (Results of Survey), the Authority, to the extent that then or subsequently there are funds standing to the credit of the Retention Fund Account, shall reimburse the Contractor's costs of so doing by withdrawing amounts from the Retention Fund Account and paying these to the Contractor. If the aggregate of the amounts from time to time paid into the Retention Fund Account are insufficient to cover the Contractor's costs the Contractor shall bear the balance of such costs itself.

44.8 **Failure to Carry Out Work**

If and to the extent that the Contractor fails to carry out the necessary rectification and/or maintenance work to the Required Standard within the specified period as notified pursuant to **clause 44.4.1** (Results of Survey), the Authority shall be entitled to carry out itself, or procure, such rectification and/or maintenance work at the Contractor's expense and shall make withdrawals from the Retention Fund Account or, where there are insufficient funds in the Retention Fund Account, make subject to **clause 36.8** (Rights of Set Off) deductions from the Unitary Charge to pay for such rectification and/or maintenance work or recover such amounts from the Contractor as a debt.

44.9 **Balance of Fund**

If:

- 44.9.1 all the rectification and/or maintenance work identified by the Authority or the person the Authority procures to carry out the final survey has been carried out to the Required Standard;
- 44.9.2 all such rectification and/or maintenance work has been paid for by the Contractor; and
- 44.9.3 no termination notice given in accordance with this Agreement is outstanding,

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

PART 7 - COMPENSATION ON TERMINATION

45. COMPENSATION ON TERMINATION FOR FORCE MAJEURE

45.1 Force Majeure Termination Sum

On termination of this Agreement under **clause 42.3** (Notification for Force Majeure), the Authority shall pay to the Contractor in accordance with **clauses 51** (Miscellaneous Compensation Provisions) and **52** (Method of Payment) the Force Majeure Termination Sum. Subject to **clause 45.2** (Adjustment of Compensation Amount), the Force Majeure Termination Sum shall be an amount equal to the aggregate of:

- 45.1.1 the Base Senior Debt Termination Amount;
- 45.1.2 the Junior Debt, less an amount equal to the aggregate of payments of interest made by the Contractor under the Subordinated Financing Agreements;
- 45.1.3 all amounts paid to the Contractor by way of subscription for shares in the capital of the Contractor less dividends and other distributions paid to the Shareholders (save to the extent deducted under **clause 45.1.2** (Amount)); and
- 45.1.4 redundancy payments for employees of the Contractor that have been or will be reasonably incurred by the Contractor as a direct result of termination of this Agreement and any Sub-Contractor Breakage Costs.

45.2 Adjustment of Compensation Amount

45.2.1 If the aggregate of the amounts referred to in **clauses 45.1.1, 45.1.2 and 45.1.3** is less than the Revised Senior Debt Termination Amount, then the Force Majeure Termination Sum shall be increased so that it is equal to the aggregate of the Revised Senior Debt Termination Amount and the amount referred to in **clause 45.1.4** provided always that:

- 45.2.1.1 the amount referred to in **clause 45.1.4** shall only be paid to the extent that the Contractor has demonstrated to the reasonable satisfaction of the Authority that the amount will not be paid in payment (in whole or in part) of any Distribution; and
- 45.2.1.2 if, at the time of termination, there are any Additional Permitted Borrowings outstanding, no Sub-Contractor Breakage Costs shall be paid in respect of any Sub-Contract in circumstances where there is an event of

default under such Sub-Contract which would entitle the Contractor to terminate such Sub-Contract.

45.2.2 If a Distribution is made whilst any Additional Permitted Borrowing is outstanding and the Contractor has wilfully, or through gross negligence failed to comply with its obligations under Clause 11.5.4.1 of the Direct Agreement then in addition to the deduction of the Distribution made pursuant to paragraph (v) of the definition of Revised Senior Debt Termination Amount, the Authority shall be entitled to set off the value of that Distribution a second time against the Force Majeure Termination Sum, provided that the amount of the Force Majeure Termination Sum will never be less than the Revised Senior Debt Termination Amount.

45.2.3 If the Contractor has wilfully or through gross negligence failed to comply with its obligations under clause 11.5.4.2 of the Direct Agreement and there has been an overstatement of the cash balances by the Contractor as at that date which has caused the Authority to reasonably believe that it would be required to pay a lesser sum at the Termination Date than it actually is required to pay under the terms of this **clause 45** (Compensation on Termination for Force Majeure), then the Force Majeure Termination Sum shall be reduced by the amount of such overstatement (to the extent such overstatement is still applicable at the Termination Date), provided that the amount of the Force Majeure Termination Sum will never be less than the Revised Senior Debt Termination Amount.

45.3 **Amounts less than Zero**

If the amounts referred to in **clauses 45.1.2** (Force Majeure Termination Sum) and/or **45.1.3** (Force Majeure Termination Sum) are less than zero then, for the purposes of the calculation in **clause 45.1** (Force Majeure Termination Sum), they shall be deemed to be zero.

45.4 **Payment**

The Force Majeure Termination Sum payable pursuant to this **clause 45** (Compensation on Termination for Force Majeure) shall be determined and paid in accordance with **clauses 51** (Miscellaneous Compensation Provisions) and **52** (Method of Payment).

45.5 **Assets**

On termination, the Authority shall have the option to require the Contractor to transfer to the Authority all of its rights, title and interest in any to the Assets to the Authority or as directed by the Authority.

46. **COMPENSATION ON TERMINATION FOR CONTRACTOR DEFAULT**

46.1 **Retendering Election**

46.1.1 Subject to **clause 46.1.2**, on termination of this Agreement under **clause 40.3** (Termination on Contractor Default) subject to **clauses 46.1.2 and 46.1.3** (Retendering Election), the Authority shall be entitled to:

46.1.1.1 retender the provision of the Project in accordance with **clause 46.2** (Retendering Procedure); or

46.1.1.2 require an expert determination in accordance with **clause 46.3** (No Retendering Procedure).

46.1.2 The Authority shall be entitled to retender the provision of the Project in accordance with **clause 46.2** (Retendering Procedure) if the Authority notifies the Contractor on or before the date falling 20 Business Days after the Termination Date that it intends to retender and there is a Liquid Market and either:

46.1.2.1 the Senior Lenders have not exercised their right to step in under clause 6 of the Direct Agreement; or

46.1.2.2 the Contractor or the Senior Lenders have not procured the transfer of the Contractor's rights and liabilities under this Agreement to a Suitable Substitute Contractor and have failed to use all reasonable efforts to do so.

but otherwise the Authority shall not be entitled to re-tender the provision of the Services and **clause 46.3** shall apply.

46.1.3 The Authority shall not be entitled to elect to retender the provision of the Services in accordance with **clause 46.2** (Retendering Procedure) if, having proposed a Suitable Substitute Contractor and provided all necessary information which the Secretary of State requires in order to consider approval for that person under Section 27, the Contractor or Senior Lenders have demonstrated to the Authority that the reason for the failure to transfer the Contractor's rights and liabilities under the Agreement is that the Suitable Substitute Contractor has not obtained all consents from the Secretary of State as required under Section 27 of the Housing Act 1985 (as amended) for either itself or any sub-contractor within the earlier of:

46.1.3.1 the expiry of any Moratorium Period; and

46.1.3.2 3 months from the date of the application to the Secretary of State accompanied by all required information necessary to obtain such consent.

46.2 Retendering Procedure

If the Authority elects to retender the provision of the Project under **clause 46.1** (Retendering Election), then the following provisions shall apply:

46.2.1 The objective of the retendering procedure shall be to establish and pay to the Contractor the Adjusted Highest Compliant Tender Price, as a result of the Tender Process.

46.2.2 The Authority shall (subject to any legal requirements preventing it from doing so) use its reasonable endeavours to complete the Tender Process as soon as practicable.

46.2.3 The Authority shall notify the Contractor of the Qualification Criteria and the other requirements and terms of the Tender Process, including the timing of the Tender Process, but shall act reasonably in setting such requirements and terms.

46.2.4 The Contractor authorises the release of any information by the Authority under the Tender Process which would otherwise be prevented under **clause 58** (Information and Confidentiality) that is reasonably required as part of the Tender Process.

46.2.5 The Contractor may, at its own cost, appoint a person (the "Tender Process Monitor") to monitor the Tender Process for the purpose of monitoring and reporting to the Contractor and the Senior Lenders on the Authority's compliance with the Tender Process and making representations to the Authority. The Tender Process Monitor will not disclose any confidential information to the Contractor or any other person (and shall provide an undertaking to the Authority to such effect as a condition of its appointment) but shall be entitled to advise the Contractor as to whether it considers that the Authority has acted in accordance with the Tender Process, and correctly determined the Adjusted Highest Compliant Tender Price.

46.2.6 The Tender Process Monitor shall enter into a confidentiality agreement with the Authority in a form acceptable to the Authority and shall be entitled to attend all meetings relating to the Tender Process, inspect copies of the tender documentation and bids and shall be required to make written representations to the Authority regarding compliance

with the Tender Process. All representations shall be made by the Tender Process Monitor in a timely manner as the Tender Process proceeds. The Authority shall not be bound to consider or act upon such representations but acknowledges that such representations may be referred to by the Contractor in the event that the Contractor refers a dispute relating to the Adjusted Highest Compliant Tender Price to dispute resolution in accordance with the Dispute Resolution Procedure.

- 46.2.7 For all or any part of a month, falling within the period from the Termination Date to the Compensation Date, the Authority shall pay to the Contractor:
 - 46.2.7.1 the Post Termination Service Amount for that month, on or before the date falling 10 Business Days after the end of that month; and
 - 46.2.7.2 the Post Termination Service Amount for the period ending on the Compensation Date, on or before the date falling 20 Business Days after the Compensation Date.
- 46.2.8 If any Post Termination Service Amount is less than zero, then it shall be carried forward and shall be set off against any future positive Post Termination Service Amounts. If any such Post Termination Service Amount has not been set off on or before the Compensation Date then it shall be taken into account in the calculation of the Adjusted Highest Compliant Tender Price.
- 46.2.9 The Authority shall require bidders to bid on the basis that they will receive the benefit of any outstanding claims under material damage insurance policies and amounts (if any) standing to the credit of the Joint Insurance Account on the date that the New Contract is entered into.
- 46.2.10 As soon as practicable after tenders have been received, the Authority shall (acting reasonably) determine the Compliant Tenders and shall notify the Contractor of the Adjusted Highest Compliant Tender Price.
- 46.2.11 If the Contractor refers a dispute relating to the Adjusted Highest Compliant Tender Price to the Dispute Resolution Procedure the Authority shall be entitled to enter into a New Contract. The Authority shall pay to the Contractor the Adjusted Highest Compliant Tender Price on or before the date falling 20 Business Days after it has been determined under the Dispute Resolution Procedure and the Authority shall pay interest to the Contractor at the Senior Debt Rate on any amount of the Adjusted Highest Compliant Tender Price which had

been withheld, from the date specified in **clause 46.2.12** until the date specified in this **clauses 46.2.11**. For the avoidance of doubt, where there is an agreed amount and a disputed amount in respect of the Adjusted Highest Compliant Tender Price the Authority shall (where it is agreed that the Adjusted Highest Compliant Tender Price is a positive number) pay to the Contractor the agreed amount no later than the date specified in **clause 46.2.12** below, with the disputed amount being dealt with in accordance with **clause 46.2.11**.

- 46.2.12 Subject to **clauses 46.2.11** (Retendering Procedure) and **46.2.15** (Retendering Procedure), the Authority shall pay to the Contractor an amount equal to the Adjusted Highest Compliant Tender Price no later than the date falling 20 Business Days after the date of the New Contract.
- 46.2.13 The discharge by the Authority of its payment obligation in **clauses 46.2.11** (Retendering Procedure) and/or **46.2.12** (Retendering Procedure) shall be in full and final settlement of all the Contractor's claims and rights against the Authority for breaches and/or termination of this Agreement and the Project Documents whether under contract, tort, restitution or otherwise, save for any liability of the Authority which arose prior to the Termination Date that has not already been taken into account in determining the Adjusted Highest Compliant Tender Price.
- 46.2.14 Subject to **clauses 46.2.15** (Retendering Procedure) and **46.2.18** (Retendering Procedure), if the Authority has not paid an amount equal to the Adjusted Highest Compliant Tender Price to the Contractor on or before the date falling two years after the Termination Date then the following provisions of this **clause 46.2.14** shall not apply to that termination and the provisions of **clause 46.3** (No Retendering Procedure) shall apply instead.
- 46.2.15 If the Adjusted Highest Compliant Tender Price is zero or a negative number then the Authority shall have no obligation to make any payment to the Contractor and with effect from the time that the Authority gives notice of that event to the Contractor, the Authority shall be released from all liability to the Contractor for breaches and/or termination of this Agreement and any other Project Document whether under contract, tort, restitution or otherwise save for any antecedent liability of the Authority which arose prior to the Termination Date (but not from the termination itself) that has not already been taken into account in determining the Adjusted Highest Compliant Tender Price.

- 46.2.16 If the Adjusted Highest Compliant Tender Price is less than zero then an amount equal to the Adjusted Highest Compliant Tender Price shall be due and payable by the Contractor to the Authority on the date of the New Contract.
- 46.2.17 The Authority may elect at any time prior to the receipt of a Compliant Tender to follow the no retendering procedure under **clause 46.3** (No Retendering Procedure) by notifying the Contractor that this election has been made.
- 46.2.18 If the Authority has received all bids from bidders under the Tender Process and has received a Compliant Tender but decides not to complete the Tender Process, it shall notify the Contractor of this decision and pay to the Contractor an amount equal to the Adjusted Highest Compliant Tender Price within 20 Business Days of such notification.

46.3 **No Retendering Procedure**

If either the Authority is not entitled to retender the provision of the Project under **clause 46.1.2 or 46.1.3** (Retendering Election), or the Authority elects to require an expert determination in accordance with this **clause 46.3** (No Retendering Procedure), then the following procedure shall apply:

- 46.3.1 Subject to **clause 46.3.2** (No Retendering Procedure), the Contractor shall not be entitled to receive any Post Termination Service Amount.
- 46.3.2 If the Authority elects to require an expert determination in accordance with this **clause 46.3** (No Retendering Procedure) after it has elected to follow the procedure under **clause 46.2** (Retendering Procedure), then the Authority shall continue to pay to the Contractor each Post Termination Service Amount until the Compensation Date, in accordance with **clause 46.2** (Retendering Procedure).
- 46.3.3 In agreeing or determining the Estimated Fair Value of this Agreement, the parties shall be obliged to follow the principles set out below:
 - 46.3.3.1 all forecast amounts should be calculated in nominal terms at current prices, using the indexation formula in **paragraph** Error! Reference source not found. (Indexation) of **Schedule 4** (Payment Mechanism) recognising the adjustment for indexation in respect of forecast inflation between the date of calculation and the forecast payment date(s) as set out in this Agreement and using the agreed assumed forecast rate of increase in the

RPIx index (as set out in the Base Case) in applying the formula;

46.3.3.2 the total of all future payments of the full Unitary Charge (without deductions) forecast to be made shall be calculated and discounted to the Termination Date at the Termination Date Discount Rate;

46.3.3.3 the total of all costs forecast to be incurred by the Authority as a result of termination shall be calculated and discounted at the Termination Date Discount Rate and deducted from the payment calculated pursuant to **clause 46.3.3.2** (No Retendering Procedure), such costs to include (without double counting):

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

in each case such costs to be forecast at a level that will deliver the full Unitary Charge referred to in **clause 46.3.3.2** (No Retendering Procedure).

46.3.4 If the parties cannot agree on the Adjusted Estimated Fair Value of the Contract on or before the date falling 20 Business Days after the date on which the Authority elected to require an expert determination in accordance with this **clause 46.3** (No Retendering Procedure), then the Estimated Fair Value of this Agreement shall be determined in accordance with the Dispute Resolution Procedure.

46.3.5 Subject to **clause 52.2** (Instalments), the Authority shall pay to the Contractor an amount equal to the Adjusted Estimated Fair Value of the Contract on the date falling 40 Business Days after the date on which the Adjusted Estimated Fair Value of the Contract has been agreed or determined in accordance with this **clause 46.3** (No Retendering Procedure).

- 46.3.6 The discharge by the Authority of its obligation in **clause 46.3.5** (No Retendering Procedure) is in full and final settlement of all the Contractor's claims and rights against the Authority for breaches and/or termination of this Agreement or other Project Document whether in contract, tort, restitution or otherwise, save for any liability that arose prior to the Termination Date (but not from the termination itself) that has not been taken into account in determining the Adjusted Estimated Fair Value of the Contract.
- 46.3.7 To the extent that the Adjusted Estimated Fair Value of the Contract is less than zero, then an amount equal to the Adjusted Estimated Fair Value of the Contract shall be due and payable by the Contractor to the Authority on the Compensation Date.
- 46.4 On termination of this Agreement under **clause 40.3** (Termination on Contractor Default), the Authority shall have the option to require the Contractor to transfer all of its rights, title and interest in and to the Assets to the Authority or as directed by the Authority.
47. **COMPENSATION ON TERMINATION FOR AUTHORITY DEFAULT/VOLUNTARY TERMINATION**
- 47.1 **Authority Default Termination Sum**
- On termination of this Agreement pursuant to **clauses 40.1** (Voluntary Termination by the Authority) or **clause 40.2** (Termination on Authority Default) the Authority shall pay the Contractor the Authority Default Termination Sum in accordance with **clauses 51** (Miscellaneous Compensation Provisions) and **52** (Method of Payment) on the Termination Date. Subject to **clause 47.3** (Adjustment of Compensation Amount), the Authority Default Termination Sum shall be an amount equal to the aggregate of:
- 47.1.1 the Base Senior Debt Termination Amount;
- 47.1.2 redundancy payments for employees of the Contractor that have been or will be reasonably incurred by the Contractor as a direct result of termination of this Agreement and any Sub-Contractor Breakage Costs; and
- 47.1.3 the aggregate amount for which the share capital of the Contractor and the amounts outstanding under the Subordinated Financing Agreements could have been sold on an open market basis based on Relevant Assumptions.

47.2 On payment of the amount referred to in **clause 47.1** (Authority Default Termination Sum) the Authority shall have the option to require the Contractor to transfer its right, title and interest in and to the Assets to the Authority or as directed by the Authority.

47.3 **Adjustment of Compensation Amount**

47.3.1 If the aggregate of the amounts referred to in **clause 47.1.1** and **clause 47.1.3** is less than the Revised Senior Debt Termination Amount, then the Authority Default Termination Sum shall be increased so that it is equal to the aggregate of the Revised Senior Debt Termination Amount and the amount referred to in **clause 47.1.2** provided always that:

47.3.1.1 the amount referred to in **clause 47.1.2** shall only be paid to the extent that the Contractor has demonstrated to the reasonable satisfaction of the Authority that the amount will not be paid in payment (in whole or in part) of any Distribution; and

47.3.1.2 if, at the time of termination, there are any Additional Permitted Borrowings outstanding, no Sub-Contractor Breakage Costs shall be paid in respect of any Sub-Contract in circumstances where there is an event of default under such Sub-Contract which would entitle the Contractor to terminate such Sub-Contract.

47.3.2 If a Distribution is made whilst any Additional Permitted Borrowing is outstanding and the Contractor has wilfully, or through gross negligence failed to comply with its obligations under clause 11.5.4.1 of the Direct Agreement, then in addition to the deduction of the Distribution referred to in paragraph (v) of the definition of Revised Senior Debt Termination Amount, the Authority shall be entitled to set off the value of that Distribution a second time against the Authority Default Termination Sum, provided that the amount of the Authority Default Termination Sum shall never be less than the Revised Senior Debt Termination Amount.

47.3.3 If the Contractor has wilfully or through gross negligence failed to comply with its obligations under clause 11.5.4.2 of the Direct Agreement and there has been an overstatement of the cash balances by the Contractor as at that date which has caused the Authority to reasonably believe that it would be required to pay a lesser sum at the Termination Date than it actually is required to pay under the terms of this **clause 47** (Compensation for Termination on Authority Default),

then the Authority Default Termination Sum shall be reduced by the amount of such overstatement (to the extent that such overstatement is still applicable at the Termination Date), provided that the amount of the Authority Default Termination Sum will never be less than the Revised Senior Debt Termination Amount.

48. **COMPENSATION ON CORRUPT GIFTS, FRAUD AND REFINANCING BREACHES**

On termination of this Agreement in accordance with **clauses 40.5** (Termination for Breach of Refinancing Provisions) or **40.6** (Termination for Corrupt Gifts and Fraud) the Authority shall pay the Contractor an amount equal to the Revised Senior Debt Termination Amount. Such amount shall be determined and paid in accordance with **clauses 51** (Miscellaneous Compensation Provisions) and **52** (Method of Payment).

49. **TREATMENT OF ASSETS AT EXPIRY DATE**

49.1 On or before a date falling no later than twelve 12 months prior to the Expiry Date, the Authority shall notify the Contractor in writing whether it wishes to retender the provision of the Services.

49.2 If the Authority wishes to retender the provision of the Services then:

49.2.1 the Contractor shall do all necessary acts (including entering into any contracts) to ensure that the successor contractor obtains all of its rights, title and interest in and to the Assets with effect on and from the Expiry Date; and

49.2.2 the Authority will bear all costs of any retendering of the Agreement on expiry.

49.3 If the Authority does not wish to retender the Services then the Assets shall transfer to the Authority on the Expiry Date and the Contractor shall do any necessary acts (including entering into any contracts) to ensure that the Authority obtains all of its rights, title and interest in the Assets with effect on and from the Expiry Date.

49.4 **Duty to Co-operate**

During the final six (6) months of the Contract Period (where this expires by effluxion of time) or during the period of any Termination Notice of this Agreement, and in either case for a period of three (3) months thereafter, the Contractor shall co-operate fully with the transfer of responsibility for the Services (or any of the Works and/or Services) to the Authority or to any New Contractor of such Works and/or Services the same or similar to the Works

and/or Services, and for the purposes of this **clause 49.4** (Duty to Co-operate) the meaning of the term “co-operate” shall include:

- 49.4.1 liaising with the Authority and/or any New Contractor, and providing reasonable assistance and advice concerning the Services and their transfer to the Authority or to such New Contractor;
- 49.4.2 allowing any such New Contractor access (at reasonable times and on reasonable notice) to the Blocks, Communal Areas and Exterior Common Areas but not so as to interfere with or impede the provision of the Works and/or Services;
- 49.4.3 (without prejudice to the obligations of the Contractor pursuant to **clause 34.10** (Operating Manual)) providing to the Authority and/or to any New Contractor all and any information concerning the Project Site, Works and/or the Services which is reasonably required for the efficient transfer of responsibility for their performance; and
- 49.4.4 doing all necessary acts (including entering into any contracts) to ensure that the Authority or the New Contractor obtains all of its rights, title and interest in and to the Assets with effect on and from the Expiry Date.

49.5 **Transfer of Responsibility**

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

50. **PROJECT DOCUMENTS AND FINANCING AGREEMENTS**

50.1 **Delivery of Initial and Changed Project Documents and Financing Agreements**

- 50.1.1 The Contractor has provided to the Authority copies of the Project Documents (as listed in **Schedule 14** (Project Documents)) and of the Initial Financing Agreements (as listed in Parts 1 and 2 of **Schedule 13** (Financing Agreements)).
- 50.1.2 Without prejudice to the provisions of **clauses 50.2** (Changes to Project Documents) or **50.3** (Changes to Financing Agreements), or to the definition of Senior Financing Agreements in **clause 1.1** (Definitions), if at any time an amendment is made to any Project Document or Financing Agreement, or the Contractor enters into a new

Project Document or Financing Agreement (or any agreement which affects the interpretation or application of any Project Document or Financing Agreement), the Contractor shall deliver to the Authority a conformed copy of each such amendment or agreement within ten (10) Business Days of the date of its execution or creation (as the case may be), certified as a true copy by an officer of the Contractor.

50.2 **Changes to Project Documents**

50.2.1 The Contractor shall perform its obligations under, and observe all of the provisions of, the Project Documents and shall not:

50.2.1.1 terminate or agree to the termination of all or part of any Project Document;

50.2.1.2 make or agree to any material variation of any Project Document;

50.2.1.3 in any material respect depart from its obligations, (or waive or allow to lapse any rights its may have in a material respect), or procure that any counterparty to a Project Document in any material respect departs from its obligations (or waives or allows to lapse any rights they may have in a material respect), under any Project Document; or

50.2.1.4 enter into (or permit the entry into by any other person of) any agreement replacing all or part of (or otherwise materially and adversely affecting the interpretation of) any Project Document,

unless the proposed course of action (and any relevant documentation) has been submitted to the Authority for review pursuant to the Review Procedure and there has been no objection made by the Authority in accordance with paragraph 3 of the Review Procedure within twenty (20) Business Days (or such shorter period as may be agreed by the parties) of receipt by the Authority of the submission of the proposed course of action (and relevant documentation) and provided, in the circumstances specified in **clause 50.2.1.1**, that the Contractor has complied with the provisions of clause 63 (Assignment and Sub-Contracting).

50.3 **Changes to Financing Agreements**

50.3.1 Without prejudice to the provisions of **clause 50.1** (Delivery of Initial and Changed Project Documents and Financing Agreements) and

clause 84 (Refinancing), the Contractor shall not, without the prior written consent of the Authority, enter into new Financing Agreements or terminate, amend, waive its rights or otherwise deal with its Financing Agreements if the same may reasonably be expected to have a material adverse effect on the ability of the Contractor to perform its obligations under the Project Documents or this Agreement.

50.3.2 No amendment, waiver or exercise of a right under any Financing Agreement or Project Document shall have the effect of increasing the Authority's liabilities on early termination of this Agreement unless:

50.3.2.1 the Contractor has obtained the prior written consent of the Authority to such increased liability for the purposes of this **clause 50.3** (Changes to the Financing Agreements);
or

50.3.2.2 it is a Permitted Borrowing.

In the event of any conflict between the provisions of this **clause 50.3** and any other provision of this Contract the provisions of this **clause 50.3** shall prevail.

50.4 **Accounts**

The accounts of the Contractor shall be maintained as foreseen in the Base Case.

51. **MISCELLANEOUS COMPENSATION PROVISIONS**

51.1 **Gross Up of Termination Payments**

If any amount of compensation payable by the Authority under **clauses 45** (Compensation on Termination for Force Majeure), **47** (Compensation on Termination for Authority Default) and **48** (Compensation on Corrupt Gifts, Fraud and Refinancing Breaches) is subject to Tax payable to a Relevant Authority in the United Kingdom, then the Authority shall pay to the Contractor such additional amount as will put the Contractor in the same after Tax position as it would have been in had the payment not been subject to Tax taking account of any relief, allowances deduction, setting off or credit in respect of Tax (whether available by choice or not) which may be available to the Contractor to reduce the Tax to which the payment is subject.

51.2 **Set Off on Termination**

Except where expressly stated otherwise, the Authority is not entitled to set off any amount against any payment of termination compensation (whether payable as a lump sum or in instalments) under **clauses 45** (Compensation on Termination for Force Majeure), **48** (Compensation on Corrupt Gifts), Fraud and

Refinancing Breaches) and **47** (Compensation on Termination for Authority Default), save to the extent that after such an amount has been set off, the termination payment made would be an amount greater than or equal to Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount as the case may be at that time.

51.3 **Exclusivity of Remedy**

Any payment of compensation shall be in full satisfaction of any claim which can be made against the Authority by the Contractor in relation to termination of this Agreement or any Project Document. The compensation payable under **clauses 45** (Compensation on Termination for Force Majeure), **47** (Compensation on Termination for Authority Default/Voluntary Termination) and **48** (Compensation on Corrupt Gifts, Fraud and Refinancing Breaches) shall be the sole remedy of the Contractor against the Authority in respect of termination of this Agreement.

51.4 **Certificate of Senior Lenders**

The Authority shall be entitled to rely on the certificate of the Agent as conclusive as to the amount of the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount outstanding at any relevant time. The receipt by the Agent of the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or elements thereof (as relevant) shall discharge the Authority's obligation to pay such sums to the Contractor.

52. **METHOD OF PAYMENT**

52.1 **Termination Sum**

The Authority shall pay to the Contractor the Termination Sum, together with interest on any Senior Debt Termination Amount or Revised Senior Debt Termination Amount element of the Termination Sum at the Senior Debt Rate on or before the date falling forty (40) Business Days after the Notice Date provided that it may elect to pay the Adjusted Estimated Fair Value of the Contract or the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant) element of the Termination Sum in accordance with **clause 52.2** (Instalments) below.

52.2 **Instalments**

The Authority may, other than on an Authority Default, elect to pay the Adjusted Estimated Fair Value of the Contract or the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant) element of the Termination Sum:

52.2.1 in instalments as follows:

52.2.1.1 where the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of the Contract (as relevant) is greater than or equal to the Outstanding Principal;

(a) in respect of that element of the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of the Contract (as relevant) representing the Outstanding Principal on the dates (the "**Instalment Dates**") and in the amounts that the Contractor would have been required to pay principal to the Senior Lenders under the terms of the Senior Credit Agreement (disregarding any changes to such amounts or dates that have not been approved by the Authority other than changes giving rise to an Additional Permitted Borrowing) had the Termination Date not occurred;

(b) in respect of the sum (if any) remaining after deducting the Outstanding Principal from the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of the Contract (as relevant) in equal instalments on the Instalment Dates;

52.2.1.2 where the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or the Adjusted Fair Value of the Contract (as relevant) is less than the Outstanding Principal, on the Instalment Dates pro rata to the amounts that the Contractor would have been required to pay as principal to the Senior Lenders on each Instalment Date under the terms of the Senior Credit Agreement (disregarding any changes to such amounts or dates that have not been approved by the Authority other than changes giving rise to an Additional Permitted Borrowing) had the Termination Date not occurred; or

52.2.2 as the parties may otherwise agree.

52.3 **Interest**

From the Notice Date until the date of payment, interest shall accrue on any unpaid element of the Termination Sum at the Senior Debt Rate and be payable on the next occurring Instalment Date.

52.4 **Payment of Outstanding Element**

If the Authority has elected to pay in accordance with **clause 52.2** (Instalments) it may (on 20 Business Days' prior written notice to the Contractor) elect to pay the outstanding part of the Adjusted Estimated Fair Value of the Contract or the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant) in full on any Instalment Date.

52.5 **Authority Default in Payment**

If the Authority:

- 52.5.1 fails to make a payment to the Contractor in accordance with **clauses 52.1** (Termination Sum) and/or **52.2** (Instalments) and/or **52.3** (Interest); or
- 52.5.2 breaches **clause 67.1** (Restrictions on Transfer of the Agreement by the Authority),

the Contractor may issue a notice to the Authority declaring any unpaid and outstanding element of (as applicable) the Adjusted Estimated Fair Value of the Contract , the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant) element of the Termination Sum and any accrued but unpaid interest to be immediately due and payable.

PART 8 - GENERAL

53. LIAISON

The parties shall give effect to the procedure set out in **Schedule 8** (Liaison Procedure).

54. RELIEF EVENTS

54.1 Occurrence

If and to the extent that a Relief Event:

54.1.1 is the direct cause of a delay to the commencement of the Works by the Start on Site Date, the issue of a Certificate of Availability by a relevant Planned Services Commencement Date, or following a Planned Services Commencement Date the issue of a final Certificate of Availability by the Long Stop Date and/or delay to achieving the Milestone by the Milestone Completion Date; and/or

54.1.2 adversely affects the ability of the Contractor to perform any of its obligations under this Agreement,

then the Contractor shall be entitled to apply for relief from any rights of the Authority arising under **clause 40.3** (Termination on Contractor Default)

54.2 Relief

To obtain relief, the Contractor must:

54.2.1 as soon as practicable, and in any event within 10 Business Days after it becomes aware that the Relief Event has caused or is likely to cause delay and/or adversely affect the ability of the Contractor to perform its other obligations give to the Authority a notice of its claim for relief from its obligations under this Agreement, including full details of the nature of the Relief Event, the date of occurrence and its likely duration;

54.2.2 within 5 Business Days of receipt by the Authority of the notice referred to in **clause 54.2.1** (Relief), give full details of the relief claimed; and

54.2.3 demonstrate to the reasonable satisfaction of the Authority that:

54.2.3.1 the Contractor and its sub-contractors could not have avoided such occurrence or consequences by steps which

they might reasonably be expected to have taken, without incurring material expenditure;

- 54.2.3.2 (where applicable) the Relief Event directly caused the delay to the commencement of the Works by the Start on Site Date, the issue of a Certificate of Availability by the relevant Planned Services Commencement Date or, following a Planned Service Commencement Date, delay in achieving the final Certificate of Availability by the Long Stop Date and/or achieving the Milestone by the Milestone Completion Date;
- 54.2.3.3 the time lost and/or relief from the obligations under this Agreement claimed could not reasonably be expected to be mitigated or recovered by the Contractor acting in accordance with Good Industry Practice, without incurring material expenditure; and
- 54.2.3.4 the Contractor is using reasonable endeavours to perform its obligations under this Agreement.

54.3 Consequences

In the event that the Contractor has complied with its obligations under **clause 54.2** (Relief), then:

- 54.3.1 the Start on Site Date, relevant Planned Services Commencement Date or, following a Planned Service Commencement Date, the Long Stop Date and/or Milestone Completion Date, shall be postponed by such time as shall be reasonable for such a Relief Event, taking into account the likely effect of delay; and/or
- 54.3.2 the Authority shall not be entitled to exercise its right to terminate the Agreement under **clause 40.3** (Termination Contractor Default) and subject to **clause 54.4** (Deductions), shall give such other relief as has been requested by the Contractor.

54.4 Deductions

Nothing in **clause 54.3** (Consequences) shall affect any entitlement to make deductions or deductions made under **clause 36** (Payment Provisions) an **Schedule 4** (Payment Mechanism) during the period in which the Relief Event is subsisting provided that any such deductions shall be disregarded for the purposes of the Authority's right to terminate this Agreement for a Contractor Default.

54.5 **Information**

In the event that information required by **clause 54.2** (Relief) is provided after the dates referred to in that clause, then the Contractor shall not be entitled to any relief during the period for which the information is delayed.

54.6 **Notice**

The Contractor shall notify the Authority if at any time it receives or becomes aware of any further information relating to the Relief Event, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading.

54.7 **Disputes**

If the parties cannot agree the extent of the relief required, or the Authority disagrees that a Relief Event has occurred or that the Contractor is entitled to any extension to the Start on Site Date, any Planned Services Commencement Date, the Long Stop Date, the Milestone Completion Date and/or relief from other obligations under this Agreement, the parties shall resolve the matter in accordance with the Dispute Resolution Procedure.

55. **CHANGE IN LAW**

55.1 **Occurrence**

The Contractor shall take all steps necessary to ensure that the Works and the Services are performed in accordance with the terms of this Agreement following any Change in Law.

55.2 **Qualifying Change in Law**

If a Qualifying Change in Law occurs or is shortly to occur, then either party may write to the other to express an opinion on its likely effects, giving details of its opinion of:

55.2.1 any necessary change in the Works or the Services;

55.2.2 whether any changes are required to the terms of this Agreement to deal with the Qualifying Change in Law;

55.2.3 whether relief from compliance with obligations is required, including the obligation of the Contractor to achieve the Planned Services Commencement Date in relation to a Dwelling, Communal Area and/or Exterior Common Area meet the Output Specification and/or the Contractor's Proposals during the implementation of any relevant Qualifying Change in Law;

- 55.2.4 any loss of revenue that will result from the relevant Qualifying Change in Law;
- 55.2.5 any Estimated Change in Project Costs that directly result from the Qualifying Change in Law; and
- 55.2.6 any Capital Expenditure that is required or no longer required as a result of a Qualifying Change in Law taking effect following the issue of the relevant Certificate of Availability;

in each case giving in full detail the procedure for implementing the change in Works or in the Services. Responsibility for the costs of implementation (and any resulting variation to the Unitary Charge) shall be dealt with in accordance with **clauses 55.3** (Parties to Discuss) to **55.7** (Adjustment to Unitary Charge).

55.3 **Parties to Discuss**

As soon as practicable after receipt of any notice from either party under **clause 55.2** (Qualifying Change in Law), the parties shall discuss and agree the issues referred to in **clause 55.2** (Qualifying Change in Law) and any ways in which the Contractor can mitigate the effect of the Qualifying Change in Law, including:

- 55.3.1 providing evidence that the Contractor has used reasonable endeavours (including (where practicable) the use of competitive quotes) to oblige its sub-contractors to minimise any increase in costs and maximise any reduction in costs;
- 55.3.2 demonstrating how any Capital Expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred or would have been incurred, foreseeable Changes in Law at that time have been taken into account by the Contractor;
- 55.3.3 giving evidence as to how the Qualifying Change in Law has affected prices charged by any similar businesses to the Project, including similar businesses in which the Shareholders or their Affiliates carry on business; and
- 55.3.4 demonstrating that any expenditure that has been avoided, which was anticipated to be incurred to replace or maintain assets that have been affected by the Qualifying Change in Law concerned, has been taken into account in the amount which in its opinion has resulted or is required under **clauses 55.2.5** (Qualifying Change in Law) and/or **55.2.6** (Qualifying Change in Law).

55.4 **Funding for Capital Expenditure**

If the parties agree or it is determined under the Dispute Resolution Procedure that the Contractor is required to incur additional Capital Expenditure due to a Qualifying Change in Law (excluding the Contractor's Share of any Capital Expenditure agreed or determined to be required as a result of a General Change in Law under this clause), then the Contractor shall use its reasonable endeavours to obtain funding for such Capital Expenditure on terms reasonably satisfactory to it and to the Senior Lenders.

55.5 Contractor's Share

55.6 The Contractor's Share of any Cumulative Capital Expenditure agreed or determined or required as a result of a General Change in Law shall be solely for the account of the Contractor.

If the Contractor has used reasonable endeavours to obtain funding for the Capital Expenditure referred to in **clause 55.4** (Funding for Capital Expenditure), but has been unable to do so within 40 Business Days of the date that the agreement or determination referred to in **clause 55.4** (Funding for Capital Expenditure) occurred, then the Authority shall pay to the Contractor an amount equal to that Capital Expenditure on or before the date falling twenty (20) Business Days after the Capital Expenditure has been incurred.

55.7 Adjustment to Unitary Charge

Any compensation payable under this **clause 55** including any Capital Expenditure procured by the Contractor in accordance with **clause 55.4** (Funding for Capital Expenditure) by means of an adjustment to or reduction in the Unitary Charge shall be determined and made in accordance with **clause 69** (Financial Adjustments).

55.8 Postponement of Planned Services Commencement Date

Any relevant Planned Services Commencement Date shall be postponed by such period as is agreed in accordance with **clause 55.3** (Parties to Discuss) or determined under the Disputes Resolution Procedure.

55.9 Payment of Irrecoverable VAT

The Authority shall pay to the Contractor from time to time as the same is incurred by the Contractor sums equal to any Irrecoverable VAT but only to the extent that it arises as a result of a Change in Law. Any such payment shall be made within twenty (20) Business Days of the delivery by the Contractor to the Authority of written details of the amount involved accompanied by details as to the grounds for and computation of the amount claimed. For the purposes of this **clause 55.9** "Irrecoverable VAT" means input VAT incurred by the Contractor on any supply which is made to it which is used or to be used

exclusively in performing the Works or the Services or any of the obligations or provisions under the Contract (together with input VAT incurred as part of its overhead in relation to such activities) to the extent that the Contractor is not entitled to repayment or credit from HM Customs & Excise in respect of such input VAT.

56. **AUTHORITY AND CONTRACTOR CHANGES**

56.1 **Authority and Contractor Changes**

The Authority may propose an Authority Change and the Contractor may propose a Contractor Change in accordance with the Change Protocol and the Parties shall comply with the provisions of the Change Protocol.

57. **AUTHORITY STEP-IN**

57.1 **Right to Step-In**

If the Authority reasonably believes that it needs to take action in connection with:

- 57.1.1 the Services or those of the Works which are Dwellings that are being refurbished, in each case because a serious risk exists to the health or safety of persons or property or to the environment; and/or
- 57.1.2 the Services or those of the Works which are Dwellings that are being refurbished, in each case to discharge a statutory duty,

then the Authority shall be entitled to take action in accordance with **clauses 57.2** (Notice to the Contractor) to **57.5** (Step-In on Contractor Breach).

57.2 **Notice to the Contractor**

If **clause 57.1** (Right to Step-In) applies and the Authority wishes to take action, the Authority shall notify the Contractor in writing of the following:

- 57.2.1 the action it wishes to take;
- 57.2.2 the reason for such action;
- 57.2.3 the date it wishes to commence such action;
- 57.2.4 the time period which it believes will be necessary for such action; and
- 57.2.5 to the extent practicable, the effect on the Contractor and its obligation to carry out the Works and/or provide the Services during the period such action is being taken.

57.3 **Action by Authority**

57.3.1 Following service of such notice, the Authority shall take such action as notified under **clause 57.2** (Notice to the Contractor) and any consequential additional action as it reasonably believes is necessary (together, the "Required Action") and the Contractor shall give all reasonable assistance to the Authority while it is taking the Required Action. The Authority shall provide the Contractor with notice of completion of the Required Action and shall use reasonable endeavours to provide such advance notice as it reasonably practicable of its anticipated completion.

57.3.2 Where the Required Action has been taken otherwise than as a result of a breach by the Contractor, the Authority shall undertake the Required Action in accordance with Good Industry Practice and shall indemnify the Contractor against all Direct Losses where it fails to do so.

57.4 **Step -In without Contractor Breach**

If the Contractor is not in breach of its obligations under this Agreement, then for so long as and to the extent that the Required Action is taken, and this prevents the Contractor from carrying out the Refurbishment Works and/or providing any part of the Services:

57.4.1 the Contractor shall be relieved from its obligations to carry out the Refurbishment Works and/or provide such part of the Services; and

57.4.2 in respect of the period in which the Authority is taking the Required Action and provided that the Contractor provides the Authority with reasonable assistance (such assistance to be at the expense of the Authority to the extent that incremental costs are incurred), the Unitary Charge due from the Authority to the Contractor shall equal the amount the Contractor would receive if it were satisfying all its obligations and carrying out the Refurbishment Works and/or providing the Services affected by the Required Action in full over that period.

57.5 **Step-In on Contractor Breach**

If the Required Action is taken as a result of a breach of the obligations of the Contractor under this Agreement, then for so long as and to the extent that the Required Action is taken, and this prevents the Contractor from carrying out any part of the Refurbishment Works and/or providing any part of the Services:

- 57.5.1 the Contractor shall be relieved of its obligations to carry out such part of the Refurbishment Works and/or provide such part of the Services; and
- 57.5.2 in respect of the period in which the Authority is taking the Required Action, the Unitary Charge due from the Authority to the Contractor shall equal the amount the Contractor would receive if it were satisfying all its obligations and carrying out the Refurbishment Works and/or providing the Services affected by the Required Action in full over that period, less an amount equal to all the Authority's costs of operation in taking the Required Action.

57.6 **Rights of access**

- 57.6.1 The Authority or a representative of the Authority may enter upon any property used by the Contractor to perform the Services to inspect the construction, operation and maintenance of the Project and to monitor compliance by the Contractor with its obligations.
- 57.6.2 The Authority and a representative of the Authority may at all times enter upon any property used by the Contractor as training or workshop facilities and places where work is being prepared or materials being obtained for the Project.
- 57.6.3 The Contractor shall procure that satisfactory facilities are made available to the Authority and any representative of the Authority and that reasonable assistance is given for the purposes of **clauses 57.6.1** and **57.6.2**, subject to the Contractors and Subcontractors construction or operational requirements not being adversely affected and to reimbursement of any reasonable costs or expenses of the Contractor.
- 57.6.4 If the Authority is or becomes aware of a breach by the Contractor of its obligations under **clause 26.1** (Maintenance) then the Authority may exercise its right of access and remedy such breach and shall be entitled to recover any costs or expenses incurred from the Contractor as a debt.
- 57.6.5 The Authority and its representative shall at all times comply with any health and safety requirements when exercising its rights under this Clause.
- 57.6.6 If the Authority or its representative causes material damage to any Asset in exercising any right under this Clause, then the Authority shall be liable to the Contractor for the reasonable costs directly caused by such damage.

58. FREEDOM OF INFORMATION AND CONFIDENTIALITY

58.1 Duty of Confidentiality

58.1.1 The parties agree that the provisions of this Agreement and each Project Document shall, subject to **clause 58.1.2** (Duty of Confidentiality) below, not be treated as Confidential Information and may be disclosed without restriction and the Contractor acknowledges that the Authority intends to publish, subject to **58.1.2** (Duty of Confidentiality) below, the Agreement and some of the Project Documents on a website.

58.1.2 **Clause 58.1.1** (Duty of Confidentiality) above shall not apply to provisions of this Agreement or a Project Document designated as Commercially Sensitive Information and listed in **Part 1 of Schedule 19** (Confidential Information) to this Agreement which shall, subject to **clause 58.2** (Permitted Disclosure) below, be kept confidential for the periods specified in that part.

58.1.3 The parties shall keep confidential all Confidential Information received by one party from the other party relating to this Agreement and Project Documents or the Project and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any such Confidential Information.

58.2 Permitted Disclosure

Clauses 58.1.1 and **58.1.3** (Duty of Confidentiality) shall not apply to:

58.2.1 any disclosure of information that is reasonably required by any person engaged in the performance of their obligations under this Agreement for the performance of those obligations;

58.2.2 any matter which a party can demonstrate is already or becomes generally available and in the public domain otherwise than as a result of a breach of this **clause 58** (Freedom of Information and Confidentiality);

58.2.3 any disclosure to enable a determination to be made under **clause 64** (Dispute Resolution) or in connection with a dispute between the Contractor and any of its sub-contractors;

58.2.4 any disclosure which is required pursuant to any statutory, legal (including any order of a court of competent jurisdiction) or Parliamentary obligation placed upon the party making the disclosure or the rules of any stock exchange or governmental or regulatory

authority having the force of law or if not having the force of law, compliance with which is in accordance with the general practice of persons subject to the stock exchange or governmental or regulatory authority concerned;

58.2.5 any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;

58.2.6 any provision of information to the parties' own professional advisers or insurance advisers or to the Senior Lenders or the Senior Lenders' professional advisers or insurance advisers or, where it is proposed that a person should or may provide funds (whether directly or indirectly and whether by loan, equity participation or otherwise) to the Contractor and/or Holdco to enable it to carry out its obligations under this Agreement, or may wish to acquire shares in the Contractor and/or Holdco in accordance with the provisions of this Agreement to that person or their respective professional advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal;

58.2.7 any disclosure by the Authority of information relating to the design, construction, operation and maintenance of the Project and such other information as may be reasonably required for the purpose of conducting a due diligence exercise, to:

58.2.7.1 any proposed new contractor, its advisers and Lenders should the Authority decide to retender this Agreement; or

58.2.7.2 any person in connection with Market Testing;

58.2.8 any registration or recording of the Consents and property registration required;

58.2.9 any disclosure of information by the Authority to any other department, office or agency of the Government or their respective advisers or to any person engaged in providing services to the Authority for any purpose related to or ancillary to this Agreement; or

58.2.10 any disclosure for the purpose of:

58.2.10.1 the examination and certification of the Authority's or the Contractor's accounts;

- 58.2.10.2 any examination pursuant to the 1999 Act of the economy, efficiency and effectiveness with which the Authority has used its resources;
- 58.2.10.3 complying with a proper request from either party's insurance advisers, or insurers on placing or renewing any insurance policies; or
- 58.2.10.4 (without prejudice to the generality of **clause 58.2.4** above) compliance with the FOIA and/or the Environmental Information Regulations.

provided that, for the avoidance of doubt, neither **clauses 58.2.10.4** or **58.2.4** (Permitted Disclosure) above shall permit disclosure of Confidential Information otherwise prohibited by **clause 58.1.3** (Duty of Confidentiality) above where that information is exempt from disclosure under section 41 of the FOIA.

58.3 **Obligations Preserved**

Where disclosure is permitted under **clause 58.2** (other than **clauses 58.2.2, 58.2.4, 58.2.5, 58.2.8** and **58.2.10**) the party providing the information shall procure that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Agreement.

58.4 **Audit**

For the purposes of:

- 58.4.1 the examination and certification of the Authority's accounts;
- 58.4.2 the Local Government Finance Act 1982 (and any other Legislation relating to the inspection, examination and auditing of the Authority's accounts); and
- 58.4.3 an examination pursuant to the 1999 Act of the economy, efficiency and effectiveness of which the Authority has performed its functions,

the District Auditor and the Audit Commission may examine such documents as he or it may reasonably require which are owned, held or otherwise within the control of the Contractor and any sub-contractor and may require the Contractor and any sub-contractor to produce such oral or written explanations as he or it considers necessary.

58.5 **Exploitation of Information**

The Contractor shall not make use of this Agreement or any information issued or provided by or on behalf of the Authority in connection with this Agreement otherwise than for the purposes of this Agreement, except with the written consent of the Authority.

58.6 Information about Service Users

Where the Contractor, in carrying out its obligations under this Agreement, is provided with information relating to Service Users, the Contractor shall not disclose or make use of any such information otherwise than for the purpose for which it was provided, unless the Contractor has obtained the prior written consent of that Service User and has obtained the prior written consent of the Authority.

58.7 Expiry

On or before the Expiry Date or the Termination Date, the Contractor shall ensure that all documents or computer records in its possession, custody or control, which contain information relating to any Service User, including any documents in the possession, custody or control of a Sub-Contractor, are delivered up to the Authority.

58.8 Disclosure by Audit Commission

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

58.8.2 The provisions of this **clause 58** are without prejudice to the application of the Official Secrets Acts 1911 to 1989.

58.9 Official Secrets Act

The provisions of this **clause 58** (Information and Confidentiality) are without prejudice to the application of the Official Secrets Acts 1911-1989.

58.10 Freedom of Information

58.10.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall facilitate the Authority's compliance with its Information disclosure requirements pursuant to the same in the manner provided for in **clauses 58.10.2 to 58.10.4** (inclusive) below.

58.10.2 Where the Authority receives a Request for Information in relation to Information that the Contractor is holding on its behalf the Authority shall transfer to the Contractor such Request for Information that it

receives as soon as practicable and in any event within five Business Days of receiving a Request for Information and the Contractor shall:

58.10.2.1 provide the Authority with a copy of all such Information in the form that the Authority requires as soon as practicable and in any event within ten Business Days (or such other period as the Authority acting reasonably may specify) of the Authority's request; and

58.10.2.2 provide all necessary assistance as reasonably requested by the Authority in connection with any such Information, to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

58.10.3 Following notification under **clause 58.10.2** and up until such time as the Contractor has provided the Authority with all the Information specified in **clause 58.10.2.1**, the Contractor may make representations to the Authority as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that the Authority shall be responsible for determining at its absolute discretion:

58.10.3.1 whether the Information is exempt from disclosure under the FOIA and the Environmental Information Regulations; and

58.10.3.2 whether the Information is to be disclosed in response to a Request for Information,

in no event shall the Contractor respond directly or allow its Sub-Contractors to respond directly to a Request for Information unless expressly authorised to do so by the Authority.

58.10.4 The Contractor shall ensure that all Information held on behalf of the Authority is retained for disclosure for at least 12 years from the date it is acquired and shall permit the Authority to inspect such Information as requested from time to time.

58.10.5 The Contractor shall transfer to the Authority any Request for Information received by the Contractor as soon as practicable and in any event within two Business Days of receiving it.

58.10.6 The Contractor acknowledges that any lists provided by him listing or outlining Confidential Information, are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with **clause 58.10.4**.

58.10.7 In the event of a request from the Authority pursuant to **clause 58.10.2** above, the Contractor shall as soon as practicable, and in any event within 5 Business Days of receipt of such request, inform the Authority of the Contractor's estimated costs of complying with the request to the extent these would be recoverable if incurred by the Authority under section 12(1) of the FOIA and the Fees Regulations. Where such costs (either on their own or in conjunction with the Authority's own such costs in respect of such Request for Information) will exceed the appropriate limit referred to in Section 12(1) of the FOIA and as set out in the Fees Regulations the Authority shall inform the Contractor in writing whether or not it still requires the Contractor to comply with the request and where it does require the Contractor to comply with the request the 10 Business Days period for compliance shall be extended by such number of additional days for compliance as the Authority is entitled to under Section 10 of the FOIA. In such case, the Authority shall notify the Contractor of such additional days as soon as practicable after becoming aware of them and shall reimburse the Contractor for such costs as the Contractor incurs in complying with the request to the extent the Authority is itself entitled to reimbursement of such costs in accordance with the Authority's own FOIA policy from time to time.

58.10.8 The Contractor acknowledges that (notwithstanding the provisions of **clause 58**) the Authority may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000 (the "FOIA Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose Information concerning the Contractor or the Project:

58.10.8.1 In certain circumstances without consulting with the Contractor, or

58.10.8.2 following consultation with the Contractor and having taken their views into account.

Provided always that where **clause 58.10.8.1** applies, the Authority shall, in accordance with the recommendations of the FOIA Code, draw this to the attention of the Contractor prior to any disclosure.

59. **INDEMNITIES GUARANTEES AND CONTRACTUAL CLAIMS**

59.1 **Contractor's Indemnity**

The Contractor shall, subject to **clause 59.3** (Contractor not Responsible), be responsible for, and shall release and indemnify the Authority, its employees, agents and contractors on demand from and against all liability for:

59.1.1 death or personal injury;

59.1.2 loss of or damage to property (including property belonging to the Authority or for which it is responsible ("Authority Property")); and

59.1.3 third party actions, claims and/or demands and costs, charges and expenses (including legal expenses on an indemnity basis) arising as a result thereof,

which may arise out of, or in consequence of, the design, construction, operation or maintenance of the Project Site or the Works or the performance or non-performance by the Contractor of its obligations under this Agreement or the presence on the Authority's Property (including the Dwellings, Blocks, Communal Areas and Exterior Common Areas) of the Contractor a Sub-Contractor of the Contractor, their employees or agents.

59.2 **Breach of Statutory Duty**

The Contractor shall, subject to **clause 59.3** (Contractor not Responsible), be responsible for, and shall release and indemnify the Authority, its employees, agents and contractors on demand from and against all liability for Direct Losses and Indirect Losses arising from third party actions, claims or demands (as described in **clause 59.1.3**) brought against the Authority or any Authority Related Party for breach of statutory duty which may arise out of, or in consequence of a breach by the Contractor of its obligations under this Agreement to the extent there are no other remedies available to the Authority under this Agreement.

59.3 **Contractor not Responsible**

The Contractor shall not be responsible or be obliged to indemnify the Authority for:

59.3.1 any matter referred to in **clauses 59.1.1 to 59.1.3** (Contractor's Indemnity) inclusive that arises as a direct result of the Contractor acting on the instruction of the Authority;

59.3.2 any injury, loss, damage, cost and expense caused by the negligence or wilful misconduct of the Authority, its employees, agents or

contractors, or by the breach of the Authority of its obligations under this Agreement; or

59.3.3 [REDACTED];

59.3.4 [REDACTED];

59.3.5 to the extent that any injury, loss, damage, cost and expense is the responsibility of the Authority pursuant to **clause 59.5** (Tenant Damage and Third Party Damage).

59.4 **Limitation of Indemnity**

An indemnity by either party under any provision of this Agreement shall be without limitation to any indemnity by that party under any provision of this Agreement.

59.5 **Tenant Damage and Third Party Damage**

The Authority and Contractor will comply with the provisions of the Tenant and Third Party Damage Protocol in relation to Tenant and Third Party Damage.

59.6 **Responsibility for Related Parties**

Under this **clause 59** (Indemnities and Contractual Claims) the Contractor shall be responsible as against the Authority for the acts or omissions of the Contractor Related Parties as if they were the acts or omissions of the Contractor, and the Authority shall be responsible as against the Contractor for the acts or omissions of the Authority Related Parties as if they were the acts or omissions of the Authority.

59.7 **Notification of Claims**

Where either party (the "**Indemnified Party**") wishes to make a claim under this Agreement against the other (the "**Indemnifying Party**"), the Indemnified Party shall give notice of the relevant claim as soon as reasonably practicable setting out full particulars of the claim.

59.8 **Conduct of Claims**

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

59.9 **Costs of Claims**

The Indemnifying Party shall, if it wishes to have conduct of any claim, give reasonable security to the Indemnified Party for any cost or liability arising out of the conduct of the claim by the Indemnifying Party.

59.10 **Sub-Contractor Losses**

Where:

59.10.1 a Sub-Contractor is entitled to claim any compensation and/or relief from the Contractor under the Sub-Contracts; and

59.10.2 the Contractor subsequently makes a claim against the Authority under this Agreement in relation to such compensation and/or relief,

the Authority waives any right to defend the Contractor's claim on the ground that the Contractor is only required to pay compensation or grant relief to the Sub-Contractor under the Sub-Contracts to the extent that the same is recoverable from the Authority.

59.11 **Mitigation**

The Indemnified Party shall at all times take all reasonable steps to minimise and mitigate any loss for which the Indemnified Party is entitled to bring a claim against the Indemnifying Party pursuant to this Agreement.

60. **INSURANCE**

60.1 **Requirement to Maintain**

60.1.1 The Contractor shall, prior to the carrying out of any building or demolition work on the Project Site, take out and maintain or procure the maintenance of the Insurances described in Part 1 of **Schedule 11** (Insurances) and any other insurances as may be required by law. These insurances must be effective in each case not later than the date on which the relevant risk commences; and

60.1.2 The Contractor shall during the Services Period take out and maintain or procure the maintenance of the insurances described in Part 2 of **Schedule 11** and any other insurances required by law.

60.2 **Obligation on Parties**

No party to this Agreement shall take any action or fail to take any reasonable action, or (insofar as it is reasonably within its power) permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any insurance policy in which that party is an insured, a co-insured or additional insured person.

60.3 **Nature of the Insurances**

With the exception of any insurances required by law, the insurances referred to in **clauses 60.1.1** and **60.1.2** above shall:

- 60.3.1 subject to **clause 60.4** below, name the Authority as co-insured with any other party maintaining the insurance;
- 60.3.2 provide for non-vitiation protection in respect of any claim made by the Authority as co-insured in accordance with Endorsement 2 in Part 3 of **Schedule 11**;
- 60.3.3 contain a clause waiving the insurers' subrogation rights against the Authority and its employees and agents, in accordance with Endorsement 2 of Part 3 of **Schedule 11**;
- 60.3.4 provide for twenty (20) Business Days' prior written notice of their cancellation, non-renewal or amendment to be given to the Authority in accordance with Endorsement 1 of Part 3 of **Schedule 11**;
- 60.3.5 in respect of the Physical Damage Policies provide for payment of any proceeds received by the Contractor applied in accordance with **clause 61** (Reinstatement and Change of Requirement after Insured Event);

60.4 **Co-Insured**

Whenever possible, the insurances referred to in **clauses 60.1.1** and **60.1.2** (Requirement to Maintain) shall name the Authority as co-insured for its separate interest.

60.5 **Evidence of Policies**

The Contractor shall provide, to the Authority:

- 60.5.1 copies on request of all insurance policies referred to in **clauses 60.1.1** and **60.1.2** above (together with any other information reasonably requested by the Authority relating to such insurance policies) and the Authority shall be entitled to inspect them during ordinary business hours; and
- 60.5.2 evidence that the premiums payable under all insurance policies have been paid and that the insurances are in full force and effect in accordance with the requirements of this **clause 60** and **Schedule 11**.

60.6 **Renewal Certificates**

Renewal certificates in relation to any of the insurances referred to in **clauses 59.1.1** and **clause 59.1.2** (Requirement to Maintain) shall be obtained as and when necessary and copies (certified in a manner acceptable to the Authority) shall be forwarded to the Authority as soon as possible but in any event on or before the renewal date.

60.7 Breach

If the Contractor is in breach of **clauses 59.1.1** and **clause 59.1.2** (Requirement to Maintain), the Authority may pay any premiums required to keep such insurance in force or itself procure such insurance and may, in either case, recover such amounts from the Contractor on written demand.

60.8 Notification of Claims

The Contractor shall give the Authority notification within twenty (20) Business Days after any claim in excess of twenty thousand pounds (£20,000) (indexed) on any of the insurance policies referred to in this clause accompanied by full details of the incident giving rise to the claim;

60.9 Limit of Liability

Neither failure to comply nor full compliance with the insurance provisions of this Agreement shall limit or relieve the Contractor of its other liabilities and obligations under this Agreement.

60.10 Premia

The insurance premiums referred to in **clauses 59.1.1** and **clause 59.1.2** shall at all times be the responsibility of the Contractor.

60.11 Authority Approval

The insurances referred to in this clause shall be effected with insurers approved by the Authority, such approval not to be unreasonably withheld or delayed.

60.12 Authority Self-Insurance Option

60.12.1 The Authority and the Contractor agree (subject to **clause 60.12.2** and if requested by the Authority) to explore in good faith a model for Authority self-insurance based upon:

60.12.1.1 the Authority becoming principally responsible for the cover provided by either or both of the following insurances that are in place after the Services Commencement Date, namely:

- (a) property damage insurance (but not where and to the extent that Contractors' 'All Risks' Insurance is in force)
- (b) business interruption insurance

and if the Authority so requires delay in start up insurance that applies during the design and construction phase and insurance against any other risk that the Authority determines;

- 60.12.1.2 such self-insurance being subject to insured interests, sums insured, deductibles, limits, periods of insurance, cover feature and extensions, exclusions and endorsements to substantially the same effect as if insurance were maintained under the provisions of this Agreement;
- 60.12.1.3 a reduction in the Unitary Charge to reflect the self-insurance model agreed upon and all insurance premia savings arising;
- 60.12.1.4 such protections as may be reasonably required by Senior Lenders and any Contractor Related Party in consequence of any self-insurance model agreed upon;
- 60.12.1.5 a process for reverting to commercial insurance if required by the Authority;
- 60.12.1.6 such (if any) guidance as may be issued by or on behalf of Government,

and if such a self-insurance model can be developed and agreed between the Authority and the Contractor to amend this Agreement and the Project Documents to reflect such self-insurance model.

60.12.2 This **clause 60.12** shall not, save in relation to the obligation to act in good faith, have legally binding effect.

61. **REINSTATEMENT AND CHANGE OF REQUIREMENT AFTER INSURED EVENT**

61.1 **Application of Insurance Proceeds**

Subject to **clause 62** (Economic Test) all insurance proceeds received under any policy referred to in paragraph 1 of **Schedule 11** (Insurances) (the "**Physical Damage Policies**") shall be applied to repair, reinstate and replace each part or parts of the Assets in respect of which such proceeds were received.

61.2 Joint Account

All insurance proceeds paid under any Physical Damage Policy in respect of a single event (or a series of events) in an amount in excess of £250,000 (two hundred and fifty thousand pounds)(indexed) shall be paid into the Joint Insurance Account.

61.3 Reinstatement

Subject to **clause 62** (Economic Test) where a claim is made or proceeds of insurance are received or are receivable under any Physical Damage Policy in respect of a single event (or a series of related events) the ("**Relevant Incident**") in an amount in excess of £50,000 (Indexed):

61.3.1 the Contractor shall deliver as soon as practicable and in any event within 28 days after the making of the claim a plan prepared by the Contractor for the carrying out of the works necessary (the "**Reinstatement Works**") to repair, reinstate or replace (the "**Reinstatement Plan**") the assets which are the subject of the relevant claim or claims in accordance with **clause 61.4**. The Reinstatement Plan shall set out:

61.3.1.1 if not the Construction Sub-Contractor the identity of the person proposed to effect the Reinstatement Works, which shall be subject to the prior written approval of the Authority; and

61.3.1.2 the proposed terms and timetable upon which the Reinstatement Works are to be effected (including the date that the Project will become fully operational), the final terms of which shall be subject to the prior written approval of the Authority which approval shall not be unreasonably delayed.

61.3.2 provided that the Authority is satisfied that the Reinstatement Plan will enable the Contractor to comply with **clause 61.4** (Works Carried Out) within a reasonable timescale:

61.3.2.1 the Reinstatement Plan will be adopted;

61.3.2.2 the Contractor shall enter into contractual arrangements to effect the Reinstatement Works with the person identified in the approved Reinstatement Plan approved by the Authority;

61.3.2.3 prior to the earlier to occur of the Termination Date

- 61.3.2.4 or the Expiry Date, any amounts standing to the credit of the Joint Insurance Account (the "**Relevant Proceeds**") (together with any interest accrued) may be withdrawn by the Contractor from the Joint Insurance Account as required to enable it to make payments in accordance with the terms of the contractual arrangements referred to in **clause 61.3.2.2** and to meet any other reasonable costs and expenses of the Contractor for the sole purposes of funding the Reinstatement Works and the parties shall operate the signatory requirements of the Joint Insurance Account in order to give effect to such payments. Following the earlier to occur of the Termination Date and the Expiry Date, the Authority may withdraw amounts standing to the credit of the Joint Insurance Account for the purposes of funding any Reinstatement Works;
- 61.3.2.5 the Authority agrees and undertakes that, subject to compliance by the Contractor with its obligations under this clause, and provided that the Contractor procures that the Reinstatement Works are carried out and completed in accordance with the contractual arrangements referred to in **clause 61.3.2.2** it shall not exercise any right which it might otherwise have to terminate this Agreement by virtue of the event which gave rise to the claim for the Relevant Proceeds;
- 61.3.2.6 the Authority undertakes to use reasonable endeavours to assist the Contractor in the carrying out of the Reinstatement Plan;
- 61.3.2.7 after the Reinstatement Plan has been implemented to the reasonable satisfaction of the Authority and in accordance with **clause 61.4** the Authority shall permit withdrawal by the Contractor of any Relevant Proceeds then held in the Joint Insurance Account that have not been paid under **clause 61.3.2.3**, in respect of the Relevant Incident, together with any interest accrued; and

subject to the provisions of **clause 58.1** (Contractor's Indemnity) the Contractor shall be solely responsible for the payment of any deficiency.

61.4 Works Carried Out

Where insurance proceeds are to be used, in accordance with this agreement, to repair, reinstate or replace any Asset the Contractor shall carry out the work in accordance with the Contractor's Proposals so that on completion of the work, the provisions of the Agreement are complied with.

62. **ECONOMIC TEST**

62.1 **Assets destroyed**

If all of those Assets which are buildings and equipment on a Site are destroyed or substantially destroyed in a single event and the insurance proceeds (when taken together with any other funds available to the Contractor) are equal to or greater than the amount required to repair or reinstate those Assets, the Contractor shall calculate the senior debt loan life cover ratio as used in the Base Case (on the assumption that the Assets are repaired or reinstated in accordance with **clause 61** (Reinstatement and Change of Requirement after Insured Event)).

62.2 **Application of the Reinstatement Procedure**

If the calculation referred to in **clause 62.1** above shows that the senior debt loan life cover ratio is greater than or equal to 1.10:1 then the Contractor shall be subject to the procedure set out in **clause 61** (Reinstatement and Change of Requirement after Insured Event).

62.3 **Release into the Joint Insurance Account**

If the calculation referred to in **clause 62.1** above shows that the senior debt loan life ratio is less than 1.10:1 then an amount equal to the lesser of

62.3.1 the insurance proceeds; and

62.3.2 the Base Senior Debt Termination Amount, or, if any Additional Permitted Borrowing has been advanced, the Revised Senior Debt Termination Amount;

shall be released from the Joint Insurance Account to the Contractor.

62.4 **Contractor Breach**

If, pursuant to **clause 62.3** above, insurance proceeds are released from the Joint Insurance Account the Contractor shall be in breach of its obligations under this Agreement, and shall not, pursuant to **clause 54** (Relief Events), be relieved of its obligations unless it can demonstrate, to the satisfaction of the Authority, that it can carry out the works necessary to repair, reinstate or replace the assets which are subject to the relevant claims in accordance with

Clause 58.4 (Reinstatement and Change of Requirement after Insured Event) and within a reasonable timescale.

63. RISKS THAT BECOME UNINSURABLE

63.1 Uninsurable Risks

Nothing in this **clause 63** (Risks That Become Uninsurable) shall oblige the Contractor to take out insurance in respect of a risk which is Uninsurable save where the predominant cause of the risk being uninsurable is any act(s) or omission(s) of the Contractor.

63.2 Risks Become Uninsurable

If a risk usually covered by Contractor's all risks insurance, property damage insurance, third party liability insurance, delay in start up and business interruption insurance (but not loss of profits) or statutory insurance(s) in each case required under this Agreement becomes Uninsurable then:

63.2.1 the Contractor shall notify the Authority within five (5) Business Days of becoming aware of the risk becoming Uninsurable and in any event at least five (5) Business Days before the expiry or cancellation of any existing insurance in respect of that risk; and

63.2.2 if both parties agree, or it is determined in accordance with the Dispute Resolution Procedure, that the risk is Uninsurable and that:

63.2.2.1 the risk being Uninsurable is not caused by the actions of the Contractor or any Sub-Contractor of the Contractor; and

63.2.2.2 the Contractor has demonstrated to the Authority that the Contractor and a prudent board of directors of a company operating the same or substantially similar PFI businesses in the United Kingdom to that operated by the Contractor would in similar circumstances (in the absence of the type of relief envisaged by this clause) be acting reasonably and in the best interests of the company if they resolved to cease to operate such businesses as a result of that risk becoming Uninsurable taking into account inter alia (and without limitation) the likelihood of the Uninsurable risk occurring (if it has not already occurred), the financial consequences for such company if such Uninsurable risk did occur (or has occurred) and other mitigants against such consequences which may be available to such company.

the parties shall meet to discuss the means by which the risk should be managed or shared (including considering the issue of self-insurance by either party).

63.3 Consequences

63.3.1 If the requirements of **clause 63.2** (Risks Become Uninsurable) are satisfied, but the Parties cannot agree as to how to manage or share the risk, then:

63.3.1.1 in respect of such third party liability insurance only, the Authority shall (at the Authority's option) either pay to the Contractor an amount equal to the amount calculated in accordance with **clause 45.1** (Compensation on Termination for Force Majeure) and the Agreement will terminate or elect to allow this Agreement to continue and **clause 63.3.1.2** below shall thereafter apply in respect of such risk; and

63.3.1.2 in respect of such Contractors' all risks insurance, property damage insurance, third party liability insurance, delay in start up and business interruption insurance (but not loss of profits) or statutory insurances this Agreement shall continue and on the occurrence of the risk (but only for as long as such risk remains Uninsurable) the Authority shall (at the Authority's option) either pay to the Contractor an amount equal to the insurance proceeds that would have been payable had the relevant insurance continued to be available and the Agreement will continue; or an amount equal to the amount calculated in accordance with **clause 45** (Force Majeure Compensation) plus (in relation to third party liability insurance only) the amount of insurance proceeds that would have been payable whereupon this Agreement will terminate; and

63.3.1.3 where pursuant to **clauses 61.3.1.1** and/or **61.3.1.2** (Consequences) this Agreement continues then the Unitary Charge shall be reduced in each year for which the relevant insurance is not maintained by an amount equal to the premium paid (or which would have been paid) by the Contractor in respect of the relevant risk in the year prior to it becoming Uninsurable (Indexed from the date that the risk becomes Uninsurable). Where the risk is Uninsurable for part of a year only the reduction in the

Unitary Charge shall be pro rated to the number of months for which the risk is Uninsurable; and

- 63.3.1.4 where pursuant to **clauses 61.3.1.1** and/or **61.3.1.2** (Consequences) this Agreement continues the Contractor shall approach the insurance market at least every four months to establish whether the risk remains Uninsurable. As soon as the Contractor is aware that the risk is no longer Uninsurable, the Contractor shall take out and maintain or procure the taking out and maintenance of insurance (to be incepted as soon as is reasonably practicable) for such risk in accordance with this Agreement; and
- 63.3.1.5 in respect of any period between the Authority receiving notification in accordance with **clause 63.2.1** that a TPL Risk has become Uninsurable and the Authority's notification to the Contractor in accordance with **clause 63.3.1.1** in respect of such risk, then provided it is ultimately agreed or determined that the requirements of **clause 63.3.1.2** are satisfied in respect of the Uninsurable TPL Risk and subject to **clause 63.3.1.3**, **clause 63.3.1.2** shall apply in respect of occurrences of the Uninsurable TPL Risk during such period unless the parties otherwise agree how to manage the risk during the period; and
- 63.3.1.6 **clause 63.3.1.5** shall only apply provided the Contractor does not unreasonably materially delay:
 - (a) agreement and/or determination in accordance with the Dispute Resolution Procedure as to whether the requirements of **clause 63.2.2** are satisfied in respect of the Uninsurable TPL Risk; and/or
 - (b) meeting with the Authority to discuss the means by which the risk should be managed.

63.4 Contractor's Option

If pursuant to **clause 61.3.1.2** (Consequences), the Authority elects to make payment to the Contractor (such that the Agreement will terminate) (the "Relevant Payment") the Contractor shall have the option (exercisable in writing within (20) Business Days of the date of such election by the Authority (the "Option Period")) to pay to the Authority on or before the end of the Option Period, an amount equal to the insurance proceeds that would have been

payable had the relevant risk not become Uninsurable, in which case the Agreement will continue (and the Relevant Payment will not be made by the Authority), and the Contractor's payments shall be applied for the same purpose and in the same manner as insurance proceeds would have been applied had the relevant risk not become Uninsurable.

63.5 Unavailability of Terms and Conditions

63.5.1 If, upon the renewal of any insurance which the Contractor is required to maintain or to procure the maintenance of pursuant to this Agreement:

63.5.1.1 any Insurance Term is not available to the Contractor in the worldwide insurance market with reputable insurers of good standing; and/or

63.5.1.2 the insurance premium payable for insurance incorporating such Insurance Term is such that the Insurance Term is not generally being incorporated in insurance procured in the worldwide insurance market with reputable insurers of good standing by contractors in the United Kingdom,

(other than, in each case, by reason of one or more actions of the Contractor and/or any Sub-contractor of the Contractor (of any tier)) then **clause 63.5.2** (Unavailability of Terms and Conditions) shall apply.

63.5.2 If it is agreed or determined that **clause 63.5.1** (Unavailability of Terms and Conditions) applies then the Authority shall waive the Contractor's obligations in **clause 59.1** (Requirement to Maintain) and/or **Schedule 11** (Insurances) in respect of that particular Insurance Term and the Contractor shall not be considered in breach of its obligations regarding the maintenance of insurance pursuant to this Agreement as a result of the failure to maintain insurance incorporating such Insurance Term for so long as the relevant circumstances described in **clause 63.5.1** (Unavailability of Terms and Conditions) continue to apply to such Insurance Term.

63.5.3 To the extent that the parties agree (acting reasonably), or it is determined pursuant to the Dispute Resolution Procedure, that an alternative or replacement term and/or condition of insurance is available to the Contractor in the worldwide insurance market with reputable insurers of good standing which if included in the relevant insurance policy would fully or partially address the Contractor's inability to maintain or procure the maintenance of insurance with the

relevant Insurance Term, at a cost which contractors in the UK are (at such time) generally prepared to pay, the Contractor shall maintain or procure the maintenance of insurance including such alternative or replacement term and/or condition. Notwithstanding any other provision of this Agreement, the costs of such insurance shall be subject to the premium costs sharing mechanism set out at **Schedule 20** (Insurance Premium Risk Sharing Schedule).

63.5.4 The Contractor shall notify the Authority as soon as reasonably practicable and in any event within five days of becoming aware that **clause 63.5.1.1** and/or **clause 63.5.1.2** (Unavailability of Terms and Conditions) are likely to apply or (on expiry of the relevant insurance then in place) do apply in respect of an Insurance Term (irrespective of the reason for the same). The Contractor shall provide the Authority with such information as the Authority reasonably requests regarding the unavailability of the Insurance Term and the parties shall meet to discuss the means by which such unavailability should be managed as soon as is reasonably practicable.

63.5.5 In the event that **clause 63.5.1.1** and/or **clause 63.5.1.2** (Unavailability of Terms and Conditions) apply in respect of an Insurance Term, (irrespective of the reasons for the same) the Contractor shall approach the insurance market at least every four months to establish whether **clause 63.5.1.1** and/or **clause 63.5.1.2** (Unavailability of Terms and Conditions) remain applicable to the Insurance Term. As soon as the Contractor is aware that **clause 63.5.1.1** and/or **clause 63.5.1.2** (Unavailability of Terms and Conditions) has ceased to apply to the Insurance Term, the Contractor shall take out and maintain or procure the taking out and maintenance of insurance (to be incepted as soon as is reasonably practicable) incorporating such Insurance Term in accordance with this Agreement.

64. **DISPUTE RESOLUTION**

64.1 **Disputes**

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

64.2 **Consultation**

If a dispute arises in relation to any aspect of this Agreement, the Contractor and the Authority shall first consult in good faith in an attempt to come to an agreement in relation to the disputed matter.

64.3 **Adjudication**

Without prejudice to **clause 64.2** above, either party may give the other notice of intention to refer the dispute to adjudication and an Adjudicator shall be selected in accordance with **clause 64.4** (Identity of Adjudicator) below (the "**Adjudicator**").

64.4 **Identity of Adjudicator**

The Adjudicator nominated to consider a dispute referred to him shall be selected on a strictly rotational basis from the relevant panel of experts appointed in accordance with the following:

- 64.4.1 there shall be two (2) panels of experts, one (1) in respect of construction matters (the "**Construction Panel**") and one (1) in respect of operational and maintenance matters (the "**Operational Panel**"). All the experts on each panel shall be wholly independent of the Contractor, the Authority, the relevant Sub-Contractor and any of the major competitors of the Contractor or relevant Sub-Contractor;
- 64.4.2 the Construction Panel shall be comprised of three (3) experts who shall be appointed jointly by the Contractor and the Authority. Such appointments shall take place within twenty (20) Business Days of the date of this Agreement;
- 64.4.3 the Operational Panel shall be comprised of three (3) experts who shall be appointed jointly by the Contractor and the Authority. Such appointments shall take place twenty (20) Business Days of the Commencement Date;
- 64.4.4 if any member of a panel resigns during the term of this Agreement, a replacement expert shall be appointed by the Contractor and the Authority as soon as practicable;
- 64.4.5 if the Authority and the Contractor are unable to agree on the identity of the experts to be appointed to the panels, the President for the time being of the Chartered Institute of Arbitrators shall appoint such expert(s) within twenty (20) Business Days of any application for such appointment by either party.

64.5 **Submission of Arguments**

Within five (5) Business Days of appointment in relation to a particular dispute, the Adjudicator shall require the parties to submit in writing their respective arguments. The Adjudicator shall, in his absolute discretion, consider whether a hearing is necessary in order to resolve the dispute.

64.6 **Adjudicator's Decision**

In any event, the Adjudicator shall provide to both parties his written decision on the dispute, within twenty (20) Business Days of appointment (or such other period as the parties may agree after the reference) or thirty (30) Business Days from the date of reference if the party which referred the dispute agrees. Unless the parties otherwise agree, the Adjudicator shall give reasons for his decision. Unless and until revised, cancelled or varied by the Arbitrator, the Adjudicator's decision shall be binding on both parties who shall forthwith give effect to the decision.

64.7 Adjudicator's Costs

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

64.8 Adjudicator as Expert

The Adjudicator shall be deemed not to be an arbitrator but shall render his decision as an expert, and the provisions of the Arbitration Act 1996 and the law relating to arbitration shall not apply to the Adjudicator or his determination or the procedure by which he reached his determination.

64.9 Adjudicator's Powers

The Adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law. The Adjudicator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Agreement.

64.10 Confidentiality

All information, data or documentation disclosed or delivered by a party to the Adjudicator in consequence of or in connection with his appointment as Adjudicator shall be treated as confidential. The Adjudicator shall not, save as permitted by **clause 58** (Information and Confidentiality), disclose to any person or company any such information, data or documentation and all such information, data or documentation shall remain the property of the party disclosing or delivering the same and all copies shall be returned to such party on completion of the Adjudicator's work.

64.11 Liability of Adjudicator

The Adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is

in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability.

64.12 Reference to Court

If:

64.12.1 there is any dispute in respect of matters referred to in **clauses 30** (Market Testing and Benchmarking), **45** (Compensation on Termination for Force Majeure), **46** (Compensation on Termination for Contractor Default), **47** (Compensation on Termination for Authority Default), **48** (Compensation on Corrupt Gifts, Fraud and Refinancing Breaches), **55** (Change in Law) or the Change Protocol;

64.12.2 either party is dissatisfied with or otherwise wishes to challenge the Adjudicator's decision made in accordance with **clause 64.6** (Adjudicator's Decision); or

64.12.3 both parties agree,

then either party may (within twenty (20) Business Days of receipt of the Adjudicator's decision, where appropriate), notify the other party of its intention to refer the dispute to court for final resolution.

64.13 Court's Decision

The decision of the courts shall be final and binding on both parties.

64.14 Parties' Obligations

The parties shall continue to comply with, observe and perform all their obligations hereunder regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution under this clause and shall give effect forthwith to every decision of the Adjudicator and the courts delivered under this clause.

64.15 Similar Disputes

If any dispute arising under this Agreement raises issues which relate to:

64.15.1 any dispute between the Contractor and the Building Contractor arising under the Building Contract or otherwise affects the relationship or rights of the Contractor and/or the Building Contractor under the Building Contract (the "Building Contract Dispute"); or

64.15.2 any dispute between the Contractor and the Housing Management Contractor arising under the Housing Management Agreement or

otherwise affects the relationship or rights of the Contractor and/or the Housing Management Contractor under the Housing Management Agreement (the "Housing Management Agreement Dispute"),

64.15.3 any dispute between the Contractor and the Responsive Repairs and Cyclical Maintenance and Renewal Contractor arising under the Responsive Repairs and Cyclical Maintenance and Renewal Contract or otherwise affects the relationship or the right of the Contractor and/or Responsive Repairs and Cyclical Maintenance and Renewal Contractor under the Responsive Repairs and Cyclical Maintenance and Renewal Contract (the "Responsive Repairs and Cyclical Maintenance and Renewal Contract Dispute")

64.15.4 any dispute between the Contractor and the Energy Contractor arising under the Energy Services Contract or otherwise affects the relationship or the right of the Contractor and/or the Energy Contractor under the Energy Services Contract (the "Energy Services Contract Dispute")

then the Contractor may include as part of its submissions made to the Adjudicator or to the court, where the dispute is referred to court, submissions made by the Building Contractor, or by the Housing Management Contractor or Responsive Repairs and Cyclical Maintenance and Renewal Contractor as appropriate.

64.16 Jurisdiction over Sub-Contractors

The Adjudicator or the court, as appropriate, shall not have jurisdiction to determine the Building Contract Dispute or the Housing Management Agreement Dispute or the Responsive Repairs and Cyclical Maintenance and Renewal Contract Dispute but the decision of the Adjudicator or the court shall, subject to **clause 64.12** (Reference to Court), be binding on the Contractor and the Building Contractor insofar as it determines the issues relating to the Building Contract Dispute and on the Contractor and the Housing Management Contractor insofar as it determines the issues relating to the Housing Management Agreement Dispute and the Contractor and the Responsive Repairs and Cyclical Maintenance and Renewal Contractor insofar as it determines the issues relating to the Responsive Repairs and Cyclical Maintenance and Renewal Contract.

64.17 Sub-Contractors' Submissions

Any submissions made by the Building Contractor or the Housing Management Contractor or the Responsive Repairs and Cyclical Maintenance and Renewal Contractor shall:

64.17.1 be made within the time limits applicable to the delivery of submissions by the Contractor; and

64.17.2 concern only those matters which relate to the dispute between the Authority and the Contractor under this Agreement.

64.18 Costs

Where the Building Contractor or the Housing Management Contractor or the Responsive Repairs and Cyclical Maintenance and Renewal Contractor makes submissions in any reference before:

64.18.1 the Adjudicator, the Adjudicator's costs of such reference shall be borne as the Adjudicator shall specify, or in default, one-third (1/3) by the Authority and two-thirds (2/3) by the Contractor; and

64.18.2 the courts, the costs of such reference shall be in the discretion of the court.

64.19 Authority's Liability

Subject to **clause 64.18**, the Authority shall have no liability to the Building Contractor or the Housing Management Contractor or the Responsive Repairs and Cyclical Maintenance and Renewal Contractor arising out of or in connection with any decision of the Adjudicator or a court or in respect of the costs of the Building Contractor or the Housing Management Contractor or the Responsive Repairs and Cyclical Maintenance and Renewal Contractor in participating in the resolution of any dispute under this Agreement.

64.20 Access to Documents

The Contractor shall not allow the Building Contractor or the Housing Management Contractor or the Responsive Repairs and Cyclical Maintenance and Renewal Contractor access to any document relevant to issues in dispute between the Authority and the Contractor save where:

64.20.1 the document is relevant also to the issues relating to the Building Contract Dispute or the Housing Management Agreement Dispute or the Responsive Repairs and Cyclical Maintenance and Renewal Contract Dispute as the case may be; and

64.20.2 the Contractor has first delivered to the Authority a written undertaking from the Building Contractor and/or the Housing Management Contractor or the Responsive Repairs and Cyclical Maintenance and Renewal Contractor (as appropriate) addressed to the Authority that they shall not use any such document otherwise than for the purpose of the dispute resolution proceedings under this

Agreement and that they shall not disclose such documents or any information contained therein to any third party other than the Adjudicator or the court or any professional adviser engaged by the Building Contractor or the Housing Management Contractor or the Responsive Repairs and Cyclical Maintenance and Renewal Contractor (as appropriate) to advise in connection with the dispute.

65. **ORDERING OF GOODS AND SERVICES**

Neither party shall place or cause to be placed any orders with suppliers or otherwise incur liabilities in the name of the other party or any representative of the other party.

66. **INTELLECTUAL PROPERTY**

66.1 **Project Data**

The Contractor grants to the Authority or shall procure the grant to the Authority of a non-exclusive, royalty-free, worldwide, irrevocable, freely assignable, perpetual licence of any Ancillary Intellectual Property Rights owned by the Contractor or licensed to it which are necessary or desirable for the purpose of using and exploiting the Generated Intellectual Property Rights, to use the same for the purposes of:

66.1.1 the Authority providing the Dwellings, Blocks, Communal Areas and/or Exterior Common Areas its duties under this Agreement and/or any statutory duties which the Authority may have; and

66.1.2 following termination of this Agreement, the design or construction of the Dwellings, Blocks, Communal Areas and/or Exterior Common Areas the operation, maintenance or improvement of the Dwellings, Blocks and/or Communal Areas and/or the Exterior Common Areas and/or the provision of services the same as, or similar to, the Services,

(together, the “**Approved Purposes**”), and in this clause “use” shall include the acts of copying, modifying, adapting and translating the material in question and/or incorporating them with other materials and the term “the right to use” shall be construed accordingly.

66.2 **Ancillary Intellectual Property Rights**

Ownership of Ancillary Intellectual Property Rights shall not be affected by this Agreement and accordingly:

66.2.1 to the extent that Ancillary Intellectual Property Rights exist at the date of this Agreement, ownership of such rights remains with the

Contractor or, as the case may be, the third party licensing use of the same to the Contractor; or

- 66.2.2 to the extent that the Ancillary Intellectual Property Rights are created after the date of this Agreement, ownership of such rights remains with the Contractor or, as the case may be, the third party licensing use of the same to the Contractor.

Nothing in this Agreement is intended to give the Authority any right, title or interest in any Ancillary Intellectual Property Rights which may be disclosed to it by the Contractor which is otherwise made available to it in connection with this Agreement, save as specifically set out in this Agreement.

66.3 **Assignment of Generated Intellectual Property Rights**

All Generated Intellectual Property Rights created by or on behalf of either party shall be owned by the Authority. Accordingly, the Contractor:

- 66.3.1 assigns to the Authority with full title guarantee (by way of present assignment of future rights) all copyright, database rights and rights in designs which form part of the Generated Intellectual Property Rights created at any time by the Contractor during the continuance of this Agreement, including without limitation the Project Data, and such assignment is effective from the time that the rights in question arise; and
- 66.3.2 agrees to assign to the Authority with full title guarantee all other Generated Intellectual Property Rights.

The assignments made under this **clause 66.3** (Assignment of Generated Intellectual Property Rights) shall include without limitation all statutory or common law rights attaching to those Generated Intellectual Property Rights assigned including without limitation the right to sue for past infringements.

The Contractor undertakes that it will:

- 66.3.3 procure that all Generated Intellectual Property Rights created by a third party engaged by the Contractor in connection with the Project are assigned to the Authority under the terms of **clause 66.3** (Assignment of Generated Intellectual Property Rights) above; and
- 66.3.4 at the Contractor's cost, execute such further documents and do such acts as may be necessary for securing, confirming or vesting absolutely in the Authority full right, title and interest in the Generated Intellectual Property Rights and for conferring on the Authority all rights of action in respect of any claim for infringement by third

parties. The Contractor grants to the Authority a power of attorney for the Authority to execute such further documents on behalf of the Contractor should the Contractor fail to do so.

66.4 Computer Data and Materials

To the extent that any of the data, materials and documents referred to in this clause are generated by or maintained on a computer or similar system, the Contractor shall:

- 66.4.1 use all reasonable endeavours to procure for the benefit of the Authority, at no charge or at the lowest reasonable fee, the grant of a licence or sub-licence for any relevant software to enable the Authority or its nominee to access and otherwise use (subject to the payment by the Authority of the relevant fee, if any) such data for the Approved Purposes. As an alternative, the Contractor may provide such data, materials or documents in a format which may be read by software generally available in the market at the relevant time or in hard copy format; and
- 66.4.2 enter into the then current multi-licence escrow deposit agreement of National Computer Centre Limited or standard single licence escrow deposit agreement as appropriate in each case.

66.5 Back-up Obligations

The Contractor shall ensure the back-up and storage in safe custody of the data, materials and documents referred to in **clause 66.4** (Computer Data and Materials) in accordance with Good Industry Practice. Without prejudice to this obligation, the Contractor shall submit to the Authority's Representative for approval its proposals for the back-up and storage in safe custody of the data, materials and documents and the Authority shall be entitled to object if the same is not in accordance with Good Industry Practice. The Contractor shall comply, and shall cause all Contractor Related Parties to comply, with all procedures to which the Authority's Representative has given its approval. The Contractor may vary its procedures for such back-up and storage subject to submitting its proposals for change to the Authority's Representative, who shall be entitled to object on the basis set out above.

66.6 Contractor Indemnity

Where a claim or proceeding is made or brought against the Authority which arises out of the infringement of any Intellectual Property Rights or because the use of any materials, plant, machinery or equipment in connection with the Works or the Project infringes any Intellectual Property Rights or a third party then, unless such infringement has arisen out of the use of any Intellectual

Property by or on behalf of the Authority otherwise than in accordance with the terms of this Agreement, the Contractor shall indemnify the Authority at all times from and against all such claims and proceedings and the provisions of **clause 59** (Indemnities, Guarantees and Contractual Claims) shall apply.

66.7 Licence to Contractor

The Authority hereby grants to the Contractor a non-transferable, non-exclusive, royalty free licence (carrying the right to grant sub-licences) to use for the duration of this Agreement only and only for purposes directly relating to the Project any Intellectual Property Rights relating to the Project which are or become vested in the Authority.

67. ASSIGNMENT AND SUB-CONTRACTING

67.1 Restrictions on Transfer of the Agreement by the Authority

The rights and obligations of the Authority under this Agreement shall not be assigned, novated or otherwise transferred (whether by virtue of any Legislation or any scheme pursuant to any Legislation or otherwise) to any person other than to any public body (being a single entity) acquiring the whole of the Agreement and having the legal capacity, power and authority to become a party to and to perform the obligations of the Authority under this Agreement being:

- 67.1.1 a Minister of the Crown pursuant to an Order under the Ministers of the Crown Act 1975;
- 67.1.2 any Local Authority which has sufficient financial standing or financial resources to perform the obligations of the Authority under this Agreement and the Direct Agreement; or
- 67.1.3 any other public body whose obligations under this Agreement and the Direct Agreement are unconditionally and irrevocably guaranteed (in a form reasonably acceptable to the Contractor) by the Authority or a Minister of the Crown having the legal capacity, power and authority to perform the obligations under the guarantee and the obligations of the Authority under this Agreement and the Direct Agreement.

67.2 Restriction on the Contractor

Subject to **clause 67.3** (Exception) and subject always to the provisions of the Direct Agreement, the Contractor shall not sub-contract, assign, underlet, charge, sell, bargain or otherwise deal in any way with the benefit of this Agreement in whole or in part except with the prior written consent of the Authority.

67.3 Exception

67.3.1 The provisions of **clause 67.3.2** do not apply to the grant of any security for any loan made to the Contractor under the Financing Agreements.

67.3.2 Subject to **clause 31.2** (Management Agreements), nothing in this Agreement shall prohibit the Contractor from providing or procuring the provision of the Works or the Services from a Sub-Contractor having the legal capacity, power and authority to become a party to and perform the obligations of the relevant Sub-Contract and employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it which are sufficient to enable it to perform the obligations of the Sub-Contractor under the relevant Sub-Contract and whose identity has been notified to the Authority (and who the Authority has approved, such approval not to be unreasonably withheld, and to be given (or withheld) within twenty (20) Business Days of notice) prior to the appointment of such Sub-Contractor, provided that the Contractor shall remain primarily and directly liable for the Contractor's obligations under this Agreement. By entering into this Agreement, the Authority approves the Sub-Contractors appointed by the Contractor as at the Commencement Date.

67.4 **Contractor's Obligations**

The Contractor shall perform its obligations under and observe all the terms of any Sub-Contract with a Sub-Contractor.

67.5 **Sub-Contractors**

Nothing in this Agreement shall prohibit or prevent any Sub-Contractor employed by the Contractor from being employed by the Authority at any establishments of the Authority.

67.6 **Replacement of Sub-Contractors**

67.6.1 On not more than two such occasions during the Contract Period on the substitution or replacement of the defaulting Sub-Contractor (other than the Building Contractor) or a defaulting sub-contractor to the Sub-Contractor (other than the Building Contractor) (in both cases provided that the Contractor is acting in compliance with **clause 50.2** (Changes to Project Documents), the Contractor may elect that for the purposes of **clause 40.3** (Termination on Contractor Default) only:

67.6.1.1 any accrued Unavailability Deductions; and/or

67.6.1.2 any accrued Performance Deductions; and/or

67.6.1.3 any warning notices or Final Warning Notices in respect of **clause 36** (Termination for Persistent Breach by the Contractor).

in each case relating to the relevant Services in respect of which the Sub-Contractor or any Sub-Contractor to the Sub-Contractor is being replaced, shall be cancelled. The Contractor shall notify the Authority on or before the appointment of any such substitute or replacement Sub-Contractor or sub-contractor whether it elects for this clause 63.6 (Replacement of Sub-Contractors) to apply on that occasion.

67.6.2 Where an election is made pursuant to **clause 67.6.1** above or the substitution or replacement of the defaulting Sub-Contractor or a defaulting sub-contractor to the Sub-Contractor then, for the purposes of **clause 46** (Termination on Contractor Default) only:

no Unavailability Deductions; and

no Performance Deductions; and

shall accrue for the purposes of sub-paragraphs (l), (m) and (n) inclusive of the definition of Contractor Default in respect of a Service during a period of two (2) months from the date on which that Service is first provided by the replacement or substitute Sub-Contractor or sub-contractor as appropriate. For the avoidance of doubt, deductions shall still be made from the Unitary Charge in respect of Unavailability Deductions and Performance Deductions incurred during that period.

68. **CORPORATE STRUCTURES**

68.1 **Contractor Warranty**

The Contractor represents and warrants to the Authority that at the date of this Agreement the legal and beneficial ownership of the Contractor and Holdco is as set out in **Schedule 9** (Warranted Data) and that no arrangements are in place that have or may have or result in any sale, transfer or disposal of any legal, beneficial, equitable or other interest in any or all of the shares in the Contractor or Holdco.

68.2 **Notification**

68.2.1 Without prejudice to **Clause 68.5** (Restricted Share Transfer), the Contractor shall provide the Authority with at least twenty (20) Business Days' prior written notice of any Change of Ownership contemplated by the Contractor to enable the Authority to determine

whether the Authority considers the transfer to be an Unsuitable Third Party.

68.2.2 If the Authority forms the view that the proposed Change in Ownership is to an Unsuitable Third Party it will promptly notify the Contractor in writing that it objects to the proposed Change in Ownership and is withholding its written consent to the Change in Ownership under **clause 68.5.4**.

68.2.3 Any dispute arising shall be dealt with in accordance with **clause 64** (Dispute Resolution Procedure).

68.3 **Authority Request**

The Authority may, not more than twice in any Contract Year, or at any time when a Contractor Default is outstanding, request that the Contractor inform it as soon as reasonably practicable and in any event within 20 Business Days of receipt of the Authority's request for details of any Change of Ownership occurring.

68.4 **Contractor's Awareness**

The Contractor's obligations under **clauses 68.2** (Notification) and **68.3** (Authority Request) above shall, except where a legal transfer of shares has occurred, be limited to the extent of the Contractor's awareness having made all reasonable enquiry.

68.5 **Restricted Share Transfer**

68.5.1 No Change in Ownership may occur during the Lock-in Period.

68.5.2 Any Change in Ownership arising as a consequence of:

68.5.2.1 the grant or enforcement of security in favour of the Senior Lenders over or in relation to any of the shares of the Contractor or Holdco, provided that any document conferring security over any shares has been approved by the Authority (such approval not to be unreasonably withheld or delayed); or

68.5.2.2 any change in legal or beneficial ownership of any shares that are listed on a recognised investment exchange (as defined in Section 285 of the Financial Services and Markets Act 2000); or

68.5.2.3 any transfer of shares in the Contractor or Holdco by John Laing Investments Limited (company registration number:

00780225) of Allington House, 150 Victoria Street, London, SW1E 5LB ("JLI Parentco") and/or an Affiliate of JLI Parentco to a Laing Associate;

68.5.2.4 any transfer of shares in the Contractor or Holdco by Pinnacle Regeneration Group Limited (company registration number: 04240859) of First Floor, 6 St Andrew Street, London, EC4A 3AE ("Pinnacle Parentco") and/or an Affiliate of Pinnacle Parentco to Pinnacle Parentco and/or an Affiliate of Pinnacle Parentco;

shall be disregarded for the purpose of **clause 68.5.1** (Restricted Share Transfer).

68.5.3 Where:

68.5.3.1 during the Lock-in Period, the holder of any shares in the Contractor or Holdco is an Affiliate of JLI Parentco and that holder ceases to be an Affiliate of JLI Parentco it shall be a breach of this **clause 68.5** if the shares held by that holder are not within 20 Business Days of that holder ceasing to be an Affiliate of JLI Parentco transferred to JLI Parentco or an Affiliate of JLI Parentco; and

68.5.3.2 during the Lock-in Period, the holder of any shares in the Contractor or Holdco is an Affiliate of Pinnacle Parentco and that holder ceases to be an Affiliate of Pinnacle Parentco it shall be a breach of this **clause 68.5** if the shares held by that holder are not within 20 Business Days of that holder ceasing to be an Affiliate of Pinnacle Parentco transferred to Pinnacle Parentco or an Affiliate of Pinnacle Parentco;

68.5.4 The Contractor shall obtain the Authority's prior written consent (which may be given subject to conditions) to any Restricted Share Transfer.

69. **FINANCIAL ADJUSTMENTS**

69.1 **Updating the Base Case**

Whenever a Relevant Event occurs, the financial consequence shall (save where otherwise provided in this Agreement or where the Parties mutually agree otherwise) be determined in accordance with this **clause 69** (Financial Adjustments). Where for the purposes of this **clause 69** (Financial Adjustments) the Base Case is to be adjusted by reference to a Relevant Event, this shall be carried out by the Contractor, in consultation with the Authority, to

reflect the impact of any prior Relevant Event on the version of the Base Case applicable immediately prior to the relevant adjustment and to reflect the impact of the Relevant Event in respect of which such adjustment is being undertaken, including the effect of Estimated Change in Project Costs. In calculating any Change in Costs and any Change in Revenue, and in assessing other adjustments to be made to the Base Case arising from the Relevant Event, the Contractor shall be entitled to take into account, inter alia:

69.1.1 any Change in Costs and Change in Revenue;

69.1.2 reasonable economic assumptions prevailing at the time; and

69.1.3 changes in the prospective technical performance of the Project arising as a result of the Relevant Event,

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

69.2 **Application to the Base Case**

Where, pursuant to this Agreement, either party is entitled to payment of any sum the assessment of which properly requires reference to the Base Case (with the exception of payment of the Authority's Refinancing Share to which **clause 84** (Refinancing) shall apply), the adjustment to the Unitary Charge due shall be that required to ensure that, by reference to the Base Case adjusted under **clause 69** (Financial Adjustments), the Contractor is left in a no better and no worse position than under the version of the Base Case applicable immediately prior to the relevant adjustment, and shall be ascertained by determining the adjustment to the Unitary Charge required to maintain the financial position of the Contractor with that in which it would have been under the version of the Base Case applicable immediately prior to the relevant adjustment.

69.3 **No Better and no Worse**

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

69.3.1.1 rights, duties and liabilities under or arising pursuant to performance of this Agreement, the Financing Agreements and the key sub-contracts; and

69.3.1.2 ability to perform its obligations and exercise its rights under this Agreement, the Financing Agreements, the Building Contract and the Housing Management Agreement and the Responsive Repairs and Cyclical Maintenance and Renewal Contract,

so as to ensure that:

69.3.2 the Contractor is left in a position which is no better and no worse in relation to the key ratios (to include loan life cover and debt service reserve) and internal rate of return by reference to the version of the Base Case applicable immediately prior to the Relevant Event than had the Relevant Event not occurred; and

69.3.3 the ability of the Contractor to comply with this Agreement is not adversely affected or improved as a consequence of the Relevant Event.

69.4 Replacement of Base Case

Any Base Case produced following adjustments in accordance with this **clause 69** (Financial Adjustments) shall, when it is approved by the Authority (such approval not to be unreasonably withheld) become the Base Case for the purposes of this Agreement until its further amendment in accordance with this Agreement.

69.5 Amendments to Logic and/or Formulae

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

69.5.2 Where any amendment is made to the logic or formulae incorporated in the Base Case, the Base Case, as amended, shall first be run with the date included in the Base Case immediately prior to amendment to ensure that the key ratios (to include loan life cover and debt service return) from the Base Case are maintained at no higher or no lower levels than the key ratios (to include loan life cover and debt service return) immediately post the amendment, and the difference in the pre-tax Project IRR after and immediately prior to amendment does not differ by more than five (5) basis points (being zero point zero five percent (0.05%) as shown in the resulting figure).

69.6 Copies of the Revised Base Case

Following any change to the Base Case under the provisions of this **clause 69** (Financial Adjustments), the Contractor shall promptly deliver a copy of the revised Base Case to the Authority in the same form as is established at the date of the Agreement or in such other form as may be agreed between the parties.

70. **AUDIT ACCESS**

Notwithstanding the provisions of **clause 78.3** (Maintenance of Records), the Contractor shall co-operate fully and in a timely manner with any reasonable request from time to time of any auditor (whether internal or external) of the Authority and at the expense of the Contractor to provide documents, or to procure the provision of documents, relating to the Project, and to provide, or to procure the provision of, any oral or written explanation relating to the same.

71. **NO AGENCY**

71.1 **No Partnership or Employment**

Nothing in this Agreement shall be construed as creating a partnership or as a contract of employment between the Authority and the Contractor.

71.2 **Power to Bind**

Save as expressly provided otherwise in this Agreement, the Contractor shall not be, or be deemed to be, an agent of the Authority and the Contractor shall not hold itself out as having authority or power to bind the Authority in any way.

71.3 **Deemed Knowledge**

Without limitation to its actual knowledge, the Contractor shall for all purposes of this Agreement, be deemed to have such knowledge in respect of the Project as is held (or ought reasonably to be held) by any Contractor Related Party.

72. **ENTIRE AGREEMENT**

72.1 **Prior Representations etc Superseded**

Except where expressly provided in this Agreement, this Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement.

72.2 **Acknowledgements**

Each of the parties acknowledges that:

72.2.1 subject to **clause 6.4** (Authority Warranted Data) it does not enter into this Agreement on the basis of and does not rely, and has not

relied, upon any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral, written, express or implied) made or agreed to by any person (whether a party to this Agreement or not) except those expressly repeated or referred to in this Agreement and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be any remedy available under this Agreement; and

72.2.2 this clause shall not apply to any statement, representation or warranty made fraudulently, or to any provisions of this Agreement which was induced by fraud, for which the remedies available shall be all those available under the law governing this Agreement.

73. NOTICES

73.1 Form and Service of Notices

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

Contractor	Authority
Company Secretary	The Chief Executive of the Authority
Regenter Limited Allington House 150 Victoria Street London SW1E 5LB	The London Borough of Lambeth, Town Hall, Brixton Hill, London SW2 1RW
020 7901 3520	020 7926 2843

73.2 Provision of Information to Representatives

Where any information or documentation is to be provided or submitted to the Authority's Representative or the Contractor's Representative it shall be provided or submitted by sending the same by first class post, facsimile or by hand, or leaving the same at:

Contractor's Representative	Authority's Representative
Mark Dibblin	The Chief Executive of the Authority
1 st Floor	The London Borough of Lambeth,

Contractor's Representative	Authority's Representative
6 St Andrew Street Holborn London EC4A 3AE	Town Hall, Brixton Hill, London SW2 1RW
020 7427 5199	020 7926 2843

73.3 **Change of Details**

Either party to this Agreement (and either Representative) may change its nominated address or facsimile number by prior notice to the other party.

73.4 **Notices by Post**

Notices given by post shall be effective upon the earlier of actual receipt and five (5) Business Days after mailing. Notices delivered by hand shall be effective upon delivery. Notices given by facsimile shall be deemed to have been received where there is confirmation of uninterrupted transmission by a transmission report and where there has been no telephonic communication by the recipient to the senders (to be confirmed in writing) that the facsimile has not been received in legible form:

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

73.4.2 by 11am on the next following Business Day, if sent after 4pm on a Business Day but before 9am on that next following Business Day.

74. **SEVERABILITY**

If any term, condition or provision of this Agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality and enforceability of the other provisions of or any other documents referred to in this Agreement.

75. **WAIVER**

75.1 **Waiver to be Written**

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

75.2 **Extent of Waiver**

No waiver under **clause 75.1** (Waiver to be Written) shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Agreement unless (and then only to the extent) expressly stated in that waiver.

76. PUBLIC RELATIONS AND PUBLICITY

76.1 Restriction

The Contractor shall not by itself, its employees or agents and procure that its sub-contractors shall not communicate with representatives of the press, television, radio or other communications media on any matter concerning this Agreement without the prior written approval of the Authority (such approval not to be unreasonably withheld or delayed).

76.2 Photographs

No facilities to photograph or film in or upon any property used in relation to the Project shall be given or permitted by the Contractor unless the Authority has given its prior written approval.

77. ADVERTISEMENTS

The Contractor shall not exhibit or attach to any part of the Project Site any notice or advertisement without the prior written permission of the Authority's Representative, save where otherwise required to comply with Legislation.

78. CONTRACTOR'S RECORDS

78.1 Records of Costs

The Contractor shall at all times:

78.1.1 maintain a full record of particulars of the costs of carrying out the Works and performing the Services, including those relating to the design, construction, maintenance, operation and financing of the Project;

78.1.2 upon request by the Authority, provide a written summary of any of the costs referred to in **clause 78.1.1** (Records of Costs), including details of any funds held by the Contractor specifically to cover such costs, in such form and detail as the Authority may reasonably require to enable the Authority to monitor the performance by the Contractor of its obligations under this Agreement;

- 78.1.3 provide such facilities as the Authority may reasonably require for its representatives to visit any place where the records are held and examine the records maintained under this clause; and
- 78.1.4 (i) at the request of the Authority, provide to the Authority any information provided by it to the Senior Lenders during the Contract Period and (ii) provide to the Authority copies of its annual report and accounts within 30 days of publication and (iii) provide to the Authority a copy of the Senior Lender's Base Case at Financial Close and (as the same may be amended) within 30 days of any amendment thereto.

78.2 **Books of Account**

Compliance with **clause 78.1** (Records of Costs) shall require the Contractor to keep (and where appropriate to procure that the sub-contractors shall keep books of account in accordance with best accountancy practices with respect to this Agreement showing in detail:

- 78.2.1 administrative overheads;
- 78.2.2 payments made to Sub-Contractors and by Sub-Contractors to sub-contractors;
- 78.2.3 capital and revenue expenditure; and
- 78.2.4 such other items as the Authority may reasonably require from time to time to conduct costs audits for verification of cost expenditure or estimated expenditure, for the purposes of this Agreement,

and the Contractor shall have (and procure that its sub-contractors shall have) the books of account evidencing the items listed in **clauses 78.2.1** (Books of Account) to **78.2.4** (Books of Account) inclusive available for inspection by the Authority (and its advisors) upon reasonable notice, and shall promptly present a written report of these to the Authority as and when requested from time to time.

78.3 **Maintenance of Records**

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

- 78.3.1 a full record of all incidents relating to health, safety and security which occur during the term of the Agreement; and
- 78.3.2 full records of all maintenance procedures carried out during the term of the Agreement,

and the Contractor shall have the items referred to in **clauses 78.3.1** (Maintenance of Records) and **78.3.2** (Maintenance of Records) available for inspection by the Authority upon reasonable notice, and shall present a report of them to the Authority as and when requested from time to time.

78.4 Auditor

The Contractor shall permit all records referred to in this **clause 78** (Contractor's Records) to be examined and copied from time to time by the Authority's auditor and their representatives and other representatives of the Authority.

78.5 Retention

The records referred to in this **clause 78** (Contractor's Records) shall be retained for a period of at least five years after the Contractor's obligations under the Agreement have come to an end.

78.6 Termination or Expiry

Upon termination or expiry of this Agreement, and in the event that the Authority wishes to enter into another contract for the operation and management of a project the same as or similar to the Project, the Contractor shall (and shall ensure that its sub-contractors will) comply with all reasonable requests of the Authority to provide information relating to the Contractor's costs of operating and maintaining the Project.

78.7 Further Provisions

The Contractor shall:

- 78.7.1 provide to the Authority on 31 March, 30 June, 30 September and 31 December each year a document listing all information provided by it to the Senior Lenders during the preceding three (3) month period and, at the request of the Authority, provide to the Authority any information provided by it to the Senior Lenders during the term of the Agreement and any other information relating to the Project that the Authority may reasonably require;
- 78.7.2 provide to the Authority copies of its annual report and accounts within twenty (20) Business Days of publication;
- 78.7.3 provide to the Authority a copy of the Senior Lender's Base Case at Financial Close and (as the same may be amended) within twenty (20) Business Days of any amendment thereto;

78.7.4 promptly upon the occurrence of a Financing Default notify the Authority of such Financing Default; and

78.7.5 use all reasonable endeavours to assist the Authority in its preparation of any report required by the Department for Communities and Local Government or HM Treasury, from time to time.

78.8 **Interim Project Report**

The Authority may, in the circumstances referred to in **clause 78.7** (Further Provisions) (regardless of whether the Senior Lenders have exercised any enforcement or similar rights under the Senior Financing Agreements) require the Contractor to provide an Interim Project Report and to attend, and use all reasonable endeavours to ensure that the Senior Lenders attend, such meetings as the Authority may convene to discuss such Interim Project Report and the circumstances giving rise to it.

78.9 **Confidentiality**

All information referred to in this **clause 78** (Contractor's Records) is subject to the obligations set out in **clause 58** (Information and Confidentiality).

79. **DATA PROTECTION**

79.1 **General**

79.1.1 In relation to all Personal Data, the Contractor shall at all times comply with the DPA as a data controller if necessary, including maintaining a valid and up to date registration or notification under the DPA covering the data processing to be performed in connection with the Works and/or Services.

79.1.2 The Contractor and any sub-contractor shall only undertake processing of Personal Data reasonably required in connection with the Works and/or the Services and shall not transfer any Personal Data to any country or territory outside the European Economic Area.

79.2 **No Disclosure**

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

79.2.1.1 to employees and sub-contractors to whom such disclosure is reasonably necessary in order for the Contractor to carry out the Works and/or the Services; or

79.2.1.2 to the extent required under a court order,

provided that disclosure under **clause 79.2.1.1** (No Disclosure) is made subject to written terms substantially the same as, and no less stringent than, the terms contained in this **clause 79.2.1** (No Disclosure) and that the Contractor shall give notice in writing to the Authority of any disclosure of Personal Data which either the Contractor or a sub-contractor is required to make under **clause 79.2.1.2** (No Disclosure) immediately upon becoming aware of such a requirement.

79.2.2 The Contractor shall bring into effect and maintain all technical and organisational measures to prevent unauthorised or unlawful processing of Personal Data and accidental loss or destruction of, or damage to, Personal Data including to take reasonable steps to ensure the reliability of staff having access to the Personal Data.

79.2.3 The Authority may, at reasonable intervals, request a written description of the technical and organisational methods employed by the Contractor or the sub-contractor referred to in **clause 79.2.2** (No Disclosure). Within 20 Business Days of such a request, the Contractor shall supply written particulars of all such measures detailed to a reasonable level such that the Authority can determine whether or not, in connection with the Personal Data, it is compliant with the DPA.

79.3 **Indemnity by Contractor**

The Contractor shall indemnify and keep indemnified the Authority against all losses, claims, damages, liabilities, costs and expense (including reasonable legal costs) incurred by it in respect of any breach of this **clause 79** (Data Protection) by the Contractor and/or any act or omission of any sub-contractor.

80. **INTEREST ON LATE PAYMENT**

Save where otherwise specifically provided, where any payment or sum of money due from the Contractor to the Authority or from the Authority to the Contractor under any provision of this Agreement is not paid within 5 Business Days of the due date, it shall bear interest thereon at the Prescribed Rate from the due date (whether before or after any judgment) until actual payment and it is agreed between the parties that the Prescribed Rate and the provisions of this Agreement relating to the payment of compensation on termination of this Agreement following the occurrence of an Authority Default provide the Contractor with a substantial remedy pursuant to Sections 8 and 9 of the Late Payment of Commercial Debts (Interest) Act 1998.

81. **CO-OPERATION**

The Contractor shall co-operate fully and in a timely manner with any reasonable request from time to time of any auditor (whether internal or

external) of the Authority or the Ombudsman to provide documents, or to procure the provision of documents, relating to the Project, and to provide, or to procure the provision of, any oral or written explanation relating to the same.

82. LOCAL GOVERNMENT (CONTRACTS) ACT 1997

82.1 Certification Requirements

The Certification Requirements are intended to be satisfied by the Authority with respect to this Agreement and the Direct Agreement before the end of the period relating to each agreement within which the Certification Requirements must be satisfied for the agreement to be a certified contract for the purposes of the Local Government (Contracts) Act 1997.

82.2 Contractor's Consent

The Contractor hereby consents to the issue by the Authority of certificates under Section 3 of the Local Government (Contracts) Act 1997 in respect of this Agreement and the Direct Agreement.

82.3 Failure to Issue a Certificate

If a certificate is not issued by the Authority pursuant to **clause 82.2** (Contractor's Consent) within six (6) weeks of the date of this Agreement then the Contractor shall be entitled by giving notice in writing to the Authority within five (5) Business Days of the Authority failing to issue such a certificate to terminate this Agreement, whereupon the Authority shall pay to the Contractor an amount equal to the compensation that would be payable in accordance with **clause 47** (Compensation on Termination for Authority Default/Voluntary Termination) and on termination for Authority Default pursuant to **clause 40.2** (Termination on Authority Default).

82.4 Relevant Discharge Terms

The relevant discharge terms within the meaning of Section 6 of the Local Government (Contracts) Act 1997 are set out in **Schedule 10** (Relevant Discharge Terms).

83. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in all respects in accordance with the laws of England and Wales. Subject to **clause 64** (Dispute Resolution), the English Courts shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement.

84. REFINANCING

84.1 Requirement for Authority Consent

The Contractor shall obtain the Authority's prior written consent to any Qualifying Refinancing and both the Authority and the Contractor shall at all times act in good faith with respect to:

84.1.1 any Refinancing; or

84.1.2 any potential or proposed Refinancing under **clause 84.9**.

84.2 Share of Gain

84.2.1 The Authority shall be entitled to receive:

84.2.1.1 a ninety per cent (90%) share of any Refinancing Gain arising from a Qualifying Refinancing in respect of any Refinancing Gain to the extent that that Refinancing Gain is attributable to any reduction in Margin on the Senior Term Loan Facility as defined in the Credit Agreement from [REDACTED] per cent. per annum to [REDACTED] per cent. per annum. or more, provided that, if the Contractor's share of any Refinancing Gain to which this **clause 84.2.1.1** applies exceeds [REDACTED] ([REDACTED]) in aggregate, the Authority shall be entitled to receive the excess;

84.2.1.2 a fifty per cent (50%) share of any Refinancing Gain (other than a Refinancing Gain to the extent that **clause 84.2.1.1** applies) arising from a Qualifying Refinancing, in respect of any Refinancing Gain up to (when considered in aggregate with all previous Qualifying Refinancings) and Refinancing Gain of £1 million;

84.2.1.3 a 60 per cent share of any further Refinancing Gain (other than a Refinancing Gain to the extent that **clause 84.2.1.1** applies) arising from a Qualifying Refinancing, in respect of any Refinancing Gain up to (when considered in aggregate with all previous Qualifying Refinancings) a Refinancing Gain of £3 million; and also

84.2.1.4 a 70 per cent share of any other Refinancing Gain (other than a Refinancing Gain to the extent that **clause 84.2.1.1** applies) arising from a Qualifying Refinancing.

84.3 The Authority shall not withhold or delay its consent to a Qualifying Refinancing to obtain a greater share of the Refinancing Gain than that specified in **clause 84.2.1**.

84.4 **Contractor Details**

The Contractor shall promptly provide the Authority with full details of any proposed Qualifying Refinancing including a copy of the proposed financial model relating to it (if any) and the basis for the assumptions used in the proposed financial model. The Authority shall (before, during and at any time after any Refinancing) have unrestricted rights of audit over any financial model and documentation (including any aspect of the calculation of the Refinancing Gain) used in connection with that Refinancing whether the Refinancing is a Qualifying Refinancing or not).

84.5 **Receipt of Gain**

The Authority shall have the right to elect to receive its share of any Refinancing Gain as:

84.5.1 a single payment in an amount less than or equal to any Distribution made on or about the date of the Refinancing;

84.5.2 a reduction in the Unitary Charge over the remainder of the Contract Period; or

84.5.3 a combination of any of the above.

84.6 **Method of Calculation**

The Authority and the Contractor will negotiate in good faith to agree the basis and method of calculation of the Refinancing Gain and payment of the Authority's share of the Refinancing Gain (taking into account how the Authority has elected to receive its share of the Refinancing Gain under **clause 84.5** (Receipt of Gain)). If the parties fail to agree the basis and method of calculation of the Refinancing Gain or the payment of the Authority's share, the dispute shall be determined in accordance with the Dispute Resolution Procedure.

84.7 **Costs**

The Refinancing Gain shall be calculated after taking into account the reasonable and proper professional costs that each party directly incurs in relation to the Qualifying Refinancing and on the basis that all reasonable and proper professional costs incurred by the Authority will be paid to the Authority by the Contractor within 20 Business Days of any Qualifying Refinancing.

84.8 **Notifiable Financings**

Without prejudice to the other provisions of this **clause 84** (Refinancing) the Contractor shall:

- 84.8.1 notify the Authority of all Notifiable Financings on becoming aware of the same and again when they are entered into and provide full details of the same; and
- 84.8.2 include a provision in the Financing Agreements (other than Subordinated Financing Agreements) whereby the Contractor is entitled to be informed of any proposals which the Senior Lenders may have to refinance the Financing Agreements (other than Subordinated Financing Agreements).

84.9 Authority right to request refinancing

- 84.9.1 If the Authority (acting reasonably) considers the funding terms generally available in the market to be more favourable than those reflected in the Financing Agreements (other than Subordinated Financing Agreements), the Authority may, by notice in writing to the Contractor, require the Contractor to request potential funders to provide terms for a potential Refinancing (a "Refinancing Notice").
- 84.9.2 The Refinancing Notice shall set out in reasonable detail the grounds upon which the Authority believes such funding terms to be available. The Contractor and Authority shall meet to discuss the Refinancing Notice within 28 days. Such a meeting will consider the evidence available to both parties about the availability of funding terms for a potential Refinancing. The Authority shall be entitled to withdraw the Refinancing Notice at or before such a meeting, or within ten days following the meeting.
- 84.9.3 If the Authority serves a Refinancing Notice which is not withdrawn pursuant to **clause 84.9.2**, then the Contractor shall:
 - 84.9.3.1 act promptly, diligently and in good faith with respect to the potential Refinancing;
 - 84.9.3.2 use all reasonable endeavours to obtain the most favourable available terms from existing and/or new lenders for any potential Refinancing (provided that the Contractor shall not be required to propose refinancing in a manner which a prudent board of directors of a company operating the same business in the United Kingdom to that operated by the Contractor, in similar circumstances, would not approve), for the avoidance of doubt also being terms which are likely to generate a positive Refinancing

Gain after the deduction of costs in accordance with the provisions of **clause 84.7**; and

84.9.3.3 either:

- (a) as soon as reasonably practicable after receipt of the Refinancing Notice, provide to the Authority (i) full details of the proposed Refinancing, including a financial model and the basis for the assumptions used in the financial model and evidence to the reasonable satisfaction of the Authority that these assumptions represent the most favourable available terms for the potential Refinancing on the basis set out in **clause 84.9.3.2** above and (ii) initial drafts of any changes to this Contract including in relation to potential compensation on termination which might be required to give effect to the proposed Refinancing; or
- (b) if the Contractor (acting reasonably) believes that it is not possible to obtain funding terms which are more favourable than those reflected in the Financing Agreements (other than Subordinated Financing Agreements) in accordance with the requirements of **clause 84.9.3.2**, provide evidence to the reasonable satisfaction of the Authority for such belief and evidence to the reasonable satisfaction of the Authority that the Contractor has complied with its obligations in **clauses 84.9.3.1** and **84.9.3.2**.

84.9.4 Following receipt of the information referred to in **clause 84.9.3.3(a)**, the Authority shall (in its absolute discretion) either:

84.9.4.1 instruct the Contractor to implement the proposed Refinancing; or

84.9.4.2 instruct the Contractor to discontinue the proposed Refinancing

provided that if the Authority reasonably considers that the requirements of **clause 84.9.3.3(a)** have not been satisfied, the Authority may require the Contractor to satisfy its obligations under **clause 84.9.3.3(a)** whereupon the provisions of **clauses 84.9.3** and **84.9.4** shall apply as if the Authority had served a Refinancing Notice.

84.9.5 If the Authority instructs the Contractor to implement the proposed Refinancing:

84.9.5.1 the Contractor shall, as soon as reasonably practicable, use all reasonable endeavours to procure that such proposed Refinancing is implemented;

84.9.5.2 such proposed Refinancing shall be deemed to be a Qualifying Refinancing; and

84.9.5.3 the provisions of **clauses 84.1 to 84.8** shall apply.

84.9.6 If:

84.9.6.1 the Authority instructs the Contractor to discontinue the potential Refinancing pursuant to **clause 84.9.4.2**; or

84.9.6.2 the requirements of **clause 84.9.3.3(b)** are satisfied

then, the Authority shall reimburse the Contractor for the reasonable and proper professional costs incurred by the Contractor in relation to the potential Refinancing, such costs to be paid to the Contractor by the Authority within 28 days after receipt of a valid invoice in respect of such amount. Such costs shall not include any internal management costs incurred by the Contractor except insofar as (a) it can be demonstrated to the reasonable satisfaction of the Authority that such costs have been incurred in place of professional costs which would in the normal course of such business have been paid to third parties and (b) the Authority has, by prior written agreement, approved the use of such internal management resource.

84.9.7 The Authority shall be entitled to issue a Refinancing Notice under **clause 84.9.1** at any time but not more than once in any two-year period. For the avoidance of doubt, a Refinancing Notice that has been withdrawn under **clause 84.9.2** has been issued for the purpose of this **clause 84.9.7**.

85. **SOLE REMEDY AND COMMON LAW RIGHTS**

85.1 **Common Law Rights for the Contractor**

Without prejudice to any entitlement of the Contractor:

85.1.1 to specific performance of any obligation under this Agreement; or

85.1.2 to injunctive relief,

the Contractor shall not be entitled to any common law or equitable rights including rights to damages or to any other rights under contract, tort or otherwise in relation to any breach of this Agreement to the extent that this Agreement provides an express remedy in relation to the breach.

85.2 **Sole Remedy**

Subject to:

85.2.1 any other express right of the Authority pursuant to this Agreement; and

85.2.2 the Authority's right to claim, on or after termination of this Agreement, the amount of its reasonable costs, losses, damages and expenses suffered or incurred by it as a result of rectifying or mitigating the effects of any breach of this Agreement by the Contractor, save to the extent that the same has already been recovered by the Authority pursuant to this Agreement or has been taken into account to calculate any compensation payable by the Authority pursuant to **clauses 45** (Compensation on Termination for Force Majeure), **46** (Compensation on Termination for Contractor Default), **47** (Compensation on Termination for Authority Default/Voluntary Termination) or **48** (Compensation on Corrupt Gifts, Fraud and Refinancing Breaches);

the sole remedy of the Authority in respect of a failure to provide the Services in accordance with this Agreement shall be the operation of **Schedule 4** (Payment Mechanism).

85.3 Nothing in **clause 85.2** (Sole Remedy) shall prevent or restrict the right of the Authority to seek injunctive relief or a decree of specific performance or other discretionary remedies of the court.

86. **RIGHTS AND REMEDIES**

Where this Agreement provides specifically for any right of a party on breach of the other party's obligations under this Agreement, the entitlement to exercise

(and conferring of) that right will be to the exclusion of all other rights (other than available equitable remedies including injunction or their equivalent in any other jurisdiction) of the first mentioned party howsoever arising at common law, under statute or in equity in respect of the circumstances constituting such breach.

87. NO FETTER OF STATUTORY FUNCTIONS

Save as otherwise expressly provided, the obligations of the Authority under this Agreement are obligations of the Authority in its capacity as a contracting counterparty and nothing in this Agreement shall operate as an obligation upon, or in any other way fetter or constrain the Authority in any other capacity, nor shall the exercise by the Authority of its duties and powers in any other capacity lead to any liability under this Agreement (howsoever arising) on the part of the Authority to the Contractor.

88. COUNTERPARTS

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

89. NO DOUBLE RECOVERY

Notwithstanding any other provisions of this Agreement, neither party shall be entitled to recover compensation or make a claim under this Agreement in respect of any loss that it has incurred to the extent that it has already been compensated in respect of that loss pursuant to this Agreement or otherwise and for this purpose, Deductions shall be deemed to be Compensation.

THIS DOCUMENT is executed as a deed and delivered on the date stated at the beginning of this Deed.

SCHEDULE 1

Output Specification

1. GENERAL

1.1 Overview

This document sets out the nature and level of services to be performed by the Contractor under this Agreement.

The requirements of the Authority are defined in terms of Availability Standards and Performance Standards. A Dwelling is Available if it meets all of the Availability Standards set out in Annex II of this Output Specification. The Contractor meets the required Performance Standards if it provides all of the Services to the standard service level in accordance with the Tenancy and Estate Management Services (TEMS) standards set out in Annex III of this Output Specification.

The Contractor is required to perform all Services in accordance with this **Schedule 2** (Output Specification) and the Authority's Policies set out in **Schedule 12** of this Agreement.

1.2 Definitions

All definitions are as per **clause 1.1** to this Agreement.

2. DESIGN STANDARDS

This section contains an overview of the design standards to be achieved in respect of the new homes and community facilities to be built for inclusion in the HRA and the PFI arrangements. Generally, unless requirements are specifically identified in the Certification Standards in section 5 of this Output Specification, this section is intended to provide guidance on the nature of development only. The extent to which this guidance is complied with will be as set out by:

- (a) The requirements of the Planning Authority and in turn, the Greater London Authority
- (b) The Contractors Proposals

2.2 Scope of Design Works

2.2.1 New Build Housing

The new housing developments will offer a range of new accommodation, including 1 and 2 bed flats, and 2, 3 and 4 bedroom housing. This will satisfy a number of tenure requirements including:

- 2.2.1.1 The creation of 247 new homes to be included within the Housing Revenue Account.
- 2.2.1.2 The development of 58 new flats/houses to enable the relocation of existing leaseholders/freeholders from the existing spine blocks.

In addition and where site and planning authority constraints allow, the Contractor may design and construct further units on the same sites capable of offering a range of affordable home ownership options including shared ownership, staircasing options or outright sale. The Contractor should make all efforts to integrate tenures to ensure that these additional units are indistinguishable from those within the PFI, but for the avoidance of doubt, the standards set out in this Output Specification are intended to apply to the PFI Dwellings only.

2.2.2 New Community Centre

The Project will provide and maintain new community facilities, which, will contribute substantially to the economic sustainability of the Myatts Field North Housing Estate. The Community Centre should provide space for community based activities which support and enable community use and integration. It is expected that the following groups will access and use the Community Centre, although this list is not exhaustive and will include the following:

- 2.2.2.1 Older and vulnerable people
- 2.2.2.2 Young people
- 2.2.2.3 Babies and toddlers
- 2.2.2.4 People with physical disabilities

The Community Centre will play a significant part in the life of the local community, most significantly in the following ways:

- 2.2.2.5 The Community Centre will provide a range of services which will serve the community through offering a variety of services and facilities, through providing facilities for recreational, cultural and personal welfare needs of members of that community;

- 2.2.2.6 The Community Centre will provide a meeting place for diverse groups of the immediate and surrounding community, including voluntary organisations and other groups in the community which require accommodation.
- 2.2.2.7 The Community Centre will provide Economic Sustainability by maximising the potential use of the Community Centre through effective marketing and advertising of the Community Centre and spaces available within. The Community Centre and the new facilities will help develop the community for the long term, by providing and facilitating income generating activities and uses.

The re-development of the Myatts Field North Housing Estate provides the ideal opportunity to re-provide a facility which will creatively encourage usage by the younger population of Myatts Field North Housing Estate. Engagement of the 11-16 youth group will form a key element of the proposals for usage of the Community Centre and the facilities it provides.

The Community Centre will contribute significantly to the overall success of the regeneration project, and will be a major factor in meeting a number of borough targets and strategic objectives, including objectives set out in the Lambeth Community Plan.

The Community Centre should provide accommodation in accordance with Annex X that is capable of housing a range of community activities. The following list is an example of the types of activities and services which might benefit from using the facilities. This list is not exhaustive, and includes some activities which are already being offered by the existing community management team on the estate:

- 2.2.2.8 After School /Homework Clubs
- 2.2.2.9 Youth clubs
- 2.2.2.10 Pre school services
- 2.2.2.11 Mother and Toddler Groups
- 2.2.2.12 Large events including weddings, parties, christenings and socials

2.2.2.13 Small events including exercise classes, committee meetings, counselling sessions, various groups and societies

2.2.2.14 Educational activities including mini courses, training sessions and workshops.

2.2.3 Public Realm Improvements (Excluding Park)

The Project is anticipated to deliver and subsequently maintain improvements to the public realm on the Myatts Field North Housing Estate in a number of ways:

2.2.3.1 Roads and Footpaths - improving the permeability of the Estate through improvement of existing infrastructure and the creation of new infrastructure to serve new developments. It is expected that all primary estate infrastructure (including the existing infrastructure) will be developed to achieve adoptable standards.

2.2.3.2 Parking - improving parking provisions on the Estate and in particular addressing resident concerns over the security of parked vehicles.

2.2.3.3 Landscaped open spaces - much of the existing open space suffers from poor definition and acts as a haven for anti-social behaviour. The Project will improve the identity of and security within open spaces, and will, in particular, provide appropriate amenities for a range of groups including young children, teenagers and the wider community.

2.2.3.4 The integration of new and old using a strong design code that will coordinate the appearance of the whole Estate, giving a feeling of transformation with a lasting impact in terms of creating a sense of place.

Further advice on urban design public realm improvement work is contained below. The principles such as legibility and designing out crime are expected to be demonstrably evident in the public realm works proposals.

2.2.4 New Park

The Project will design, construct and maintain a new Park for the enjoyment of the wider community in and around Myatts Field North.

The new Park must seek to compliment not duplicate other existing park facilities within Lambeth, most specifically the Myatt's Field park, which is a Victorian Park that has secured funding from the Heritage Lottery Fund.

The new Park must be capable of catering for the following groups:

- 2.2.4.1 Young people
- 2.2.4.2 People with disabilities
- 2.2.4.3 The elderly
- 2.2.4.4 Children

2.3 The Development and Its Context

The Contractor is to provide a masterplan and neighbourhood proposals for each area of development that optimises the potential of each location, respecting its topology and aspect, and achieves the required overall mix of dwelling types as identified in Section 3.

The new Dwellings, Community Centre and public realm shall integrate with and compliment adjoining environments, enhancing them where possible.

The masterplan and neighbourhood proposals should seek to respond fully to the Myatts Field North Development Planning Guidelines (January 2006), and in particular:

- 2.3.1 respond to each of the development objectives set out in section 4.1.2 of the Myatts Field North Development Planning Guidelines; and
- 2.3.2 recognise the work undertaken in partnership with local residents in respect of specific areas of the Myatts Field North Estate. Particular attention should be paid to:
 - 2.3.2.1 the key sites as identified in section 5 of the Myatts Field North Development Planning Guidelines
 - 2.3.2.2 the issues considered in the key development concepts as identified in section 5.1.2 of the Myatts Field North Development Planning Guidelines, and how these might be responded to in proposals.

2.4 General Design Standards

The Authority requires designs for individual Dwellings, Blocks and Community Centre and spaces on each of the sites that will inspire all who live in them,

whilst making a positive statement in the community. Designs must also meet all other requirements of this Output Specification in respect of technical and operational performance, compliance with regulations and safety.

The Authority endorses the work that the Government and CABE (Commission for Architecture and the Built Environment) is undertaking to promote higher design standards in PFI projects.

The Contractor is to achieve a high quality urban design following the guidance provided by ODPM, EP and CABE. Responsibility for the design work will rest absolutely with the Contractor. In addition to designs meeting the requirements of this Output Specification, the Authority wishes to provide guidance of a more general nature. The background information listed below contains central and local government guidance on PFI projects, together with housing specific matters.

The Contractor should ensure that proposed designs do not contravene such guidance:

2.4.1 General Design Guidance

- 2.4.1.1 Better Public Buildings, a proud legacy for the future. The Better Public Buildings Group (2000)
- 2.4.1.2 How to achieve Design Quality in PFI projects. OGC (2003)
- 2.4.1.3 Achieving Quality in Local Authority PFI Building Projects. 4 P's
- 2.4.1.4 By Design. Urban Design in the planning system. DETR and CABE
- 2.4.1.5 Urban Design Compendium. English Partnerships. Housing Corporation
- 2.4.1.6 Towards an Urban Renaissance: the final report of the Urban Task Force, Urban Task Force 1999
- 2.4.1.7 Better Places to Live: By Design. A companion to PPG3. Department of Transport, Local Government and the Regions and CABE 2001
- 2.4.1.8 Urban Design Guidance. Urban Design Group
- 2.4.1.9 Our Towns and Cities: DETR (NOV.2000)

- 2.4.1.10 The Value of Urban Design: CABI, UCL, DETR
- 2.4.1.11 Delivering Great Places to Live: 20 questions you need to answer (CABI)
- 2.4.1.12 Better Streets, Better Places, Delivering sustainable residential environments: PPG3 and highway adoption. ODPM 2003
- 2.4.1.13 Safer Places: The Planning System and Crime Prevention: ODPM & Home Office. 2004
- 2.4.1.14 Living Places: Cleaner, safer, greener, ODPM 2002
- 2.4.1.15 Place Check Questionnaire: Urban Design Alliance
- 2.4.1.16 Design Reviewed Urban Housing: CABI (2004)
- 2.4.1.17 Myatts Field north development planning guidelines 2006 (draft)
- 2.4.2 Housing Guidance
 - 2.4.2.1 Housing Design Handbook. BRE (1993)
 - 2.4.2.2 Planning Policy Statement 3: Housing April 2007
 - 2.4.2.3 Better Neighbourhoods: Making higher densities work (2005)
 - 2.4.2.4 Perceptions of Privacy and Density in Housing: Design for Homes, Popular Housing Research
 - 2.4.2.5 Affordable Housing – Better by Good Design. Housing Corporation & CABI (2003)
 - 2.4.2.6 Housing Layout – Lifting the Quality. Planning Officers Society, The House Builders Federation & DETR. 1998
 - 2.4.2.7 Planning for Sunlight and Daylight, BRE
 - 2.4.2.8 CABI Space (2004) Green space strategies: a good practice guide
 - 2.4.2.9 Design & Quality Standards. Housing Corporation. April 2007.
- 2.4.3 Transportation and infrastructure guidance

- 2.4.3.1 PPG13: Highway Considerations in Development Control. DETR, 2001
- 2.4.3.2 Tomorrow's Roads: Safer for Everyone: DETR 2000
- 2.4.3.3 Places, Streets & Movement: A Companion Guide to Design Bulletin 32. Residential Roads & Footpaths. DETR (1998)
- 2.4.3.4 Home Zones: A Planning and Design Handbook: Mike Biddulph
- 2.4.3.5 Home Zone Design Guidelines: Institute of Highway Engineers (2002)
- 2.4.3.6 Inclusive Mobility: A guide to best practice on access to pedestrian and transport infrastructure. Department for Transport, (DfT) 2002
- 2.4.3.7 Planning and Access for Disabled People: A good practice guide. ODPM London 2003
- 2.4.3.8 Car Parking: What works where. English Partnerships
- 2.4.4 Sustainable development guidance
 - 2.4.4.1 Building Sustainability: how to plan and construct new housing for the 21st century: TCPA, WWF
 - 2.4.4.2 LB Lambeth's Agenda 21 Strategy & Action Plan.
 - 2.4.4.3 LB Lambeth's Sustainable Construction Policy.
 - 2.4.4.4 Planning for Passive Solar Design: BRECSU (BRE), DTI, DETR
 - 2.4.4.5 Environmental Site Layout Planning: Solar Access, Micro climate and Passive Cooling in Urban Areas: BRE, JOULE DETR
 - 2.4.4.6 The Green Guide to Housing Specification. BRE
 - 2.4.4.7 A Sustainability Checklist for Developments. BRE, DTI, DTI
 - 2.4.4.8 The Green Guide to Specification. BRE

- 2.4.4.9 A Sustainability Checklist for Developments: A Common Framework for Developers and Local Authorities: BRE, DTRL, DTI
- 2.4.4.10 Code for Sustainable Homes: DCLG, BRE, April 2007.
- 2.4.4.11 English Partnerships: Space for Growth
- 2.4.4.12 ODPM (2003) Sustainable communities: building for the future ODPM (2004) Creating sustainable communities: greening the gateway, a greenspace strategy for Thames Gateway
- 2.4.4.13 ODPM (2005) Creating sustainable communities: greening the gateway implementation plan
- 2.4.5 Landscape and Public Open Space
 - 2.4.5.1 Adherence to BS3882:1965 - Recommendations and Classification for Top Soil
 - 2.4.5.2 Adherence to BS5370-3:1991 Maintenance of Amenity and Functional Turf
 - 2.4.5.3 European Standards for Playground Equipment: EN1176 and EN1177.
 - 2.4.5.4 CABE (2004) Housing audit, assessing the design quality of new homes
 - 2.4.5.5 CABE (2004) Public attitudes to architecture and public space: transforming neighbourhoods
 - 2.4.5.6 CABE Space (2005) What are we scared of? The value of risk in designing public space
 - 2.4.5.7 CABE Space (2004) A guide to producing park and green space management plans
 - 2.4.5.8 CABE Space (2005) Start With The Park
 - 2.4.5.9 Clean Neighbourhoods and Environmental Act 2005
 - 2.4.5.10 Control of Weeds, Section 14 Wildlife and Countryside Act 1981
 - 2.4.5.11 Control of Injurious Weeds, Weeds Act 1959

- 2.4.5.12 Dunnett, N, Swanwick, C and Woolley, H (2002) Improving urban parks, play areas and green spaces, London, DTLR. To download a copy visit www.odpm.gov.uk
- 2.4.5.13 DTLR (2002) Green spaces, better places – final report of the Urban Green Spaces Taskforce. To download a copy visit www.odpm.gov.uk
- 2.4.5.14 English Nature (2004) Providing accessible natural greenspace in towns and cities, a practical guide to assessing the resource and implementing local standards for provision. To download a copy visit www.english-nature.org.uk
- 2.4.5.15 Environmental Protection Act 1990: Code of practice on Litter and Refuse
- 2.4.5.16 Local Nature Reserves (LNRs): status, declaration and management
- 2.4.5.17 NPFA (2001) The six acre standard, minimum standards for outdoor playing space, London, NPFA
- 2.4.5.18 Mayor's Draft Supplementary Planning Guidance 'Preparing for Children and Young People's Play and Informal Recreation'.
- 2.4.5.19 ODPM (2002) Planning policy guidance 17, planning for open space, sport and recreation
- 2.4.5.20 ODPM (2002) Assessing needs and opportunities: planning policy guidance 17 companion guide
- 2.4.5.21 ODPM (2002) Over the garden fence
- 2.4.5.22 ODPM London (2002) The Right Hedge for you
- 2.4.5.23 Urban Parks Forum (2001) Public parks assessment. To download a copy visit www.green-space.org.uk
- 2.4.5.24 Royal Society for the Prevention of Accidents (ROSPA)
- 2.4.6 Accessibility
 - 2.4.6.1 Accessible Environments: Designing for the accessibility
 - 2.4.6.2 ODPM: Developing Accessible Play Space (2003)

2.5 **Design Life**

Whilst this Agreement has a 25 year duration, generally the works (including new Dwellings, landscaping and the Community Centre) shall be designed and constructed so as to provide for a serviceable life of at least sixty years. Replacements during the building and service life shall be consistent with the requirements contained within the Availability Standards. At the Expiry Date the Dwellings and Blocks shall be in a condition commensurate with their ongoing use for at least another 35 years.

2.6 **Security Objectives**

The new designs for the Myatts Field North Estate should take every opportunity to design out crime (including anti-social behaviour) and the fear of crime. In particular the following issues should be addressed as part of design proposals:

- 2.6.1 Minimisation of opportunity to participate in anti-social behaviour, in particular taking preventative action through both design and housing management approaches, and
- 2.6.2 The security of car parking areas both in new and existing areas of the Myatts Field North Estate.

2.7 **Sustainability Objectives**

As set out in section 3.7.2 and 3.7.3 of Section 3 (Works Requirements) of this Output Specification the requirement in respect of sustainability for new homes and other new buildings respectively is:

- Code for Sustainable Homes “Level 3” or
- BREEAM (bespoke) “Very Good” for non-housing.

The requirement for refurbished existing housing stock is

- Decent Homes Plus (as per the standard documentation “A Decent Home: Definition and guidance for implementation”. Department for Communities and Local Government June 2006)

This Output Specification does not set specific requirements on a number of issues including combined heat and power, recycling facilities. Sustainable Drainage Systems (SUDS), etc. The Contractor must acknowledge and respond to the requirements of the planning authority and/or the Greater London Authority.

2.7.1 Generally

All designs, in so far as is reasonably possible, should seek to minimise the impact upon the environment. In particular, designs and service methodologies should consider:

- 2.7.1.1 Contribution to minimising ozone depletion, global warming, air and water pollution, and non-renewable resource depletion.
- 2.7.1.2 Avoidance of radon contamination.
- 2.7.1.3 Minimising the risk of legionnaire's disease and the spread of legionella.
- 2.7.1.4 Avoiding sources of ionising and electromagnetic radiation and any design features associated with sick building syndrome.
- 2.7.1.5 Maximising the opportunity for re-cycling.
- 2.7.1.6 Maintenance regimes to be used to maintain optimum performance.
- 2.7.1.7 Avoidance of any actively harmful building products and processes.
- 2.7.1.8 Minimise traffic movements needed to construct the facilities
- 2.7.1.9 The use, where possible, of natural resources such as daylight and passive solar energy.
- 2.7.1.10 Adopting 'green' materials from sustainable sources which are non-hazardous in their erection, maintenance and long-term use, and which are environmentally sustainable. Examples are organic paints, timber (sustainable species only), and natural fibre finishes in carpets.
- 2.7.1.11 Use of 'A' rated products from the BREs green guide to specification
- 2.7.1.12 Recycling, including bottle banks etc.
- 2.7.1.13 Efficient use of water supply and waste water.
- 2.7.1.14 Use of combined heat and power

- 2.7.1.15 Reducing traffic movements necessary for the construction phase and those resulting from deliveries and waste removal during the operational phase
- 2.7.1.16 Reducing waste during construction and demolition phases and the sorting of waste streams on site using current best practice methodologies
- 2.7.1.17 Proposals for landscaping which interact with the natural environment.

2.7.2 New Assets

Sustainability should be considered in the following aspects of the design and operation of the facilities to be provided:

- 2.7.2.1 Orientation
- 2.7.2.2 Façade design
- 2.7.2.3 Building layout
- 2.7.2.4 Ventilation
- 2.7.2.5 Building form
- 2.7.2.6 Selection of materials
- 2.7.2.7 Insulation
- 2.7.2.8 Energy-efficient fixtures and fittings

2.7.3 Energy

Myatts Field North is currently connected to a district heating system, however this connection has been inactive for some time. The central plant equipment located in Akerman Road remains operational although it runs at about 40% of its original capacity and serves only the adjacent estate, Myatts Fields South. The distribution network serving Myatts Field North has been capped off from the main plant.

In replacing this central plant in the Akerman Road facility as part of a district heating solution, the central plant must be sized to meet the output requirements and to serve for Myatts Field North only.

2.7.4 Water and Drainage

In accordance with the London Plan, new developments must consider the use of sustainable drainage systems (SUDS).

Consideration should also be given to:

2.7.4.1 rainwater harvesting systems and grey water systems.

2.7.4.2 Low flush WCs

2.7.4.3 Spray taps

2.7.4.4 Installation of Water Butts

2.7.5 Noise

In areas where external noise is likely to be a concern, a specialist sound survey shall be undertaken and the building designed to minimise the impact of such noise to the satisfaction of the planning authority.

2.8 **Public Realm**

The Authority would wish all proposals relating to the public realm to promote biodiversity by selecting native species of local provenance and that reflect local landscape character.

3. **WORKS REQUIREMENTS**

3.1 **Overview of Project Requirements**

The requirements of the Project are diverse, encompassing:

- 3.1.1 the refurbishment of existing housing stock to meet Decent Homes;
- 3.1.2 the development of a range of new housing for a range of different tenures;
- 3.1.3 a new Community Centre;
- 3.1.4 the upgrading of existing and/or creation of new infrastructure;
- 3.1.5 the upgrading of existing and/or creation of new open spaces within the Myatts Field North Estate; and
- 3.1.6 the creation of a new park to replace Mostyn Gardens.

The requirements for each are detailed below.

3.2 **Refurbishment Works**

The Contractor will undertake the refurbishment of all Dwellings as follows:

- 3.2.1 the Dwellings in Part 1 of **Schedule 30** shall be refurbished to meet the Initial Standards Retained as set out in Annex II in order to meet the Initial Availability Standard Retained;
- 3.2.2 the Dwellings in Part 2 of **Schedule 30** shall be maintained to meet the Initial Standards Demo as set out in Annex II in order to meet the Initial Availability Standard Demo;
- 3.2.3 the Dwellings in Part 1 of **Schedule 30** shall be refurbished to meet the Full Standards as set out in Annex II in order to meet the Full Availability Standard. Refurbishment Works must be certified as meeting the Certification Standards as set out in section 5 (Certification Standards) of this Output Specification to trigger the commencement of Full Availability payments under the Payment Mechanism (**Schedule 4**).

3.3 **Temporary Decant Properties**

The Contractor will undertake the refurbishment of circa 69 off-site properties in accordance with the Temporary Decant protocol contained within **Schedule 24** of this Agreement.

3.4 New HRA and Leaseholder/Freeholder Replacement Housing

The Authority requires the following mix of unit types:

	1B	2B	3B	4B	5B	Total
New HRA Dwellings	26	44	158	17	2	247
Leaseholder Replacement	4	6	38	5	0	53
Freeholder Replacement	0	0	4	1	0	5
Total	30	50	200	23	2	305

Where the new Dwellings are constructed for the HRA or on a leasehold basis, the Contractor will be expected to subsequently manage and maintain these in accordance with this Output Specification.

New Dwellings are expected to achieve a Code for Sustainable Homes Level 3 standard as a minimum requirement (as set out in 3.8.2).

3.5 New Community Centre

The Contractor will design, construct, maintain and manage a new Community Centre to replace the existing facility. The minimum requirements for this are as follows:

Room	Primary Use(s)
Main Hall	Large scale community meetings Community events Playgroups Youth club
Community Room	Community meetings
Reception	Customer Services
Office	For use by individual group leaders/staff, includes the Server Hub/Room
Kitchen	Domestic scale kitchen facilities

Community Store	Secure store for Centre equipment
WC Facilities	Accessible to people with physical disabilities
Café	Central meeting point for the community
Changing Rooms	Sports and performances changing rooms, accessible to people with physical disabilities

In addition the Community Centre will House:

Housing Management Office	Neighbourhood Management offices, including Reception, Interview Rooms and internal working space
Office and Maintenance Store	Office space, storage and welfare facilities for repairs and maintenance staff

Room Data Sheets for each of the required spaces can be found in Appendix X.

3.6 **Public Realm Improvements (Excluding Park)**

The Contractor will design, construct and maintain a range of public space improvements.

3.7 **New Park**

The Project will design, construct and maintain a new Park facility. The Park will include the following facilities:

- 3.7.1 1 x Multi Use Games Area (MUGA)
- 3.7.2 2 x children's play spaces
- 3.7.3 1 x adventure playground
- 3.7.4 Seating area(s)
- 3.7.5 Quiet area
- 3.7.6 Provision for cycles (stands etc)
- 3.7.7 A variety of no less than 3 distinct types of formal and informal landscaped and planted character spaces

- 3.7.8 Litter bins
- 3.7.9 Lighting
- 3.7.10 Focal points

3.8 **Design Standards to be Achieved**

The quality of design, construction/refurbishment, finish, fit-out and equipment shall be as proposed by the Contractor in their Contractors Proposals in **Schedule 2** of this Agreement.

The following standards and requirements are mandatory for this Project and compliance will form part of the Certification Procedure in Annex I.

3.8.1 All New Build Works

- 3.8.1.1 Planning Permission and resolution of planning conditions and obligations.
- 3.8.1.2 The Building Regulations.
- 3.8.1.3 Secured by Design certification. The Home Office.

3.8.2 New Dwellings

- 3.8.2.1 Design and Quality Standards. All of the requirements within Annex II (General Recommendations) are to be met with the following exceptions:
 - (a) Lifetime Homes features apply to all Dwellings as prescribed in 3.8.2.3 below.
 - (b) Sprinkler systems are not required, as the accommodation is primarily for general needs and not vulnerable tenants.
- 3.8.2.2 Code for Sustainable Homes. "Level 3" to apply as a minimum.
- 3.8.2.3 Meeting Part M and Designing Lifetime Homes: Joseph Rowntree Foundation.

3.8.3 New Community Centre

- 3.8.3.1 BREEAM. BRE. Standard "Very Good" to apply as a minimum.
- 3.8.3.2 Compliance with DDA

3.8.4 New Infrastructure Works

3.8.4.1 All new estate roads and associated footpaths should be constructed to meet Adoptable Standards.

3.8.4.2 Compliance with DDA

3.9 Other Matters

The Contractor should comply with the following requirements in respect of their design and construction and refurbishment proposals:

3.9.1 Fire and Security

3.9.1.1 All external doors (which for the avoidance of doubt includes any doors to individual flats accessed via an internal communal area), together with their fittings and ironmongery, must be selected and installed to provide a security rating to BS5750/PAS24.

3.9.1.2 All external doors to Dwelling Blocks shall be fitted with automatic closers set to ensure that doors return to their secure closed state after use. Designs should take account of inclement weather such as strong winds, and the difficulties users may experience in their operation.

3.9.1.3 Provision of infrastructure and power supplies at the agreed locations and in accordance with the CCTV Specification in the Agreed Form to enable the Authority to extend the existing CCTV provision within the Project Site. The Authority will retain responsibility for the installation of cabling/cameras and the operating, monitoring and maintaining the system following installation. The parties acknowledge and agree that the Authority shall take full responsibility for the acts and omissions of the Authority's contractor contracted to install and maintain the cabling cameras (the "CCTV Works Contractor"). To the extent that the acts or omissions of the CCTV Works Contractor adversely impacts on the performance of the Works and/or Services pursuant to this Agreement, then this shall be deemed to be a Compensation Event and the provisions of **clause 19** (Extensions of Time) shall apply.

3.9.2 Water

Appropriate provisions for ensuring precautions against scaling are to be introduced. Where the composition of water supplies may give rise to excessive lime scale deposition, manufacturer's recommendations as to the protective measures necessary to prevent the shortening of the operating life of equipment must be followed.

3.9.3 Gas

All gas installations shall comply with the requirements of British Gas and the local supply utility, and be carried out by a 'Gas Safe' registered Contractor.

Where gas installations are being removed, this should be undertaken in accordance with the requirements of the statutory provider.

Valid gas safety certificates must be maintained for all installations until such time as the supply provision has ceased and removal works have commenced.

3.9.4 Ventilation

Wherever possible, natural ventilation shall be utilised to prevent condensation. Closeable trickle ventilation should be provided.

3.9.5 Lifts

Lifts are to be wheel chair/electric buggy accessible with convenient controls for users with sight and/or hearing impediments.

3.9.6 Electrical systems

3.9.6.1 All modified or new electrical installations shall comply with the requirements of the current edition of the "Regulations for the Electrical Equipment in Buildings" with all current amendments, issued by the Institution of Electrical Engineers (hereinafter referred to as IEE Regulations). The modified and new installations shall also conform to the requirements of the local electricity supply utility.

3.9.6.2 External lighting is to be installed for security purposes wherever recommendations exist from the Police Crime Prevention Design Advisor and/or planning authority. All external lighting fittings are to be selected to minimise lighting pollution to the sky, and neighbouring properties.

3.9.6.3 Electrical layouts should be planned to account for the nature and occupancy of the individual rooms and with a focus on minimising the use of extension cables or similar.

3.9.7 Green Energy

As part of the Authority's ongoing commitment to excellence in this area, the Contractor is expected to meet a minimum of 2.6% of the energy and natural resources consumption for the new developments from renewable sources.

3.9.8 Energy Performance Certificate

The Contractor shall ensure that a valid Energy Performance Certificate in accordance with the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007) is in place from the issue of a Certificate of Availability or upon practical completion of any building constructed as part of the Service Works (including any retail premises) for the duration of the contract or as required by law. Recommendations to be conducted in line with the contractual requirements (i.e. SAP rating target). For the avoidance of doubt, the Energy Performance Certificates will be calculated in accordance with the current SAP regulations but the SAP requirements elsewhere in this document will be in accordance with the SAP 2005 requirements.

4. **GENERAL DESIGN, CONSTRUCTION, REFURBISHMENT AND MAINTENANCE REQUIREMENTS**

This section applies to all aspects of the Project, specifically:

- Construction activities for all new Dwellings;
- Refurbishment activities to all existing Dwellings; and
- Maintenance activities to all Dwellings.

4.1 **Health and Safety**

The Construction (Design and Management) Regulations 2007 (including amendments or subsequent iterations as appropriate) apply in respect of this project.

The Contractor will discharge the client responsibilities for the project for the carrying out of all design, construction and maintenance works insofar as the Regulations permit. The Contractor will ensure that the Client responsibilities are fully complied with and that a suitable appointment is made as the Principal Contractor. The Contractor will respond to any requests made by the Authority in satisfying itself that the Contractor understands and is able to accept these responsibilities,

4.2 **Security Considerations**

The following components installed as part of the construction and subsequent maintenance activity shall comply with the requirements of the Police Crime Prevention Design Advisor and have Secured By Design accreditation:

- 4.2.1 External doors and door sets to each Dwelling – in the case of Blocks, this is deemed to include doors to individual Dwellings accessed from Common Parts, as well as the door between the external environment to the Common Parts (where installed).
- 4.2.2 External windows.
- 4.2.3 Where Blocks have principle external doors these should have access systems controllable from within each individual Dwelling within the Block.

4.3 **Standards of Workmanship**

Dwellings are to be designed and constructed to meet all national and local legislation and conform to good industry practice in all respects.

Notwithstanding the requirement to comply with relevant Statutory Requirements, the Contractor shall also comply with the following requirements and good practice. In all cases, both statutory and otherwise, the latest enactment or re-enactment shall apply:

- 4.3.1.1 All materials, goods and appliances for the developments, shall comply as a minimum with the latest relevant British Standard Specifications, British Board of Agreement Certificates, CIBSE guides, Building Energy Codes and Technical Memoranda, Building Research Establishment Digests and Good Building Guides and Local Authority building requirements and be fit for their intended use.
- 4.3.1.2 All workmanship shall as a minimum be in accordance with the recommendations of the latest relevant:
 - (a) British Standard Specifications
 - (b) British Standard Codes of Practice
 - (c) CIBSE guides
 - (d) Building Energy Codes and Technical Memoranda D.O.E./DETR circulars
 - (e) Trades suppliers, manufacturers, representative bodies Codes of Practice and recommendations of BRE Digests and Good Building Guides
 - (f) the Chartered Institute of Building Services Engineers guidelines
 - (g) Local Authority's preferred practices
 - (h) The standards set out in B.S. 8000
 - (i) British Board of Agrément Certification
- 4.3.1.3 all materials and workmanship must comply with the relevant European Standards as defined by Regulation 8 of the Public Services Contracts Regulations 1993 (S.I. No. 3228), and applicable at the date of the use and or performance of the same, save that in the absence of such European specifications, European Standards and/or European technical approvals, the Contractor must abide by the relevant British Standards and Codes of Practice applicable at the date of the carrying out works.

- 4.3.1.4 no materials, products or procedures listed in Section 4.4 of this Output Specification and no materials or products which at the time of use are widely known to building or maintenance Contractors or design consultants within the European Union to be deleterious to health or safety or to the durability of buildings and/or other structures and/or finishes and/or plant and machinery in the particular circumstances in which they are used, may be used in either construction or repairs.

Where materials, goods or appliances or workmanship standards are covered by more than one of the above standards and/or recommendations, the higher or more stringent shall be adopted (meaning that BS Licensing/Codes of Practice or the equivalent European standards will take precedence. Agrément Certificates will only be considered where there are no relevant standards available for the product or material used in this Agreement).

4.4 **Unacceptable Materials and Processes**

The materials and processes set out in **Schedule 7** (Prohibited Materials) must not be used.

5. **CERTIFICATION STANDARDS**

In order for services to commence in respect of an individual Dwelling, it must meet the Certification Standards as contained in Annex I (Availability Certification Requirements) for new build, refurbishment, infrastructure/landscaping and community facilities respectively.

These standards ensure that:

- (a) The design and construction requirements contained within section 3 (Works Requirements) of this Output Specification have been attained.
- (b) The standards of workmanship and materials used are in accordance with section 4 (General Design, Construction, Refurbishment & Maintenance Requirements) of this Output Specification.
- (c) The quality standards set out in the Contractors Proposals in **Schedule 2** of this Agreement have been attained.
- (d) The Availability Standards contained within section 6 (Availability Standards) of this Output Specification have been met.

6. AVAILABILITY STANDARDS

This section contains a summary commentary on the principles and interpretation of the Availability Standards. The detailed Availability Standards are contained within Annex II (Availability Standards) to this Output Specification. Where conflict arises between this Section 6 commentary and Annex II, it is the latter that takes precedence.

The Availability Standards are split into 3 areas:

- Housing Availability Standards – as applied to all Dwellings whether refurbished or newly constructed. Where appropriate, these same standards apply to leasehold as well as tenanted Dwellings.
- Community Centre Availability Standards
- Park Availability Standards

6.1 Phases of Availability

6.1.1 Initial Standard

6.1.1.1 Existing Dwellings to be Retained

Until such time as Dwellings included within Part 1 of **Schedule 30** have been refurbished and certified in accordance with section 5 (Certification Standards) of this Output Specification, they must be maintained at the Initial Standard Retained as set out in Annex II of this Output Specification. Repairs necessary as a result of a failure to meet any one of the Initial Standard Retained requirements should be carried out in such a manner as to achieve compliance within the Rectification Period. The only exceptions to this are:

- (a) Any outstanding logged repairs as at Service Commencement Date will be managed as part of the Repairs Audit, and such repairs must achieve compliance with the rectification times as revised by such Repairs Audit where it differs from the Rectification Period.
- (b) During the agreed refurbishment works period for an individual Dwelling.

6.1.1.2 Existing Dwellings to be Demolished

- (a) For such time as Dwellings included within Part 2 of **Schedule 30** remain tenanted, they must be maintained to meet the Initial Standard Demo identified within the Availability Standards in Annex II. Repairs necessary as a result of a failure to meet any such requirement should be carried out in such a manner as to achieve compliance within the Rectification Period.
- (b) Any outstanding logged repairs as at Service Commencement Date will be managed as part of the Repairs Audit, and such repairs must achieve compliance with the rectification times as revised by such Repairs Audit where it differs from the Rectification Period.
- (c) Once a Dwelling included within Part 2 of **Schedule 30** has become void, it will be soft stripped to put them beyond habitable use, have services disconnected and meters removed, properly secured and thereafter maintained to a satisfactory level as to not adversely affect any other adjacent properties or communal areas until such time as they are demolished.
- (d) Once all Dwellings included within Part 2 of **Schedule 30** within an individual block are void, any existing lifts or communal accesses serving these properties will be decommissioned/properly secured. For the avoidance of doubt, any existing abandoned lifts in the buildings that are due to be demolished will be properly secured and not reinstated.

6.1.1.3 Community Centre

The existing community centre will continue to be maintained by the community itself and no Initial Standard exists.

6.1.1.4 Parks and Open Spaces

The existing park and open spaces will be maintained in accordance with the Performance Standards as set out in Section 7. No Initial Standard exists.

6.1.2 Full Standard

6.1.2.1 Existing Dwellings

Once a Dwelling has been certified in accordance with section 5 (Certification Standards) of this Output Specification, the Contractor is required to ensure that each such Dwelling is Available and meets the Full Availability Standard set out in Annex II (Availability Standards) of this Output Specification.

Service Works necessary as a result of action to maintain or a failure to meet any one of the Full Availability Standard are required to be carried out in such a manner as to achieve compliance within the Rectification Period.

6.1.2.2 Community Centre

Once the new Community Centre has been certified, the Contractor is required to maintain it to the Availability Standards set out in Section 6.3 of this Output Specification.

6.1.2.3 Open Spaces

The existing and new open spaces will be maintained in accordance with the Performance Standards as set out in Section 7. No Availability Standards exist.

6.1.2.4 Park

Once the new Park has been certified, the Contractor is required to maintain it to the Availability Standards set out in Section 6.4.

6.2 Overview of Availability Standards for Housing

6.2.1 General Requirements - Initial Standard

The Contractor is expected to maintain all Dwellings contained within **Schedule 30** at the statutory minimum standard defined as free from a 'Category 1' failure under the Housing Health & Safety Rating System (part of the Housing Act 2004) at all times (as set out in 4.2 of the Decent Homes: Definition and Guidance for Implementation: Department for Communities and Local Government. June 2006.) It should be noted that the continuing presence of a Category 1 failure on the grounds of "disproportionate expense or disruption" will only be permitted if requested by the Contractor and accepted in the Authority's sole discretion.

6.2.2 General Requirements - Full Standard

The Contractor shall maintain all Dwellings (i.e. refurbished and new build Dwellings) at 'Decent Homes Plus' standard. Decent Homes Plus is defined with reference to the Decent Homes: Definition and Guidance for Implementation: Department for Communities and Local Government. June 2006. A failure event occurs if:

6.2.2.1 Under Criterion B either:

- (a) Any one of the components scheduled in Annex A have, with reference to the table, exceeded the prescribed life, and are therefore determined as 'old';
- (b) Any one of the components scheduled in Annex B are, with reference to the table, determined to be 'in poor condition';

6.2.2.2 Under Criterion C, any of the individual criterion listed in paragraph 5.17 of the Decent Homes Standard are not met;

6.2.2.3 Under Criterion D, the requirements of paragraph 5.23 to 5.26 of the Decent Homes Standard (as they apply in their different combinations of heating and insulation requirements) are not met.

6.2.3 Roofs, External Walls, Wall Finishes and Chimneys

The Contractor is responsible for the structure and fabric of the Dwellings and must ensure that all Dwellings are:

6.2.3.1 structurally sound, stable and fit for purpose;

6.2.3.2 wind and weather-tight;

6.2.3.3 free from water penetration and rising or penetrating damp, dry or wet rot or fungal infestation. For the avoidance of doubt, where damp remediation works have been properly completed to rectify a suspected cause of damp, the Contractor shall re-test then levels of damp on a monthly basis (or such other frequency as is mutually agreed) to ensure that damp levels reduce commensurate with the solution put in place. Such a testing regime shall extend the Rectification Period for up to 3 months (or such period as is mutually agreed);

6.2.3.4 maintained so as to maximise the energy efficiency of the Dwelling as defined at paragraph 6.2.13;

- 6.2.3.5 free from serious disrepair (including damaged/missing render);
- 6.2.3.6 free from any Health & Safety risks;
- 6.2.3.7 adequately insulated against noise to no lesser standard than that set out in Annex 1, Table 1A, Item 7;
- 6.2.3.8 secure and protected against forced entry or crime; and
- 6.2.3.9 include appropriate fire containment, detection and escape systems.

6.2.4 Windows and External Doors

The Contractor must ensure that:

- 6.2.4.1 Safe and secure access/egress capability is maintained to all Dwellings;
- 6.2.4.2 Entrances to Dwellings, ancillary buildings and entrances must be maintained in a safe condition free from obstruction or hazard;
- 6.2.4.3 Windows and doors are installed and maintained to a standard that ensures the integrity of the structure as identified at 6.2.3 of this Output Specification is maintained at all times; and
- 6.2.4.4 Appropriate provision is made for all windows installed as part of this Contract to afford occupants the ability to clean all glazing (inside and out) in a safe manner.

6.2.5 Internal Fixtures, Fittings and Finishes

The Contractor must ensure that internal wall surfaces, internal joinery and floor finishes are appropriate for their function and are maintained in a good state of repair including, where appropriate, being capable of receiving decoration.

Save for an appropriate level of making good where appropriate, the responsibility for decorations remains with the Tenant.

6.2.6 Kitchen Facilities

All kitchen facilities must be less than 20 years of age, have adequate space and must include as a minimum kitchen storage units, food

preparation areas, sink unit and service connections to Tenants' kitchen appliances.

6.2.7 Bathroom Facilities

All bathroom facilities must be less than 30 years of age, be appropriately located and must include as a minimum a bath, washbasin and WC (which, if separate, should also have a rinse hand basin). For the avoidance of doubt this requirement does not apply to the units in **Schedule 30** Part 2.

6.2.8 Electrical Installations

The Contractor must provide electrical installations appropriate to the Dwelling (including a hard wired smoke alarm system) and maintain them in a safe and operable condition at all times.

Every Dwelling must have a valid electrical safety inspection certificate.

6.2.9 Space Heating

The Contractor must provide an efficient, comfortable and affordable means of space heating to Dwellings (excluding Garages). The space heating system must be capable of maintaining defined temperatures to individual rooms.

6.2.10 Hot Water, Water & Drainage

The Contractor must provide:

6.2.10.1 domestic hot water and potable cold water at all outlets installed for the purpose in the Dwellings; and

6.2.10.2 suitable means of drainage to ensure all waste is safely and efficiently removed from the Dwelling.

6.2.11 Utilities

The Contractor is responsible for ensuring the provision of utilities including well maintained and safe access to water supply, sewerage facilities, electrical supply and gas supply (where provided).

The Contractor will not be penalised where an Availability Standard is failed as a result of the failure of a relevant utility service provider (bring a water supplier, electricity supplier or gas supplier) in providing the utility to a standard sufficient to enable the Contractor to fulfil its obligations under this Agreement.

The Contractor will not be penalised where an Availability Standard is failed as a result of the failure of the relevant occupant to:

- (a) pay the relevant utility service provider (being the water supplier or electricity supplier), resulting to such Dwelling being cut off;
- (b) make payments required under the supply agreement, resulting in the supply by the Contractor being cut off;
- (c) enter into a supply agreement with the Contractor.

6.2.12 Not Used

6.2.13 Energy Efficiency

The minimum SAP rating for each refurbished Dwelling, houses to be calculated individually and flats and maisonettes on a block by block basis (excluding Common Parts and Garages) must be 70.

The minimum SAP rating for each new Dwelling should be 80.

Where connection of a Dwelling to the District Heating System is programmed at a point in time after Certification, then a reduced SAP rating is acceptable at the point of Certification provided that the Contractor can clearly demonstrate through calculation that the required SAP rating of 70 or 80 for refurbishment or new build respectively will be achieved once connection is made. This reduced SAP rating shall only apply until the date at which connection to the District Heating System is made, or was due to be made, whichever is the sooner (subject to any Tenant Waivers in respect of the Dwellings to be refurbished).

SAP ratings calculations will be based upon the full operation of the District Heating System, defined as operable connections to a minimum of 480 units across the PFI and Development Works. Where a unit is connected prior to this minimum number being reached, then a continued reduced SAP rating is permissible until the sooner of:

- the 480th overall unit being completed (taking in the refurbishment, PFI new build and development New build units); or
- the 333rd PFI unit (taking in the PFI new build & refurbishment units only) is connected or was due to be connected.

SAP calculations will be undertaken in accordance with the SAP 2005 Edition (as required by Part L of the Building Regulations introduced in April 2006).

6.2.14 Ventilation

All Dwellings must be capable of adequate ventilation to ensure:

- 6.2.14.1 the prevention of condensation and associated damage/mould growth;
- 6.2.14.2 the control of moisture in kitchens and bathrooms;
- 6.2.14.3 a comfortable level of background ventilation; and
- 6.2.14.4 the requirements of fuel burning and other appliances can be met.

Whilst the Contractor will not be penalised if it is demonstrable that the Tenant has elected not to employ the fully operable and adequate means of moisture dispersal installed, it is expected that the Contractor will seek to educate Tenants on this matter to promote future usage.

6.2.15 Adaptations

The Contractor will be responsible for the maintenance of all adaptations installed within the Dwellings, save for the following items:

- 6.2.15.1 stairlifts;
- 6.2.15.2 through floor lifts;
- 6.2.15.3 any other motorised or "active" adaptation; and
- 6.2.15.4 any further Adaptations required to Dwellings will be dealt with in accordance with the Adaptations Protocol (see Annex VII) of this Output Specification.

6.2.16 External Areas to Dwellings

- 6.2.16.1 Boundaries to Dwellings must be clearly defined in durable materials. An appropriate level of security and privacy must be provided to rear gardens of Dwellings where provided.

- 6.2.16.2 Within curtilage parking must be maintained in a satisfactory condition with appropriate and adequate access provided.
- 6.2.16.3 Footpaths should be maintained so as to be free from trip hazards and other obstacles.
- 6.2.16.4 Externally painted surfaces should be maintained in good condition, so as to be aesthetically pleasing and to offer appropriate protection for the materials covered.
- 6.2.16.5 Bin and refuse stores and other external structures shall be appropriate for their purpose and maintained in a safe condition.
- 6.2.17 Garages
 - 6.2.17.1 The Contractor must ensure that the existing garage areas under the spine blocks remain fully secured until such time as the blocks are demolished. The Contractor is also responsible for ensuring these areas are maintained in such a condition that they do not present potential risks to the Dwellings above, for example through allowing an accumulation of debris that may either attract vermin or present a risk of fire, etc.
 - 6.2.17.2 Garages to individual Dwellings should be maintained in such a condition so as to be safe, free from hazard and capable of being secured.
- 6.2.18 Common Parts and Services to Flatted Dwellings
 - 6.2.18.1 The Contractor must ensure that satisfactory means of escape is maintained to all Common Parts.
 - 6.2.18.2 Lift installations must be satisfactorily maintained and appropriate records of regular safety inspections must be kept available within plant rooms except for existing abandoned lifts in the properties to be demolished.
 - 6.2.18.3 Individual entrance doors to the Common Parts (where installed) must afford adequate security to Tenants and must not be accessible to unauthorised entry. All entrance doors and lobby areas must be adequately lit.
 - 6.2.18.4 The Contractor must maintain adequate communal lighting systems (including emergency lighting systems).

- 6.2.18.5 Communal terrestrial television reception facilities must be maintained so as to maintain a good quality television reception for terrestrial channels. For the avoidance of doubt this includes the Contractor installing any such digital systems that might be required to ensure continuity of television services beyond the point at which analogue services are switched off.
- 6.2.18.6 All flatted Dwellings above ground floor must have access to a waste disposal outlet. The capacity of waste disposal outlets provided must continue to comply with the current waste disposal strategy.

6.3 Overview of Availability Standards for the Community Centre

Unavailability is based upon the Community Centre being made available for community use based upon daytime and evening use as follows:

	Morning	Afternoon	Evening
Monday	09.00 to 12.00	12.00 to 17.00	By prior agreement reached in accordance with the Contractors Proposals
Tuesday	09.00 to 12.00	12.00 to 17.00	
Wednesday	09.00 to 12.00	12.00 to 17.00	
Thursday	09.00 to 12.00	12.00 to 17.00	
Friday	09.00 to 12.00	12.00 to 17.00	
Weekend	By prior agreement reached in accordance with the Contractors Proposals		

Once the Community Centre has been certified in accordance with section 5, the Contractor is required to ensure that it is Available and meets the Full Availability Standard set out in Annex II Part III.

During evenings and at the weekend, the Contractor will only open the Community Centre and have a presence on site if an event is taking place.

Where the Community Centre is opened at the weekend, the Contractor may charge event organisers a reasonable fee (cost price plus applicable margin between 7.5% and 12%, depending on the nature of the user group) for access to the centre and the Contractor will have a presence on site.

The fee can only be charged by the organisation managing the Community Centre.

6.4 Overview of Availability Standards for the Park

Unavailability is based upon defined zones within the park being open for public use on a daily basis.

Once the Park has been certified in accordance with section 5 (Certification Standards) of this Output Specification, the Contractor is required to ensure that it is Available and meets the Full Availability Standard set out in Annex II Part IV (Community Centre) of this Output Specification.

6.5 Temporary Rectification

Where the Contractor considers that an incident of Unavailability cannot be remedied within the relevant Rectification Period, and Temporary Rectification is permitted in accordance with Annex II (Availability Standards) of this Output Specification, the Contractor may provide Temporary Rectification. If the Contractor chooses to provide Temporary Rectification in accordance with this paragraph, it may remain in place for the period indicated after which if a permanent repair has not been completed, Unavailability will apply. If the Contractor chooses to provide Temporary Rectification in accordance with this paragraph, and the Failure Event is not remedied within the extended Rectification Period, then Unavailability will be applied for the whole period from notification of the fault.

Where a repair requires a bespoke part (i.e. something specifically manufactured for this project), then the Rectification Period may be extended further than the defined periods if both parties are in agreement.

Where the Provider provides Temporary Rectification, the Temporary Rectification must meet the Availability Standard albeit that it does not have to be a permanent solution or in keeping with the general building fabric.

7. **TENANCY AND ESTATE MANAGEMENT SERVICES (TEMS)**

This section contains a summary commentary on the principles and interpretation of the TEMS, which contain all of the performance-based services of the PFI project. The detailed TEMS are contained within Annex III (Tenancy & Estate Management Standards) to this Output Specification. Where conflict arises between this Section 7 commentary and Annex III, it is the latter that takes precedence.

The Contractor is required to deliver the following Tenancy and Estate Management Services (TEMS) services throughout the entire Contract Period to the Performance Standards and service levels specified in Annex III.

7.1 **Overview of TEMS Requirements**

7.1.1 Customer Service

The Contractor must provide general customer services, which must include as a minimum the following:

- 7.1.1.1 a local office to provide direct access for residents to services;
- 7.1.1.2 the provision of a friendly, helpful Helpdesk;
- 7.1.1.3 prompt dealing with complaints (both formal and informal);
- 7.1.1.4 the provision of translation and interpretation services as appropriate for the profile of Tenants on the Project Site;
- 7.1.1.5 the provision of an efficient appointment system and home visit arrangements for all aspects of the service;
- 7.1.1.6 the provision of accurate and relevant information to Tenants and owner-occupiers (including information on health and safety, refuse disposal, security and fire safety and use of equipment and fixtures);
- 7.1.1.7 the provision of accurate and helpful information in relation to rent accounting service, housing benefit, other welfare benefits, multiple debts and other financial matters; and
- 7.1.1.8 active provision of assistance to Tenants in completing the requisite housing benefit or other forms.

7.1.2 Housing Advice and Information Service

The Contractor must offer a friendly, accessible and informative housing advice and information service on the Project Site to advise the Tenants and residents in respect of:

- 7.1.2.1 Rent problems, personal debt problems and other financial matters;
- 7.1.2.2 Housing and other welfare benefits including mobility and transfer options;
- 7.1.2.3 Advice in relation to energy issues including:
 - (a) Heating and hot water controls;
 - (b) Use of ventilation;
 - (c) Avoidance of condensation;
 - (d) Methods of payment of utility bills; and
 - (e) Emergency and safety procedures in relation to electricity and gas.

7.1.3 Rent Collection and Arrears Recovery

The Contractor must manage and carry out all rent administration and collection, and arrears management as agent to the Authority in a manner that maximises the amount collected and minimises arrears whilst enabling Tenants to maintain their Tenancy Agreement wherever appropriate. The Contractor is required to act as the Authority's agent in pursuing legal actions against Tenants and others to recover rent and arrears. Rent will be set by the Authority in accordance with existing policies applicable across the Authority's stock.

7.1.4 Voids and Lettings Management

7.1.4.1 General Voids

The Contractor is required to manage Voids in such manner as to minimise the number of Voids, the time such properties stand empty, and the resulting rent loss.

As a minimum, this is expected to include:

- (a) Making offers to potential tenants in accordance with the Council's Lettings Policy;

- (b) handle the former Tenant's notice;
- (c) make voids available for re-letting, carrying out any capital works, repairs and maintenance so as to minimise disruption for incoming tenants;
- (d) complying with the Void Reletting Standard in Annex IV (Void Relet Standard) of this Output Specification prior to the occupation by new tenants;
- (e) dealing with vandalism, squatting and unlawful occupation; and
- (f) Securing void dwellings as appropriate.
- (g) Demised Dwellings

7.1.4.2 The Contractor must maintain and manage the Voids scheduled for demolition in such a manner as to:

- (a) eliminate disruption to Tenants and others living in the vicinity;
- (b) ensure service connections are made safe in preparation for demolition, including safe removal of gas meters etc;
- (c) keep the Voids safe and secure and in such a manner as not to create an eyesore, and to discourage theft/vandalism/unauthorised occupation;
- (d) ensure that nothing of value is left in the Void;
- (e) ensure that any open space created following demolition and pending redevelopment is either landscaped or fully secured to prevent trespass and anti-social behaviour; and
- (f) deal with vandalism issues promptly.

7.1.5 Tenancy Management

The Contractor must efficiently and effectively manage all Tenancy Agreement matters including matters of:

- 7.1.5.1 Undertake a minimum of 20% tenancy checks per annum;
- 7.1.5.2 Succession of tenants;
- 7.1.5.3 Administering applications for lodgers;

- 7.1.5.4 Responding to and administering applications for Tenant Improvements in accordance with the Housing Act 1985;
- 7.1.5.5 Administering joint tenancies;
- 7.1.5.6 Actively preventing squatting;
- 7.1.5.7 Identifying damage to Dwellings by Tenants and taking remedial action; and
- 7.1.5.8 Identifying breaches of Tenancy Agreement conditions and taking remedial action.
- 7.1.5.9 Identifying unlawful occupiers and squatters

7.1.6 Estate Management Service

The Contractor must provide an estate management service in respect of the whole of the Project Site, including all Dwellings (irrespective of tenure) and public spaces within it. The Contractor must take legal steps as agent of the Authority if appropriate in enforcing Tenancies and lease covenants or as may otherwise be required in order to properly perform the estate management service. The Contractor must provide the estate management service in such manner as will:

- 7.1.6.1 fulfil the Authority's statutory and contractual duties;
- 7.1.6.2 enable Tenants and residents on the Project Site to have safe, secure and quiet enjoyment of their respective Dwelling.

The estate management service must include as a minimum:

- 7.1.6.3 Dealing with and discouraging anti-social behaviour (such as drug dealing, noise nuisance, control of pets, garden and home condition management), domestic violence and racial harassment;
- 7.1.6.4 Vandalism and graffiti removal, and discouraging vandalism and graffiti;
- 7.1.6.5 Regular and effective cleaning of Common Parts;
- 7.1.6.6 A bulk waste removal service
- 7.1.6.7 Notification of abandoned vehicles;

- 7.1.6.8 The cleaning, planned and reactive maintenance of underground waste units;
 - 7.1.6.9 Removal of transitional occupants from the Project Site;
 - 7.1.6.10 Undertake joint inspections with Tenants and residents at regular intervals (at least one per calendar month); and
 - 7.1.6.11 Undertake a RoSPA safety check to all play equipment at least once per annum.
- 7.1.7 Grounds Maintenance and Management
- 7.1.7.1 Generally

The Contractor is required to manage all of public areas/communal spaces within the Myatts Field North Estate (including those areas that are 'privately owned' public open space) in such manner so as to ensure that:

 - (a) the public areas are provided and managed to ensure a safe and pleasant quality environment, including any provided children's play areas. This will principally relate to the management and maintenance of open space;
 - (b) open space is free of dog fouling, litter, graffiti and dumped rubbish; and
 - (c) all communal spaces and landscaped areas on the Project Site are kept tidy and are not overgrown.
 - 7.1.7.2 Development Sites

Where existing open spaces are scheduled for redevelopment or re-designation under the Contractor's Development Works, (with reference to the Development Plan AA1173/1.1/001 rev 1) these areas will be maintained to the agreed regime as set out in the Contractor's Proposals, subject to:

 - (a) the affected areas not being allowed to deteriorate so as to present a risk to health and safety; and
 - (b) the general state of repair is kept to a standard that does not encourage anti-social behaviour.
 - 7.1.7.3 Generally

For the avoidance of doubt, the Contractor will be expected to maintain all publicly accessible areas of the estate in accordance with the Performance Standards in Annex III (Tenancy and Estate Management Standards) of this Output Specification to ensure that a single regime exists across all areas of the Myatts Field North Estate.

7.1.8 Tree Works

7.1.8.1 Tree Works (including the funding of such works) shall be the responsibility of the Contractor and shall be carried out in accordance with Annex XII.

7.1.8.2 The Authority will not be party to any claims between the Contractor and the Arboriculturalist.

7.1.9 Fungal and Pest Control

The Contractor must ensure that all buildings, external areas, boundary fences, boundary walls and associated service installations within the Blocks are kept free from pests and fungal, mould or other similar growths where this would otherwise be the responsibility of the Authority in its capacity as landlord. For the avoidance of doubt, where pest treatment works have been properly completed to rectify a fungal or pest matter, the Contractor shall re-inspect affected areas on a monthly or weekly basis for fungal or pest matters respectively (or such other frequency as is mutually agreed) to ensure that treatments put in place are properly eradicating the problem. Such a testing regime shall extend the Rectification Period for up to 3 months (or such period as is mutually agreed).

7.1.10 Neighbourhood Management

The Contractor must take reasonable steps to:

- 7.1.10.1 reduce crime, fear of crime and improve the environment;
- 7.1.10.2 reassure vulnerable community members and act as friendly and supportive figures to local people and visitors;
- 7.1.10.3 foster social inclusion, particularly in relation to children and young people, the unemployed, homeless people, black and minority ethnic communities, asylum seekers and any other socially excluded group; and
- 7.1.10.4 support neighbourhood management by adding value and contributing to the work of local initiatives, projects and

services so that they are joined up and sensitive to local needs.

7.1.11 Repairs and Maintenance Service

The Contractor is required to provide a repairs and maintenance service to the Dwellings, Community Facilities, Park and non-adopted infrastructure (notably refuse storage facilities).

If the request for a repair relates to one of the Failure Events described in Annex II (Availability Standards) of this Output Specification the Contractor must carry out the repairs so as to remedy the Failure Event within the relevant Rectification Period set out in Annex II. If the nature of the request does not relate to a Failure Event in Annex II, then it shall be dealt with as a TEMS repair.

The repairs and maintenance service must include as a minimum:

- 7.1.11.1 A 24 hour repair reporting line (the maximum tariff chargeable to callers should be a local call rate) (not a recording/automated message taking service);
- 7.1.11.2 A measure of satisfaction with any repairs carried out through a repairs service satisfaction survey. This applies to both Annex II and TEMS repairs. For Dwellings listed in **Schedule 30** Part 2, the calculation shall be limited to non-property measures only;
- 7.1.11.3 a Decoration Scheme for the Project Site; and
- 7.1.11.4 the servicing and checking of all appliances and equipment in accordance with Authority policies or where there is a statutory duty to do so.

7.1.12 Tenant, Resident and Councillor Consultation

The Contractor must consult with all Tenants, residents and Councillors in relation to any matter concerning the Project and provide opportunity to participate in decision-making and performance monitoring, and to undertake a general Tenant satisfaction survey each Year. Such consultation must be carried out in accordance with a procedure devised by the Contractor after seeking and taking into account the views of the Tenants and residents as to how they wish to be consulted and involved in the decision making with particular emphasis being given to consultation with individuals and groups not usually represented by the Tenants and residents' associations.

Specifically, the Contractor will need to have regular consultation with the Myatts Field North Resident forum (or its successor).

The Contractor must produce quarterly service performance information to the Authority for distribution to residents groups and Councillors.

7.1.13 Joint Working Arrangements with the Authority on Regeneration Initiatives

The Contractor is required to actively co-operate and participate in local regeneration issues including the following:

- 7.1.13.1 provide representatives to attend central government regeneration management meetings, where required;
- 7.1.13.2 provide input into assisting the Authority to propose and run regeneration initiatives related to the Blocks;
- 7.1.13.3 co-operate with and participate in joint working initiatives with other social housing landlords within the Authority boundary;
- 7.1.13.4 co-operate with, and participate in initiatives which help to monitor and reduce the levels of perceived and actual crime;
- 7.1.13.5 co-operate with and participate in general initiatives which assist the corporate and other service delivery goals of the Authority.

7.1.14 Community Centre Management

The management of the Community Centre will be in accordance with the tripartite agreement between the Authority, Contractor and TMO (or successor body). This sets out responsibility for the management and maintenance of the new community centre, encouraging and maximising varied usage until such time as the management is transferred to a community organisation on the agreed terms.

This includes:

- 7.1.14.1 Booking of facilities by members of the local community
- 7.1.14.2 Undertaking all maintenance activities for the Community Centre.

7.1.14.3 Contribute to creating a community hub, identifying and overcoming any barriers to community engagement.

7.1.14.4 Seeking opportunities for securing additional grant funding from other sources and supporting the community in applying for such.

7.1.15 Information Management

7.1.15.1 The Contractor is required to maintain the following Authority target applications in order to perform its housing management functions and to ensure the Authority has up to date records in respect of its stock and tenancies:

7.1.15.2 SX3 system, containing all data in relation to tenancies and tenancy management. This includes the following modules: Allocations, Rents, Service Charges, Property Purchase, System Configuration, General Enquiries and Customer Services;

7.1.15.3 Following Service Commencement, the Contractor must provide at least 60 days notice for any additional licences for the SX3 system (or any successor). The Authority will at any time provide up to 6 licences at nil cost.

7.1.15.4 The Contractor will use its own property management system for the purposes of property management (repairs and maintenance and lifecycle records) and will provide reports to the Authority in accordance with 7.1.16 below. In addition, the Authority requires a 'read-only' licence and log in to enable access to this system for data verification and validation purposes.

7.1.16 Provision Of Information

The Contractor is required to provide the information listed in column 2 of Annex VIII (Provision of Information) of this Output Specification by the date for provision set out in column 4 of Annex VIII. All information provided by the Contractor in accordance with this paragraph must be accurate.

7.1.17 Energy Provision to Estate Residents

The Contractor will provide heat and hot water through centralised boilers and an estate wide distribution system, including individual metering arrangements at each property.

The Contractor is responsible for the provision and maintenance of this system for the duration of the Contract.

The Contractor shall be responsible for the recovery of any costs associated with the consumption of energy by individual households, with charges being:

- (a) levied on the basis of actual energy used; and
- (b) equivalent to or less than those costs that would be incurred for energy consumed if using a traditional, gas fired condensing boiler solution. The achievement of this will be measured in accordance with Annex XIII.

8. **HANDBACK**

8.1 The Authority expects the Project Site to be passed back in a good state of repair, reflecting a continued investment up to the Expiry Date. The Contractor will therefore be expected comply with a "Handback Standard".

8.2 To meet the Handback Standard, the Contractor shall:

8.2.1 ensure the Project Site is handed back to the Authority such that all assets for which the Contractor is responsible under this Agreement are in a condition that fully meets the Full Availability Standards of the Output Specification at Expiry;

8.2.2 no less than 36 months prior to Expiry, provide to the Authority a "Handback Plan" showing how the funds contained within the final 3 years of the lifecycle fund as set out in the Base Case will be spent on asset replacements. The Authority and the Contractor will jointly agree the content of this plan, with the intention of minimising the investment requirements of the Authority in the years following Expiry.

8.2.3 To the extent that, in reaching agreement under 8.2.2 above the parties agree to reallocate investment from a component(s) that are subsequently identified as deficient in accordance with Clause 44 of the Project Agreement, then the Authority will:

8.2.3.1 at its absolute discretion, either accept such deficiency as identified in accordance with Clause 44; or

8.2.3.2 agree with the Contractor those items to be removed from the Handback Plan to reinstate the original funding allocated to the component(s) identified as deficient.

ANNEX I: Availability Certification Requirements

This Annex forms the basis of the Certification Procedure and sets out the standards that should be achieved by the Contractor when offering up part(s) of the Project for Certification.

The requirements are set out in four tables which should be used as follows:

Table 1A	Certification of Dwellings where refurbishment has been completed
Table 1B	Certification of Dwellings that have been designed and built under this Project
Table 1C	Certification of Public Realm and Infrastructure Works
Table 1D	Certification of Community Buildings
Table 1E	Certification of Park

Table 1A

Ref	Certification Requirement
1	Compliance with the Building Regulations and legislative requirements in all areas where works have been completed.
2	The standards of workmanship and materials used are in accordance with section 4 of this Output Specification.
3	The quality standards set out in the Contractors Proposals in Schedule 2 of this Agreement have been attained.
4	Compliance with the Full Availability Standards in section 6 of this Output Specification.
5	No reduction in floor space from that prior to refurbishment
6	Number of windows/size of window aperture not reduced from that prior to refurbishment
7	Works undertaken do not reduce the acoustic performance of the Dwelling from that prior to refurbishment
8	All suspected asbestos has been tested and where positive, either: <ul style="list-style-type: none">• removed and disposed of properly; or• appropriate management plans have been developed and approved by the Authority.
9	All internal and external finishes made good following works

Table 1B

Ref	Certification Requirement
1	Compliance with latest Building Regulations and legislative requirements.
2	Compliance with all planning obligations (including renewable energy requirements)
3	The design and construction requirements contained within section 3.4 and 3.8 of this Output Specification have been attained.
4	The standards of workmanship and materials used are in accordance with section 4 of this Output Specification.
5	The quality standards set out in the Contractors Proposals in Schedule 2 of the Project Agreement have been attained.
6	Compliance with Full Availability Standards in section 6 of this Output Specification.

Table 1C

Ref	Certification Requirement
1	Stage II certification under s. 38 works for new infrastructure to be adopted (subject to an exclusion for Availability Certification purposes only relating specifically to the Wearing Course for roads 12A and 12B as identified on the planning drawing named the "Road Plan Drawing").
2	Stage I certification under s. 278 for all works to existing adopted infrastructure.
3	Compliance with all planning obligations
4	The standards of workmanship and materials used are in accordance with section 4 of this Output Specification.
5	The quality standards set out in the Contractors Proposals in Schedule 2 of the Project Agreement have been attained.
6	The works are in accordance with the plans and drawing listed in the Contractor's Proposals.
7	RoSPA/BS/EN certification of all play areas contained within the general public realm.

Table 1D

Ref	Certification Requirement
1	Compliance with latest Building Regulations and legislative requirements.
2	Compliance with all planning obligations.
3	Compliance with Full Availability Standards for the Community Centre as set out in section 6 of this Output Specification.
4	The standards of workmanship and materials used are in accordance with section 4 of this Output Specification.
5	The works are in accordance with the plans and drawings detailed in the Contractor's Proposals.
6	The quality standards set out in the Contractors Proposals in Schedule 2 of the Project Agreement have been attained.
7	The Community Centre must be connected to the permanent CHP system.

Table 1E

Ref	Certification Requirement																												
1	Compliance with all planning obligations																												
2	RoSPA certification of all play areas.																												
3	Compliance with Full Availability Standards for the Park as set out in section 6 of this Output Specification.																												
4	The standards of workmanship and materials used are in accordance with section 4 of this Output Specification.																												
5	<p>The works are in accordance with the following plans and drawings:</p> <table border="1"> <thead> <tr> <th>Drawing Title</th><th>Drawing No.</th></tr> </thead> <tbody> <tr> <td>Site Plan – Landscape Layout</td><td>2.1/L0001</td></tr> <tr> <td>Proposed Open Space</td><td>2.1/L0002</td></tr> <tr> <td>Proposed Car and Cycle Parking</td><td>2.1/L0003</td></tr> <tr> <td>Proposed Planting Strategy</td><td>2.1/L0004</td></tr> <tr> <td>Proposed Trees Strategy</td><td>2.1/L0005</td></tr> <tr> <td>Landscape Layout Retendered</td><td>2.1/L0006</td></tr> <tr> <td>Landscape Detailed Plans 1/3</td><td>2.1/L0007</td></tr> <tr> <td>Landscape Detailed Plans 2/3</td><td>2.1/L0008</td></tr> <tr> <td>Landscape Detailed Plans 3/3</td><td>2.1/L0009</td></tr> <tr> <td>Landscape Sections ½</td><td>2.1/L0010</td></tr> <tr> <td>Landscape Sections 2/2</td><td>2.1/L0011</td></tr> <tr> <td>Typical Details</td><td>2.1/L0012</td></tr> <tr> <td>Lighting Spread Plan</td><td>2.1/L0013</td></tr> </tbody> </table> <p>This is subject to specific exclusion for Availability Certification purposes only relating specifically to Site 16D (edged purple on the Project Site Plan) which is to be used as the Marketing Suite for the sales units, and will be brought up to standard in accordance with the lease granted.</p>	Drawing Title	Drawing No.	Site Plan – Landscape Layout	2.1/L0001	Proposed Open Space	2.1/L0002	Proposed Car and Cycle Parking	2.1/L0003	Proposed Planting Strategy	2.1/L0004	Proposed Trees Strategy	2.1/L0005	Landscape Layout Retendered	2.1/L0006	Landscape Detailed Plans 1/3	2.1/L0007	Landscape Detailed Plans 2/3	2.1/L0008	Landscape Detailed Plans 3/3	2.1/L0009	Landscape Sections ½	2.1/L0010	Landscape Sections 2/2	2.1/L0011	Typical Details	2.1/L0012	Lighting Spread Plan	2.1/L0013
Drawing Title	Drawing No.																												
Site Plan – Landscape Layout	2.1/L0001																												
Proposed Open Space	2.1/L0002																												
Proposed Car and Cycle Parking	2.1/L0003																												
Proposed Planting Strategy	2.1/L0004																												
Proposed Trees Strategy	2.1/L0005																												
Landscape Layout Retendered	2.1/L0006																												
Landscape Detailed Plans 1/3	2.1/L0007																												
Landscape Detailed Plans 2/3	2.1/L0008																												
Landscape Detailed Plans 3/3	2.1/L0009																												
Landscape Sections ½	2.1/L0010																												
Landscape Sections 2/2	2.1/L0011																												
Typical Details	2.1/L0012																												
Lighting Spread Plan	2.1/L0013																												
6	The quality standards set out in the Contractors Proposals in Schedule 2 of the Project Agreement have been attained.																												

ANNEX II: Availability Standards

This annex sets out the standards that must be achieved in meeting each of the Initial Availability Standard and Full Availability Standard.

It is set out two parts.

- Part I constitutes the general Availability Standards that must be met to ensure the Dwellings remain Available.
- Part II provides specific access measures Blocks that must be maintained to ensure some or all of Dwellings in an individual Block remain Available.
- Part III provides a draft of the Availability Standards that will be used in connection with the Community Centre.
- Part IV provides an indication as to how Availability Standards will be developed to capture the new Park.

Note that for the Temporary Decant Dwellings, these standards shall be replaced with those set out in the Temporary Decant protocol (**Schedule 24**, Part 3).

Table Meanings

Initial Standard – “Y” denotes that this standard must be met from commencement of the operational period (i.e. prior to refurbishment) to avoid the Dwelling becoming Unavailable.

Full Standard – “Y” denotes that this standard must be met in order to avoid the Dwelling becoming Unavailable.

Rectification Period – defined in consecutive calendar days unless stated otherwise.

Temporary Rectification – where permitted, the completion of a temporary rectification within the defined Rectification Period will permit a further period within which a permanent repair can be effected. Note that to qualify, a temporary repair must restore the Dwelling to the Availability Standard (examples include a securely fastened tarpaulin to prevent water ingress, boarding up of windows, temporary heating forms, etc,) but need not be in keeping with the building fabric/component to which it is administered.

Unavailable but Used applicable – “No” indicates that in the event of Unavailability, the full Availability deduction will be made regardless of whether or not the Tenant(s) remain in occupation. The Contractor should note that where any Availability Standard is failed to the extent that it causes the Dwelling to fail the Availability Standards within the section entitled “General” then Unavailable but Used will not be applicable.

Part I: Availability Standards - Dwellings

This applies to both refurbished and new build HRA Dwellings

Asset		Availability Standard	Failure Event	Initial Standard Demo	Initial Standard Retained	Full Standard	Leaseholder Standard	Rectification Period	Temporary Rectification	Unavailable but Used applicable
General	1	Every Dwelling shall meet the minimum statutory requirements	Failure to meet the standard set out in 6.2.1	Y	Y	Y	Y (Landlord Responsible Areas Only)	1	None	No
	2	Every Dwelling shall meet 'Decent Homes Plus' standard	Failure to meet the standard set out in 6.2.2	N	N	Y	Y (Landlord Responsible Areas Only)	X	None	No
	3	Not used								
Access	4a	Every Dwelling shall be accessible to and from the public highway	Inability to gain access to/from a Dwelling from the public highway acting reasonably	Y	Y	Y	Y	4 hours	None	No
	4b		Failure of an access measure as scheduled in Part II of this Annex II to this Output Specification in respect of the access route to/from the public highway to a Dwelling	Y	Y	Y	Y	As indicated in Part II of this Annex II	As indicated in Part II of this Annex II	As indicated in Part II of this Annex II

Asset		Availability Standard	Failure Event	Initial Standard Demo	Initial Standard Retained	Full Standard	Leaseholder Standard	Rectification Period	Temporary Rectification	Unavailable but Used applicable
			within a Dwelling Block							
Roofs, External Walls, Wall Finishes and Chimney	5a	All components of the construction are to be properly secured, fitted and functional, to provide a wind and weather tight roof, secure, free from water penetration, penetrating damp, energy efficient and fit for purpose.	External envelope and structure is not <ul style="list-style-type: none"> • secure • wind and weather tight • free from water penetration 	Y (temporary measures may be used provided they are appropriate to the duration they remain)	Y	Y	Y	1	Permissible up to 20 days	Yes
	5b		External envelope and structure is not: <ul style="list-style-type: none"> • free from damp (as evidenced by the presence of excessive moisture within components and/or visibility of 	N	N	Y	Y	1	Permissible up to 20 days or such extension permitted by paragraph 6.2.3.3	Yes

Asset		Availability Standard	Failure Event	Initial Standard Demo	Initial Standard Retained	Full Standard	Leaseholder Standard	Rectification Period	Temporary Rectification	Unavailable but Used applicable
			dampness and/or staining within the Dwelling) save to the extent attributable to ongoing monitoring in accordance with paragraph 6.2.3.3 • fit for purpose.							
	5c		Failure to provide or maintain fire stopping between adjoining properties within the roof void	N	N	Y	Y	14	None	Yes
	5d		Visible evidence of structural damage or defect (including but not limited to brickwork,	Y (to the extent that failure either causes or will cause a risk to structural integrity or the health and	Y	Y	Y	14	None	Yes

Asset		Availability Standard	Failure Event	Initial Standard Demo	Initial Standard Retained	Full Standard	Leaseholder Standard	Rectification Period	Temporary Rectification	Unavailable but Used applicable
			render finishes, etc.).	safety of occupants within the remaining time period prior to demolition)						
	5e		Failure to keep timber structures, including roof construction and coverings free from rot, rust, decay and damage that materially affects function (including, without limitation, fungal, worm, beetle and other attack).	Y (to the extent that failure either causes or will cause a risk to structural integrity or the health and safety of occupants within the remaining time period prior to demolition)	Y	Y	Y	14	None	Yes
	6a	All systems for the collection and disposal of rainwater shall be adequate and maintained in a good standard of repair and shall be free form	Components missing	Y	Y	Y	Y	14	None	Yes

Asset		Availability Standard	Failure Event	Initial Standard Demo	Initial Standard Retained	Full Standard	Leaseholder Standard	Rectification Period	Temporary Rectification	Unavailable but Used applicable
		spillage and leaking								
	6b		Rainwater system is inadequate (undersized, etc.), leaks and/or is damaged	N	N	Y	Y	14	None	Yes
Windows & External Doors	7a	All windows shall be fit for purpose and keep the window opening wind and weathertight.	Windows are not: <ul style="list-style-type: none"> structurally secure wind and weather tight free from water penetration. 	Y where a window is not structurally secure or substantially weather tight	Y	Y	N	1	Permissible up to 20 days	Yes
	7b		Window casements do not open, close or remain open correctly.	Y except where there is sufficient level of rot to make a casement unrepairable then it will be sealed shut	Y	Y	N	14	None	Yes
	8	Windows at ground floor levels and those accessible from	<ul style="list-style-type: none"> Non-installed, missing or inoperable 	Y	Y	Y	N	3	None	Yes

Asset		Availability Standard	Failure Event	Initial Standard Demo	Initial Standard Retained	Full Standard	Leaseholder Standard	Rectification Period	Temporary Rectification	Unavailable but Used applicable
		upper floor deck access balconies/flat roofs shall be provided with locking devices and other means to prevent forced entry	locking devices • Other missing, faulty or inoperable devices intended to prevent forced entry							
	9	Windows at first floor level and above shall be fitted with a means of restricting opening to prevent accidental falls	No means provided to restrict opening to upper floor windows	N	N	Y	N	3	None	Yes
	10	Windows should be designed to enable safe cleaning by residents (note: that this may permit the overriding of devices intended to restrict opening provided that such an action is an intended function of the	Subject to 6.2.4.4, windows do not permit occupants to safely clean both inside and out from within the Dwelling.	N	N	Y	N	14	None	Yes

Asset		Availability Standard	Failure Event	Initial Standard Demo	Initial Standard Retained	Full Standard	Leaseholder Standard	Rectification Period	Temporary Rectification	Unavailable but Used applicable
		window/restrictor and the system provides a "childproof" means of doing such)								
	11	External doors shall be maintained in a serviceable condition allowing safe access to the Dwelling	External doors do not open/close correctly or are not in a condition which allows safe access to the Dwelling.	Y	Y	Y	N	1	Permissible up to 14 days	No
	12	All external doors shall be fit for purpose, wind and weathertight.	External doors are not: <ul style="list-style-type: none"> structurally secure wind and weather tight free from water penetration. 	Y	Y	Y	N	1	Permissible up to 20 days	Yes
	13	External doors shall have adequate locking devices and other means of deterring unauthorized or	<ul style="list-style-type: none"> Doors are not provided with adequate locks, hinges or 	Y	Y	Y	N	1	Permissible up to 14 days	No

Asset		Availability Standard	Failure Event	Initial Standard Demo	Initial Standard Retained	Full Standard	Leaseholder Standard	Rectification Period	Temporary Rectification	Unavailable but Used applicable
		forced access to the Dwelling	<p>hinge bolts or other means of deterring unauthorized entry to the Dwelling.</p> <ul style="list-style-type: none"> Installed devices do not operate correctly. 							
	14	Doors or the adjacent structure shall have the means of allowing letters to be delivered to the Dwelling	No means of delivering letters to the Dwelling	N	N	Y	N	3	None	Yes
Internal Fixture, Fittings and Finishes	15 a	All retained properties are to be maintained free from hazards	All floors and staircases: damage, decay or trip hazard to flooring, floor coverings (where responsibility of Contractor), stairs, banisters and	Y	Y	Y	N	1	Permissible up to 20 days	Yes

Asset		Availability Standard	Failure Event	Initial Standard Demo	Initial Standard Retained	Full Standard	Leaseholder Standard	Rectification Period	Temporary Rectification	Unavailable but Used applicable
			balustrades.							
	15 b		<ul style="list-style-type: none"> Floor coverings to kitchens/bathrooms only: floor coverings are missing or damaged Floor coverings are not classified as "non-slip" by manufacturer or not considered such by the Authority acting reasonably. 	Y to the extent that failure creates a health and safety issue for the occupant. Such risk can be remedied through temporary means (e.g. taped repairs)	Y	Y	N	1	Permissible up to 20 days	Yes
	15 c		Glazed screens & doors: non safety glazing to screens and doors	Y to the extent that failure creates a health and safety issue for the occupant. Such risk can be remedied through temporary means (e.g.	Y	Y	N	1	Permissible up to 20 days	Yes

Asset		Availability Standard	Failure Event	Initial Standard Demo	Initial Standard Retained	Full Standard	Leaseholder Standard	Rectification Period	Temporary Rectification	Unavailable but Used applicable
				safety film)						
	15 d		Internal joinery: damaged or splintered joinery	Y to the extent that this creates a health and safety issue for the occupant. Such risk can be remedied through removal or temporary repair where this does not affect functionality or integrity	Y	Y	N	1	Permissible up to 20 days	Yes
	16	All landlord's fixtures and fittings will be securely and safely installed.	Fixtures & fittings: loose or insecure fixings which may pose a hazard	Y	Y	Y	Y	1	Permissible up to 20 days	Yes
	17	Internal finishes are serviceable and provide a sound base to receive decoration	Internal finishes: rough finish to walls/ceiling, blown/missing plaster, unplastered walls/ceiling, cracked	N	N	Y	N	14	None	Yes

Asset		Availability Standard	Failure Event	Initial Standard Demo	Initial Standard Retained	Full Standard	Leaseholder Standard	Rectification Period	Temporary Rectification	Unavailable but Used applicable
			(excluding a small number of hairline cracks) or uneven surfaces, efflorescence or similar							
	18	All internal partitions are to be maintained in a sound and structurally stable condition.	Internal partitions are not safe, structurally stable or sound.	Y where structures are unsafe or unstable	Y	Y	N	14	None	Yes
Kitchen	19	Provision of a functional and modern kitchen, where modern is defined as not more than 20 years old	Kitchen exceeds 20 years old	N	N	Y	N	X	None	Yes
	20 a	Minimum requirements for kitchens shall include: <ul style="list-style-type: none"> 1200mm of accessible storage base units and a total storage volume incl. 	Failure to provide kitchen as specified (except where agreed to the contrary with the tenant in accordance with the agreed	N	N	Y	N	14	None	Yes

Asset		Availability Standard	Failure Event	Initial Standard Demo	Initial Standard Retained	Full Standard	Leaseholder Standard	Rectification Period	Temporary Rectification	Unavailable but Used applicable
		<p>wall units of 1.5m³ for 1 Bed dwelling</p> <ul style="list-style-type: none"> 1600mm of accessible storage base units and a total storage volume incl. wall units of 2.0m³ for 2 & 3 bed dwelling 2700mm of accessible storage base units and a total storage volume of 2.4 m³ for 4 bed dwellings, 2.7 m³ for 6 bed dwellings Space and service connections for ancillary equipment (600mm) in 6 bed dwellings only Adequate 	protocol)							

Asset		Availability Standard	Failure Event	Initial Standard Demo	Initial Standard Retained	Full Standard	Leaseholder Standard	Rectification Period	Temporary Rectification	Unavailable but Used applicable
		sized sink bowl and Draining Board								
	20 b		Damaged or defective kitchen components causing them to be <ul style="list-style-type: none"> • unstable, • unsafe or • unfit for the purpose they are intended 	Y	Y	Y	N	7	None	Yes
	20 c		Damage or inoperation of the sink facilities causing it to be unstable, unsafe or unfit for the purpose intended	Y	Y	Y	N	1	None	Yes
	21	All kitchens must have at least one minimum functioning 500mm wide drawer within one of the base	Absence or in operation of at least one functioning drawer as specified.	N	N	Y	N	14	None	Yes

Asset		Availability Standard	Failure Event	Initial Standard Demo	Initial Standard Retained	Full Standard	Leaseholder Standard	Rectification Period	Temporary Rectification	Unavailable but Used applicable
		units provided.								
	22	Two metres of worktop (excluding sink units) must be provided and maintained in each kitchen where physically possible to do so.	Less than two metres of worktop provided where physically possible to do accommodate this length.	N	N	Y	N	14	None	Yes
	23	Space and service connections for at least a cooker, free standing fridge freezer and washing machine	Failure to provide space and service connections for cooker, fridge freezer, and washing machine (unless specifically agreed with the tenant to the contrary in accordance with the agreed protocol)	N	N	Y	N	14	None	Yes
	24	Allowance is to be made for ventilation for	Failure to provide adequate	N	N	Y	N	1	None	Yes

Asset		Availability Standard	Failure Event	Initial Standard Demo	Initial Standard Retained	Full Standard	Leaseholder Standard	Rectification Period	Temporary Rectification	Unavailable but Used applicable
		appliances where such ventilation is required to allow their normal operation	ventilation where required for the proper operation of appliances.							
	25	Walls above worktops and sinks and around cookers shall be provided with splashback protection	Walls above worktops and sinks and around cookers lacking suitable protection to at least 450mm against splashes	N	N	Y	N	14	None	Yes
Bathroom	26	Provision of a functional and modern bathroom where modern is defined as not more than 30 years old	Bathroom exceeds 30 years old	N	N	Y	N	X	None	Yes
	27	Bathrooms should include as a minimum a bath, wash basin and WC (where not	Non provision, inoperation or defective sanitary fittings including	Y	Y	Y	N	1	None	Yes

Asset		Availability Standard	Failure Event	Initial Standard Demo	Initial Standard Retained	Full Standard	Leaseholder Standard	Rectification Period	Temporary Rectification	Unavailable but Used applicable
		provided separately) all securely fixed and in an operating condition.	leaks, blockages and overflows, toilet not flushing							
	28	Where separate WCs are provided these shall have a hand rinse basin within the WC compartment	Non provision, operation or loss of use of hand rinse basins in separate WC compartments	Y (where already fitted)	Y (where already fitted)	Y	N	14	Permissible up to 11 days	Yes
	29	Walls adjacent to baths, showers and basins shall have suitable protection against splashing	Lack of splashbacks to baths, showers and basins.	N	Y	Y	N	14	None	Yes
	30 a	Shower facilities shall be maintained in safe working order	Non-operation of shower installations for which the landlord is responsible	Y	Y	Y	N	7	None	Yes
	30 b		Presence of unsafe shower unit	Y	Y	Y	N	1	None	Yes

Asset		Availability Standard	Failure Event	Initial Standard Demo	Initial Standard Retained	Full Standard	Leaseholder Standard	Rectification Period	Temporary Rectification	Unavailable but Used applicable
Electrics	31 a	Maintain safe and modern electrical distribution systems to Dwellings or Communal Areas as appropriate in accordance with paragraph 3.9.6.1.	<ul style="list-style-type: none"> Total loss of power and/or lighting Presence of exposed live wiring Failure to complete safety checks after water penetration 	Y	Y	Y	Y (Landlord Responsible Areas Only)	4 hrs	Permissible up to 7 Days	No
	31 b		<ul style="list-style-type: none"> Partial loss of power and/or lighting Damage/malfunction of fuse box 	Y	Y	Y	Y (Landlord Responsible Areas Only)	1	Permissible up to 7 days	No
	31 c		<ul style="list-style-type: none"> Isolated lamp failure to communal areas Presence of other minor electrical faults 	Y	Y	Y	Y (Landlord Responsible Areas Only)	7	None	Yes

Asset		Availability Standard	Failure Event	Initial Standard Demo	Initial Standard Retained	Full Standard	Leaseholder Standard	Rectification Period	Temporary Rectification	Unavailable but Used applicable
	32	Socket outlets and switches will be positioned so as to be safe and easily accessible and be sufficient in number to operate a reasonable number of domestic appliances/equipment	Insufficient socket outlets (with reference to the Agreed Schedule of Sockets as per Annex VI) or poorly positioned socket outlets and/ or switches	N	N	Y	N	14	Permissible up to 20 days	Yes
	33	All rooms will have sufficient light points to allow the Tenant to safely and comfortably carry out the activities of daily life.	With all doors closed, inability to directly view a light fitting from a given location (includes communal areas).	N	N	Y	N	1	Permissible up to 20 days	Yes
	34	There will be hard wired, interconnected smoke detection devices fitted and operational in each Dwelling.	Non provision or non operation of hard wired, interconnected smoke detectors or non-compliance of	N	N	Y	N	3	Permissible up to 20 days	Yes

Asset		Availability Standard	Failure Event	Initial Standard Demo	Initial Standard Retained	Full Standard	Leaseholder Standard	Rectification Period	Temporary Rectification	Unavailable but Used applicable
		Smoke detectors to comply with British Standard BS 5446 (as updated from time to time).	systems with relevant standards.							
	35	The Contractor must at all times maintain evidence that all electrical installations in a Dwelling are safe and fit for purpose, e.g. NICEIC Domestic Electrical Installation Certificate or Periodic Inspection Report.	Failure to maintain or provide upon request a valid certification that an electrical installation in a Dwelling is safe and adequate as at the date last inspected, altered or added to by the Contractor.	Y	Y	Y	N	X	None	Yes
Heating Systems	36 a	Space heating and water heating are to be capable of independent operation and available 24 hours per day, controlled both	Space and water heating not capable of independent operation.	N	N	Y	N	3	None	Yes

Asset		Availability Standard	Failure Event	Initial Standard Demo	Initial Standard Retained	Full Standard	Leaseholder Standard	Rectification Period	Temporary Rectification	Unavailable but Used applicable
		on a whole Dwelling and room by room basis.								
	36 b		Space heating not working.	Y	Y	Y	N	1	Permissible up to 3 days	Variable NOTE: Unavailable but Used deductions will apply during the period 21 March to 20 September inclusive, but will not apply during the period 21 September to 20 March. Provision for Temporary Rectification to heating failure events must be made by the Contractor to any Dwelling in which the main source of heating is

Asset		Availability Standard	Failure Event	Initial Standard Demo	Initial Standard Retained	Full Standard	Leaseholder Standard	Rectification Period	Temporary Rectification	Unavailable but Used applicable
										incapable of meeting the standards set out for 2 Hours or more and there is no operable secondary source of heating at least to one living room (i.e. a room that is not the kitchen, bathroom, bedroom, storage or corridor area).

Asset		Availability Standard	Failure Event	Initial Standard Demo	Initial Standard Retained	Full Standard	Leaseholder Standard	Rectification Period	Temporary Rectification	Unavailable but Used applicable
	36 c		Water heating not working.	Y	Y	Y	N	1	Permissible up to 3 days	No
	36 d		Inability of tenants to control system on a room by room and on a whole Dwelling basis.	N	N	Y	N	14	None	Yes
	37	To provide and maintain a space heating system free from leaks (whether water, liquid, gas or solid materials).	Leaks on a water pipe, tank, cylinder, boiler, or heat interface unit (HIU), fitting or valve.	Y	Y	Y	N	1	Permissible up to 20 days	Yes
	38	The installation shall be capable of: <ul style="list-style-type: none"> achieving the internal air temperature of 21°C in habitable rooms (to include living 	Failure to provide an operable heating system that meets the required capabilities.	N	N	Y	N	1	Permissible up to 20 days	Yes

Asset		Availability Standard	Failure Event	Initial Standard Demo	Initial Standard Retained	Full Standard	Leaseholder Standard	Rectification Period	Temporary Rectification	Unavailable but Used applicable
		rooms, dining rooms, kitchen/dine r, all bedrooms, the bathroom and any other rooms where a radiator is fitted as at Service Commence ment) when the external air temperature is -1°C, assuming a minimum of two air changes per hour; <ul style="list-style-type: none"> achieving an internal temperature of 21°C within four hours when the external air temperature is minus 1°C or above, 								

Asset		Availability Standard	Failure Event	Initial Standard Demo	Initial Standard Retained	Full Standard	Leaseholder Standard	Rectification Period	Temporary Rectification	Unavailable but Used applicable
		without the use of any secondary source of heat.								
	39 a	The Contractor will maintain any existing fixed and independent source of heating (other than supplied by the tenant) in the main living area.	Failure to maintain any existing fixed and independent source of heat in the main living area to a standard that is safe for operation.	Y (where installed)	Y (where installed)	Y (where installed)	N	7	None	Yes
	39 b		Failure to remove unsafe or irreparable fixed and independent sources of heating for which the landlord is responsible. Irreparable is defined as the value of any parts to facilitate a repair exceeding	Y (where installed)	Y (where installed)	Y (where installed)	N	7	None	Yes

Asset		Availability Standard	Failure Event	Initial Standard Demo	Initial Standard Retained	Full Standard	Leaseholder Standard	Rectification Period	Temporary Rectification	Unavailable but Used applicable
			£250.							
Hot Water	40 a	<p>Every Dwelling to be provided with domestic hot water at all appropriate outlets as follows:</p> <ul style="list-style-type: none"> Where provided from a storage system, the delivery of 135 litres at a temperature of 60°C. The water heating system shall provide a maximum recovery from ambient external temperature to 60°C of 45 minutes (all as verified by manufacturer's specification). Where dwellings are smaller or larger than average, a 	<ul style="list-style-type: none"> Failure to meet domestic hot water capacities at the temperatures required and for the time allowed. Failure to maintain or provide hot water storage of appropriate capacity to the size of dwelling. 	N	N	Y	N	1	Permissible up to 4 days	No

Asset		Availability Standard	Failure Event	Initial Standard Demo	Initial Standard Retained	Full Standard	Leaseholder Standard	Rectification Period	Temporary Rectification	Unavailable but Used applicable
		<p>suitably sized hot water storage tank is to be provided appropriate to the size of the dwelling.</p> <ul style="list-style-type: none"> Where hot water is provided by a combi system or similar, a minimum delivery of 12 litres per minute (assuming use of a single outlet only) at a temperature increase of at least 35°C from incoming (as verified by manufacturer's specification). 								
	40 b		Loss of ability to control flow of hot and cold water at	Y	Y	Y	N	1	Permissible up to 4 days	Yes

Asset		Availability Standard	Failure Event	Initial Standard Demo	Initial Standard Retained	Full Standard	Leaseholder Standard	Rectification Period	Temporary Rectification	Unavailable but Used applicable
			outlets.							
	41	Every Dwelling to be provided with a continuous supply of drinking water at an outlet in the kitchen and bathroom.	Loss of continuous supply of drinking water to kitchen and/or bathroom.	Y (bathrooms only where such connection exists)	Y (bathrooms only where such connection exists)	Y	N	1	Permissible up to 4 days	No
	42	Every Dwelling to have a water distribution system which shall: - <ul style="list-style-type: none"> • have sufficient capacity and throughput to provide hot and cold water simultaneously; • be free from leaks; • be suitably insulated so as to minimise risk of bursting due to frost; 	Failure of the water distribution system to meet the defined requirements	Y save for issues in respect of flow starvation	Y	Y	Y (Landlord Responsible Areas Only)	1	Permissible up to 20 days	Yes

Asset		Availability Standard	Failure Event	Initial Standard Demo	Initial Standard Retained	Full Standard	Leaseholder Standard	Rectification Period	Temporary Rectification	Unavailable but Used applicable
		<ul style="list-style-type: none"> satisfy any design requirements of any water company or authority. 								
Water & Drainage	43	All Retained Properties to have well maintained and safe access to utilities connections i.e. water, sewerage, electric and gas.	Failure to ensure safe provision of any listed utility supplies to standards required by relevant legislation.	Y	Y	Y	Y (Landlord Responsible Areas Only)	1	Permissible up to 4 days	No
	44	All Retained Properties to have an effective system (above and below ground within the curtilage of the Dwelling) for the removal/drainin g of foul, waste and surface water, so as not to be prejudicial to the health and	Failure of system to drain/remove foul or waste water away from dwelling which results in inability to use any bath shower washbasin WC or other sanitary facility.	Y	Y	Y	Y (Landlord Responsible Areas Only)	1	None	No

Asset		Availability Standard	Failure Event	Initial Standard Demo	Initial Standard Retained	Full Standard	Leaseholder Standard	Rectification Period	Temporary Rectification	Unavailable but Used applicable
		safety of any occupants of the Dwelling or to the structural fabric of the Dwelling.								
Gas Services	45 a	Gas systems to be maintained checked and certified in accordance with good practice current Gas Safety (Installation and Use) Regulations.	Non compliance with the Gas Safety (Installation and Use) Regulations.	Y	Y	Y	N	1	None	No
	45 b		Failure to provide on request landlords/homeowner gas safety certificate demonstrating inspection and safe certification (which includes evidence of remedial works being completed	Y	Y	Y	N	X	None	No

Asset		Availability Standard	Failure Event	Initial Standard Demo	Initial Standard Retained	Full Standard	Leaseholder Standard	Rectification Period	Temporary Rectification	Unavailable but Used applicable
			where faults were identified at the point of inspection) by competent authorised persons within the previous 12 month period or at last change of tenancy whichever is the most recent.							
Other Utilities	46	The Contractor will maintain television aerial and amplifier systems where the responsibility of the Contractor and access to telephone systems in flatted blocks so as to allow Tenants to access telephone Contractors and television service Contractors.	Non operation of system that allows Tenants in flatted blocks to access terrestrial television and telephone services.	Y	Y	Y	Y (Landlord Responsible Areas Only)	1	Permissible up to 20 days	Yes

Asset		Availability Standard	Failure Event	Initial Standard Demo	Initial Standard Retained	Full Standard	Leaseholder Standard	Rectification Period	Temporary Rectification	Unavailable but Used applicable
		Provide an aerial outlet for television in the living room of each Dwelling.								
Energy	47 a	All Retained Properties will have a minimum SAP rating of 70. (The Contractor will provide a commentary accompanying the design proposals indicating where these energy efficiency standards are not going to be met for any particular Dwelling and setting out the reasons why.)	In respect of retained (refurbished Dwellings) failure to satisfactorily demonstrate that the Dwelling meets a SAP rating of 70 using the 2005 edition methodology.	N	N	Y	N	14	None	No
	47 b		In respect of new HRA/leasehold Dwellings failure to satisfactorily	N/A	N/A	Y	Y	14	None	No

Asset		Availability Standard	Failure Event	Initial Standard Demo	Initial Standard Retained	Full Standard	Leaseholder Standard	Rectification Period	Temporary Rectification	Unavailable but Used applicable
			demonstrate that the Dwelling meets a SAP rating of 80 using the 2005 edition methodology.							
Ventilation	48 a	<p>Dwellings are required to be capable of adequate ventilation to ensure:</p> <ul style="list-style-type: none"> • prevention of condensation in the building fabric and/or in living areas • extraction of moisture from areas where it is produced in significant quantities • rapid mechanical ventilation for dilution of pollutants • background ventilation • requirements 	<p>Presence of excessive or prolonged condensation to internal surfaces not being dispersed within 2 hours by appropriate use of ventilation provision.</p>	N	N	Y	N	14	None	Yes

Asset		Availability Standard	Failure Event	Initial Standard Demo	Initial Standard Retained	Full Standard	Leaseholder Standard	Rectification Period	Temporary Rectification	Unavailable but Used applicable
		for fuel burning or other appliances for process air are met								
	48 b		Absence or inoperability of extractor fans or other means of rapid moisture dispersal to provide one air change per hour in a kitchen.	Y where fitted and where Dwelling is scheduled to remain in use for a period of more than 4 months	Y (where already fitted)	Y	N	7	None	Yes
	48 c		Absence or inoperability of extractor fans or other means of rapid moisture dispersal to provide three air changes per hour in a bathroom.	Y where fitted and where Dwelling is scheduled to remain in use for a period of more than 4 months	Y (where already fitted)	Y	N	7	None	Yes
Adaptations	49	Adaptations to be maintained in accordance	Adaptations damaged, not fit for purpose	Y	Y	Y	N	3	Permissible up to 18 days	Yes

Asset		Availability Standard	Failure Event	Initial Standard Demo	Initial Standard Retained	Full Standard	Leaseholder Standard	Rectification Period	Temporary Rectification	Unavailable but Used applicable
		with manufacturers and/or suppliers recommendations and Good Industry Practice and adaptations must be fit for purpose and safe	or unsafe							
Instruction Books	50	The Contractor will provide each Tenant with up to date information on the operation of all mechanical and electrical systems for which the Contractor is responsible.	Failure to provide up to date information on the operation of installed systems.	N	N	Y	Y (Landlord Responsible Areas Only)	14	None	Yes
External areas to Dwellings	51a	Every Dwelling to have an individual boundary treatment, encompassing front and rear gardens, providing defined	<ul style="list-style-type: none"> Failure to provide an appropriate form of boundary treatment to meet specified requirements 	N	N	Y	N	7	Permissible up to 14 days	Yes

Asset		Availability Standard	Failure Event	Initial Standard Demo	Initial Standard Retained	Full Standard	Leaseholder Standard	Rectification Period	Temporary Rectification	Unavailable but Used applicable
		<p>boundary separation and definition of defensible space.</p> <p>Each boundary treatment to provide appropriate privacy for tenants and be constructed of robust materials which are resistant to vandalism, attractive and in keeping with neighbourhood, and to rear boundaries they will provide a barrier to easy access for adults, children and dogs.</p>	<ul style="list-style-type: none"> Missing/damaged boundary treatments 							
	51 b		Loss of privacy for Tenants resulting from failure to provide or defect to the boundary	N	N	Y	N	7	Permissible up to 18 days	Yes

Asset		Availability Standard	Failure Event	Initial Standard Demo	Initial Standard Retained	Full Standard	Leaseholder Standard	Rectification Period	Temporary Rectification	Unavailable but Used applicable
			treatment.							
	52	Where accessible to public areas rear gardens will be provided with a gate which is capable of being fastened and locked	Failure to provide a gate with an operable fastening and locking system	N	N	Y	N	7	Permissible up to 14 days	Yes
	53	Paths will be even, free from trip hazards and excessive ponding	<ul style="list-style-type: none"> • Presence of trip hazards of over 15mm to paths within curtilage. • Evidence of excessive ponding 	Y	Y	Y	Y (where communal access)	3	Permissible up to 20 days	Yes
	54	Each boundary treatment will provide for vehicular access to Tenants and visitors where in-curtilage parking exists or is being proposed.	Non provision of vehicular access within boundary treatments where such vehicular access currently exists or is proposed	N	N	Y	Y (where delivered as part of Works)	7	Permissible up to 14 days	Yes

Asset		Availability Standard	Failure Event	Initial Standard Demo	Initial Standard Retained	Full Standard	Leaseholder Standard	Rectification Period	Temporary Rectification	Unavailable but Used applicable
	55	All external painted surfaces to be kept in good condition	Paint to external surfaces is missing and/or defective	N	N	Y	Y	14	None	Yes
	56	Bin Stores or underground refuse storage shall be maintained in a safe and functional condition	Bin stores or underground refuse storage unsafe or unfunctional	Y to the extent that failure creates a health and safety issue for the occupant. Such risk can be remedied through temporary means.	Y	N	Y	14	None	Yes
	57	Driveways to Garages must be safe, level and non-pitted, free from trip hazards and excessive ponding and accessible to Tenants with disabilities	<ul style="list-style-type: none"> • Driveways not safe, level, accessible to Tenants with disabilities • Presence of trip hazards of over 15mm to paths within curtilage. • Evidence of excessive 	N	Y	Y	N	7	Permissible up to 14 days	Yes

Asset		Availability Standard	Failure Event	Initial Standard Demo	Initial Standard Retained	Full Standard	Leaseholder Standard	Rectification Period	Temporary Rectification	Unavailable but Used applicable
			ponding							
Garages within Dwelling curtilage	58 a	All Garages to be substantially weather tight, safe and fit for purpose, including, without limitation, being capable of being made secure by use of the fitted locks.	Garages not capable of being secured and/or not substantially weather tight.	N	Y	Y	N	7	Permissible up to 14 days	Yes
	58 b		Garage roofs or walls in danger of collapse.	Y	Y	Y	N	1	Permissible up to 20 days	Yes
	59	Signage must be provided denoting risk of fragile Garage roofs and risk of injury from falls.	No signage provided advising of risk of fragile roofs and risk of injury from falls.	Y	Y	Y	N	14	None	Yes

Part II: Access Measures for Dwelling Blocks

These standards are intended to cover the existing blocks in the Initial Standard period but also any new blocks created in fulfilling the requirement for new HRA units. Where mixed tenure arrangements are developed of a single access, then these standards shall apply to the entire access to reflect the Contractor's role of delivering leaseholder services.

Asset		Availability Standard	Failure Event	Initial Standard	Full Standard	Rectification Period	Temporary Rectification	Unavailable but Used applicable
Common Parts to Dwelling Blocks	A 1	All Common Parts to be maintained free from hazards likely to cause injury including, stairs, banisters and balustrades which will be secure and free from damage, decay and trip hazard.	Staircases: damage, decay or trip/slip hazard to floorings, stairs, banisters and balustrades.	Y	Y	1	Permissible up to 20 days	Yes
	A 2		Floor coverings: worn, torn or damaged floor coverings. Floor coverings not classified as "non-slip" by manufacturer or not considered such by the Authority acting reasonably.	Y	Y	1	Permissible up to 20 days	Yes
	A 3		Fixtures & fittings: insecure fixtures which could pose a hazard.	Y	Y	1	Permissible up to 20 days	Yes
	A 4		Glazed screens & doors: non safety glazing to screens and doors	Y	Y	1	Permissible up to 20 days	Yes

Asset		Availability Standard	Failure Event	Initial Standard	Full Standard	Rectification Period	Temporary Rectification	Unavailable but Used applicable
	B	Lighting levels are sufficient to allow safe use of Common Parts	Insufficient lighting levels to allow safe use of Common Parts	Y	Y	1	Permissible up to 20 days	Yes
	C	Emergency lighting installations shall be maintained in working order.	Emergency lighting: failure to maintain emergency lighting to communal areas, lack of adequate (3 hours) back-up power supply, failure to inspect in accordance with regulations	Y	Y	1	Permissible up to 20 days	Yes
	D	Smoke detection installations shall be maintained in working order.	Smoke detection: failure to maintain fully functioning detection systems; failure to inspect in accordance with regulations	Y	Y	1	Permissible up to 20 days	Yes
	E1	Existing refuse facilities shall be made accessible to all residents.	Existing communal refuse facilities not maintained in operating condition	Y	Y	3	Permissible up to 5 days	Yes
	E2		Individual dwelling refuse facilities not maintained in operating condition	Y	Y	7	None	Yes
	F	Where existing, all door entry systems and security systems shall be maintained in proper working order.	Door entry systems not working	Y	Y	3	None	Yes
	G 1	Passenger lifts shall be fully operational at all times	Lifts: Lift failure when occupied,	Y	Y	1 hour	None	Yes

Asset		Availability Standard	Failure Event	Initial Standard	Full Standard	Rectification Period	Temporary Rectification	Unavailable but Used applicable
	G 2		Non operation of lifts	Y	Y	1	None	Yes

Part III: Community Centre

These standards are intended to cover the Community Centre only.

Asset		Availability Standard	Failure Event	Initial Standard	Full Standard	Rectification Period	Temporary Rectification	Unavailable but Used applicable
Community Centre	H	Failure to provide and maintain amenity and facilities in accordance with the data sheets	<p>Failure in maintaining one or more requirements for an individual space as identified in the data sheets in Annex X</p> <p>Failure includes in respect of each aspect identified on the data sheet:</p> <ul style="list-style-type: none"> • Absence • Damage or inoperability • Sub-standard performance 	N/A	Y	3	Permissible up to 18 days	Yes

Asset		Availability Standard	Failure Event	Initial Standard	Full Standard	Rectification Period	Temporary Rectification	Unavailable but Used applicable
	J1	<p>All components of the external envelope are to be properly secured, fitted and functional, free from rot, rust, decay and damage, to provide a wind and weather tight structure, secure and free from water penetration, penetrating damp, energy efficient and fit for occupation. In this context, external envelope is deemed to include:</p> <ul style="list-style-type: none"> Walls Roofs including coverings and structures Windows Doors 	<p>External envelope and structure is not</p> <ul style="list-style-type: none"> secure wind and weather tight free from water penetration. free from damp (as evidenced by the presence of excessive moisture within components and/or visibility of dampness and/or staining within the Dwelling free from rot, rust and/or decay (including fungal, insect or other attack) 	N/A	Y	1	Permissible up to 20 days	Yes
	J2		Visible evidence of structural damage or defect.	N/A	Y	14	None	Yes
	K	All systems for the collection and disposal of rainwater shall be adequate and maintained in a good standard of repair and shall be free form spillage and leaking	<ul style="list-style-type: none"> Components missing Rainwater system is inadequate (undersized, etc.), leaks and/or is damaged 	N/A	Y	14	None	Yes

Asset		Availability Standard	Failure Event	Initial Standard	Full Standard	Rectification Period	Temporary Rectification	Unavailable but Used applicable
	L	External doors and windows operate correctly and shall have adequate locking devices and other means of deterring unauthorized or forced access	<ul style="list-style-type: none"> Doors cannot be secured/unsecured and/or do not allow safe ingress/egress Windows cannot be opened/secured or do not remain open correctly Doors and/or windows are not provided with adequate locks, hinges or hinge bolts or other means of deterring unauthorized entry. Installed devices do not operate correctly. 	N/A	Y	1	Permissible up to 14 days	No
	M	Doors or the adjacent structure shall have the proper means of allowing letters to be delivered	<ul style="list-style-type: none"> No means of delivering letters 	N/A	Y	3	None	Yes

Part IV: Park

These standards are intended to cover the new Park and new play facilities created and maintained as part of the Project.

Asset		Availability Standard	Failure Event	Initial Standard	Full Standard	Rectification Period	Temporary Rectification	Unavailable but Used applicable
Generally	N	Failure to provide and maintain park facilities in accordance with the data sheets	<p>Failure in maintaining one or more requirements for an identified zone as identified in the data sheets in Annex XI</p> <p>Failure includes in respect of each aspect identified on the data sheet:</p> <ul style="list-style-type: none"> • Absence • Damage or inoperability • Sub-standard performance 	N/A	Y	3	Permissible up to 18 days	Yes

ANNEX III: Tenancy and Estate Management Standards

This annex sets out the standards and performance levels that must be achieved in the provision of Tenancy and Estate Management Services.

Table Meanings

Measurement Methodology – sets out the calculation methodology by which performance is assessed. The period within which the calculation should be made is indicated in the column Measurement Frequency.

Minimum Tolerable Level – is the minimum level that must be achieved in each individual service.

Standard Service Level – is the level that must be achieved in order to attain full payment for that service.

Performance Bands - these provide interim measures against which deductions will be calculated in **paragraph** Error! Reference source not found. of **Schedule 4** (Payment mechanism).

BVPI Reference - where appropriate, this is given.

Reporting Period – this is the frequency that the Authority expects to receive progress reports. Where this differs from the measurement frequency, these reports will be used for information purposes only. The Reporting Period is calculated from Service Commencement.

Measurement Period – this is the frequency over which the Contractor should complete the measurement of services during the period of time since the previous measure. The Measurement Period is calculated from Service Commencement.

Service Area (Col 1)		Performance Standard (Col 3)	Measurement Methodology (Col 4)	Minimum Tolerable Level (Col 5)	Performance Bands				Standard Service Level (Col 10)	Reporting Period (Col 12)	Measurement Period (Col 13)
					Interval 1 (Col 6)	Interval 2 (Col 7)	Interval 3 (Col 8)	Interval 4 (Col 9)			
Customer Services	1	Telephone Helpdesk is available 24/7, covering all matters during Core Service Hours (Defined as 9am to 5pm Monday to Friday, and offering a repairs reporting service only during non-Core Service Hours	Numerator: Number of hours helpdesk (as described) available during the month. Denominator: Number of hours in the month.	97%	97.50%	98.00%	98.50%	99.00%	99.5%	Monthly	Quarterly
	2	Calls to the helpdesk within office hours answered within 8 rings (automated responses not permissible) , a two tiered selection menu (Repairs or general Helpdesk enquiry)	Numerator: Number of calls received during Office Hours answered within 8 rings Denominator: Total number of calls received within Office Hours	78%	81.40%	84.80%	88.20%	91.60%	95%	Monthly	Quarterly

Service Area (Col 1)		Performance Standard (Col 3)	Measurement Methodology (Col 4)	Minimum Tolerable Level (Col 5)	Performance Bands				Standard Service Level (Col 10)	Reporting Period (Col 12)	Measurement Period (Col 13)
					Interval 1 (Col 6)	Interval 2 (Col 7)	Interval 3 (Col 8)	Interval 4 (Col 9)			
	3	Calls to the emergency helpdesk outside office hours answered within 10 rings (automated responses not permissible)	Numerator: Number of calls received outside Office Hours answered within 10 rings Denominator: Total number of calls received outside Office Hours	75%	79.00%	83.00%	87.00%	91.00%	95%	Monthly	Quarterly
	4	Reports to the helpdesk using electronic means (email/intranet) processed within 60 minutes of receipt on the computer system during Office Hours.	Numerator: Number of reports received by electronic means logged within 60 minutes. Denominator: Total number of reports received by electronic means.	80%	83.00%	86.00%	89.00%	92.00%	95%	Monthly	Quarterly
	5	Provide a response to matters raised in	Numerator: Number of items of correspondence	80%	83.00%	86.00%	89.00%	92.00%	95%	Monthly	Monthly

Service Area (Col 1)		Performance Standard (Col 3)	Measurement Methodology (Col 4)	Minimum Tolerable Level (Col 5)	Performance Bands				Standard Service Level (Col 10)	Reporting Period (Col 12)	Measurement Period (Col 13)
					Interval 1 (Col 6)	Interval 2 (Col 7)	Interval 3 (Col 8)	Interval 4 (Col 9)			
		correspondence (excluding complaints relating to Contractor services) in writing within 10 Business Days of having been received. Where a holding response is required, such responses should clearly indicate a timescale for resolution of the issue of no longer than 28 days. Only one holding response is permitted, unless the Contractor is waiting for information from an external party (such as the police, Fire Service, Housing	answered within 10 Business Days less any responses not successfully closed out within the extended time period notified in an initial holding response Denominator: Total number of correspondence items received where response was due								

Service Area (Col 1)		Performance Standard (Col 3)	Measurement Methodology (Col 4)	Minimum Tolerable Level (Col 5)	Performance Bands				Standard Service Level (Col 10)	Reporting Period (Col 12)	Measurement Period (Col 13)
					Interval 1 (Col 6)	Interval 2 (Col 7)	Interval 3 (Col 8)	Interval 4 (Col 9)			
		Benefit, etc) that has been requested in a timely manner by the Contractor. The Contractor shall follow up the delivery of the request regularly and shall provide feedback upon request to the resident party involved in respect of the status of the matter on a weekly basis .									
	6		Numerator: Number of items where a holding response is issued. Denominator: Number of items of correspondence received.	10%	9.00%	8.00%	7.00%	6.00%	5%	Monthly	Monthly

Service Area (Col 1)		Performance Standard (Col 3)	Measurement Methodology (Col 4)	Minimum Tolerable Level (Col 5)	Performance Bands				Standard Service Level (Col 10)	Reporting Period (Col 12)	Measurement Period (Col 13)
					Interval 1 (Col 6)	Interval 2 (Col 7)	Interval 3 (Col 8)	Interval 4 (Col 9)			
	7	Acknowledge Complaints relating to Contractor services (however communicated) in writing within 2 Business Days of having been received	Numerator: Number of complaints acknowledged within 2 Business Days Denominator: Total number of complaints received where response was due	90%	91.80%	93.60%	95.40%	97.20%	99%	Monthly	Quarterly
	8	Stage 1 or stage 2 complaints relating to Contractor services resolved within 15 Business Days from initial communication or rejection of stage 1 outcome. If complaints reach stage 3, they will be passed from the Contractor to the Authority and will require	Numerator: Number of stage 1 and/or stage 2 complaints resolved within 15 Business Days of initial communication or rejection of stage 1 outcome. Denominator: Total number of stage 1 and/or stage 2 complaints received where response was	80%	90.20%	92.40%	94.60%	96.80%	99%	Monthly	Quarterly

Service Area (Col 1)		Performance Standard (Col 3)	Measurement Methodology (Col 4)	Minimum Tolerable Level (Col 5)	Performance Bands				Standard Service Level (Col 10)	Reporting Period (Col 12)	Measurement Period (Col 13)
					Interval 1 (Col 6)	Interval 2 (Col 7)	Interval 3 (Col 8)	Interval 4 (Col 9)			
		an Action Plan in accordance with Annex IX (Action Plan Protocol) to this Output Specification where the Authority agrees that the complaint is justified.	due								
	9	The provision of an efficient appointment system and home visit arrangements, with appointments for repairs/tenancy matters being offered.	Numerator: Number of appointments offered for housing management services within 5 Business Days (or longer if requested by the tenant) Denominator: Number of contacts made for housing management matters that were not resolved immediately	80%	83.60%	87.20%	90.80%	94.40%	98%	Monthly	Monthly

Service Area (Col 1)		Performance Standard (Col 3)	Measurement Methodology (Col 4)	Minimum Tolerable Level (Col 5)	Performance Bands				Standard Service Level (Col 10)	Reporting Period (Col 12)	Measurement Period (Col 13)
					Interval 1 (Col 6)	Interval 2 (Col 7)	Interval 3 (Col 8)	Interval 4 (Col 9)			
	10		Numerator: Number of appointments offered for repairs within the required rectification period. Denominator: Number of repairs reported (excluding those with response times of less than 7 days)	80%	83.60%	87.20%	90.80%	94.40%	98%	Monthly	Quarterly
	11	All appointments made are kept	Numerator: Number of appointments kept by Contractor Denominator: Number of appointments made	80%	83.40%	86.80%	90.20%	93.60%	97%	Monthly	Quarterly
	12	Provision during office hours of translation and interpretation	Numerator: Number of incidences where translation	70%	74.00%	78.00%	82.00%	86.00%	90%	Annually	Annually

Service Area (Col 1)		Performance Standard (Col 3)	Measurement Methodology (Col 4)	Minimum Tolerable Level (Col 5)	Performance Bands				Standard Service Level (Col 10)	Reporting Period (Col 12)	Measurement Period (Col 13)
					Interval 1 (Col 6)	Interval 2 (Col 7)	Interval 3 (Col 8)	Interval 4 (Col 9)			
		services. NOTE: Contractor will make contact with translation services supplier within 15 minutes of request. Where no-one suitable for the required language is available, the Contractor will make an appointment convenient to the Tenant/ Leaseholder to ring back.	services have been provided/ contacted within 15 minutes of requirement. Denominator: Number of incidences translation services were required								
Customer Satisfaction	13	Provide an overall housing and estate management service that delivers high levels of customer satisfaction	Percentage of customers (based upon a minimum response level of 25%) indicating that they are satisfied with the overall services provided in response to an	57%	62.60%	68.20%	73.80%	79.40%	85%	Annually	Annually

Service Area (Col 1)		Performance Standard (Col 3)	Measurement Methodology (Col 4)	Minimum Tolerable Level (Col 5)	Performance Bands				Standard Service Level (Col 10)	Reporting Period (Col 12)	Measurement Period (Col 13)
					Interval 1 (Col 6)	Interval 2 (Col 7)	Interval 3 (Col 8)	Interval 4 (Col 9)			
			annual customer satisfaction survey. NOTE: For Dwellings listed in Schedule 31 Part 2, the calculation should disregard responses directly related to the condition of the property. All non-property measures should still be included.								
	14		Percentage of customers indicating that they are satisfied with the repairs service in response to post-completion customer satisfaction surveys (The	80%	82.40%	84.80%	87.20%	89.60%	92%	Monthly	Annually

Service Area (Col 1)		Performance Standard (Col 3)	Measurement Methodology (Col 4)	Minimum Tolerable Level (Col 5)	Performance Bands				Standard Service Level (Col 10)	Reporting Period (Col 12)	Measurement Period (Col 13)
					Interval 1 (Col 6)	Interval 2 (Col 7)	Interval 3 (Col 8)	Interval 4 (Col 9)			
			Contractor will be responsible for the design of these surveys but they should cover full repairs experience from the point of making the initial call to the helpdesk through to the completion of the repair. This covers repairs carried out under Annex II and Annex III. Survey forms must be left after the job rather than completed whilst workman in attendance). The resident satisfaction is to be monitored and reported by ethnicity. NOTE: For								

Service Area (Col 1)		Performance Standard (Col 3)	Measurement Methodology (Col 4)	Minimum Tolerable Level (Col 5)	Performance Bands				Standard Service Level (Col 10)	Reporting Period (Col 12)	Measurement Period (Col 13)
					Interval 1 (Col 6)	Interval 2 (Col 7)	Interval 3 (Col 8)	Interval 4 (Col 9)			
			Dwellings listed in Schedule 30 Part 2, the calculation should disregard responses directly related to the condition of the property or the technical repair carried out save to the extent as to whether such repair restored Availability. All non-property measures should still be included.								
	15	Provide a regular newsletter to residents on a minimum quarterly basis (4 per annum) which, as a minimum, contains performance data collected from	Numerator: Number of newsletters prepared, published and delivered to every address in the PFI area. Denominator: Number of newsletters due for publication	90%	91.80%	93.60%	95.40%	97.20%	99%	Quarterly	Annually

Service Area (Col 1)		Performance Standard (Col 3)	Measurement Methodology (Col 4)	Minimum Tolerable Level (Col 5)	Performance Bands				Standard Service Level (Col 10)	Reporting Period (Col 12)	Measurement Period (Col 13)
					Interval 1 (Col 6)	Interval 2 (Col 7)	Interval 3 (Col 8)	Interval 4 (Col 9)			
		satisfaction surveys undertaken in the immediately preceding period.	in the period.								
Tenancy Mgmt	16	Efficiently manage the Mutual Exchanges process	Numerator: Total number of applications responded to within 28 days Denominator: Total number of applications requiring a response	80%	83.00%	86.00%	89.00%	92.00%	95%	Monthly	Annually
	17	Following the agreed procedures (with reference to the Authority Policy), promptly deal with and discourage nuisance and anti-social behaviour (such as drug dealing, noise nuisance,	Numerator: Number of nuisance and anti-social behaviour cases in which the corrective action was taken within 3 Business Days Denominator: Number of nuisance and anti-social	80%	83.40%	86.80%	90.20%	93.60%	97%	Monthly	Monthly

Service Area (Col 1)		Performance Standard (Col 3)	Measurement Methodology (Col 4)	Minimum Tolerable Level (Col 5)	Performance Bands				Standard Service Level (Col 10)	Reporting Period (Col 12)	Measurement Period (Col 13)
					Interval 1 (Col 6)	Interval 2 (Col 7)	Interval 3 (Col 8)	Interval 4 (Col 9)			
		control of pets, garden and home condition management).	behaviour cases (defined in accordance with the Authority policy which defines categories of Nuisance/Anti-social/Racism)								
	18	Following the agreed procedures(with reference to the Authority Policy), promptly deal with and discourage racist behaviour or domestic violence.	Numerator: Number of racist or domestic violence incidents in which the correct action was taken within 1 Business Day Denominator: Number of racist or domestic violence incidents (defined in accordance with the Authority policy which defines categories of Nuisance/Anti-	80%	83.40%	86.80%	90.20%	93.60%	97%	Monthly	Annually

Service Area (Col 1)		Performance Standard (Col 3)	Measurement Methodology (Col 4)	Minimum Tolerable Level (Col 5)	Performance Bands				Standard Service Level (Col 10)	Reporting Period (Col 12)	Measurement Period (Col 13)
					Interval 1 (Col 6)	Interval 2 (Col 7)	Interval 3 (Col 8)	Interval 4 (Col 9)			
			social/Racism)								
	19	Visit a minimum of 20% of tenancies per annum, with 100% of tenancies visited over a 5 year period	Numerator: Number of tenancy visits made in previous year less those visited in the previous 4 years Denominator: Number of tenancies divided by 5	90%	91.80%	93.60%	95.40%	97.20%	99%	Monthly	Annually
	20	Visit 100% of introductory tenancies during the period of the Introductory Tenancy	Numerator: Number of introductory tenancies visited in the period Denominator: Number of introductory tenancies granted in the period	90%	91.80%	93.60%	95.40%	97.20%	99%	Monthly	Annually
Voids	21	Operation of an efficient re-let service ensuring all Dwellings to be re-let meet the	Average void re-let period	28 Days	26.60	25.20	23.80	22.40	21 Days	Monthly	Monthly

Service Area (Col 1)		Performance Standard (Col 3)	Measurement Methodology (Col 4)	Minimum Tolerable Level (Col 5)	Performance Bands				Standard Service Level (Col 10)	Reporting Period (Col 12)	Measurement Period (Col 13)
					Interval 1 (Col 6)	Interval 2 (Col 7)	Interval 3 (Col 8)	Interval 4 (Col 9)			
		Void Re-let Standard									
Repairs	22	Provide an efficient repairs service for all identified or reported defects to assets for which the landlord is responsible where fault/defect is not covered by the Availability Standards	Average time taken to complete repairs, measured from the time the Contractor is notified of the need for the repair.	28 Days	25.20	22.40	19.60	16.80	14 Days	Monthly	Monthly
	23		Percentage of repairs completed in single visit to the relevant Dwelling.	70%	74.00%	78.00%	82.00%	86.00%	90%	Monthly	Monthly
	24	Failure to complete individual repair or Authority's request (Cat. B) within 28 days	Numerator: The total number of repairs completed within 28 days Denominator: The number of	90%	91.60%	93.20%	94.80%	96.40%	98%	Monthly	Monthly

Service Area (Col 1)		Performance Standard (Col 3)	Measurement Methodology (Col 4)	Minimum Tolerable Level (Col 5)	Performance Bands				Standard Service Level (Col 10)	Reporting Period (Col 12)	Measurement Period (Col 13)
					Interval 1 (Col 6)	Interval 2 (Col 7)	Interval 3 (Col 8)	Interval 4 (Col 9)			
			repairs								
	25	Not Used									
Estate Mgmt Services	26	Operate an effective estate inspection service with reference to the Contractor's Inspection Checklist according to the Environmental Protection Act standards for Estates Maintenance (including communal areas to blocks, play areas, landscaped areas and other non-adopted areas as appropriate) to identify and resolve incidences of non-compliance.	Numerator: Number of estate inspections completed within timescale Denominator: Number of estate inspections due as per the contractor's Proposals.	90%	91.60%	93.20%	94.80%	96.40%	98%	Monthly	Annually

Service Area (Col 1)		Performance Standard (Col 3)	Measurement Methodology (Col 4)	Minimum Tolerable Level (Col 5)	Performance Bands				Standard Service Level (Col 10)	Reporting Period (Col 12)	Measurement Period (Col 13)
					Interval 1 (Col 6)	Interval 2 (Col 7)	Interval 3 (Col 8)	Interval 4 (Col 9)			
	27	Operate an effective inspection regime to all play areas to comply with BS EN 1176-7	Numerator: Number of inspections of play areas completed Denominator: Number of inspections of play areas due.	90%	91.60%	93.20%	94.80%	96.40%	98%	Monthly	Semi-Annually
	28	Operate a joint-estate inspection service (including communal areas to blocks, play areas, landscaped areas and other non-adopted areas as appropriate) with identified resident group and members to identify and resolve incidences of non-compliance.	Numerator: Number of estate inspections completed within timescale Denominator: Number of estate inspections due as per the contractor's Proposals.	90%	91.60%	93.20%	94.80%	96.40%	98%	Monthly	Semi-Annually
	29	Ensure that	Numerator:	90%	91.80%	93.60%	95.40%	97.20%	99%	Monthly	Quarterly

Service Area (Col 1)		Performance Standard (Col 3)	Measurement Methodology (Col 4)	Minimum Tolerable Level (Col 5)	Performance Bands				Standard Service Level (Col 10)	Reporting Period (Col 12)	Measurement Period (Col 13)
					Interval 1 (Col 6)	Interval 2 (Col 7)	Interval 3 (Col 8)	Interval 4 (Col 9)			
		Dwellings and associated communal areas are free from pests	Number of incidents of pests in communal areas where control action has been taken within 3 Business Days Denominator: Number of incidents of pests in communal areas reported								
	30	Ensure that the Project Site is kept free of graffiti and vandalism.	Numerator: Number of instances graffiti removed within 2 Business Days of report Denominator: Number of graffiti instances reported.	90%	91.60%	93.20%	94.80%	96.40%	98%	Monthly	Quarterly
	31		Numerator: Number of instances racist graffiti	90%	91.60%	93.20%	94.80%	96.40%	98%	Monthly	Quarterly

Service Area (Col 1)		Performance Standard (Col 3)	Measurement Methodology (Col 4)	Minimum Tolerable Level (Col 5)	Performance Bands				Standard Service Level (Col 10)	Reporting Period (Col 12)	Measurement Period (Col 13)
					Interval 1 (Col 6)	Interval 2 (Col 7)	Interval 3 (Col 8)	Interval 4 (Col 9)			
			removed within 1 Business Day of report Denominator: Number of racist graffiti instances reported.								
	32		Average number of days to repair or rectify matters identified/reported as a result of vandalism	10 days	9 days	8 days	7 days	6 days	5 days	Monthly	Quarterly
	33	Ensure the PFI area (which includes all soft and hard landscaped areas for which the Contractor is responsible) is kept free of litter, detritus and foreign matter (such as stones, animal faeces, hypodermic needles, brick and glass) such	Numerator: Number of incidents of non-compliance identified/reported redressed within 12 hrs Denominator: Number of incidents of non-compliance identified/reported.	85%	87.00%	89.00%	91.00%	93.00%	95%	Monthly	Monthly

Service Area (Col 1)		Performance Standard (Col 3)	Measurement Methodology (Col 4)	Minimum Tolerable Level (Col 5)	Performance Bands				Standard Service Level (Col 10)	Reporting Period (Col 12)	Measurement Period (Col 13)
					Interval 1 (Col 6)	Interval 2 (Col 7)	Interval 3 (Col 8)	Interval 4 (Col 9)			
		that all areas continuously meets the requirements of Grade B of the Environmental Protection Act 1990 Code of Practice on Litter and Refuse;									
	34	Ensure litter bins/dog bins are regularly emptied and are clean and fit for purpose	Numerator: Number of incidents of non-compliance identified/reported redressed within 2 hrs (during Office Hours only) Denominator: Number of incidents of non-compliance identified/reported.	85%	87.00%	89.00%	91.00%	93.00%	95%		
	35	Ensure the PFI area is kept free of flyposting such that it continuously	Numerator: Number of incidents of non-compliance identified/reported redressed	75%	79.00%	83.00%	87.00%	91.00%	95%	Monthly	Monthly

Service Area (Col 1)		Performance Standard (Col 3)	Measurement Methodology (Col 4)	Minimum Tolerable Level (Col 5)	Performance Bands				Standard Service Level (Col 10)	Reporting Period (Col 12)	Measurement Period (Col 13)
					Interval 1 (Col 6)	Interval 2 (Col 7)	Interval 3 (Col 8)	Interval 4 (Col 9)			
		meets the requirements of Grade B of BVPI199	within 24 hrs Denominator: Number of incidents of non-compliance identified/reported.								
	36	Keep all grassed areas tidy and regularly trimmed to meet Grounds Maintenance Standards set out in BS7370 part 3:1991 having regard to the use identified in Table 2; <ul style="list-style-type: none"> be substantially free of weeds, moss or extraneous growth in accordance with Table 6; 	Numerator: Number of incidents of non-compliance identified/reported redressed within 3 Business Days Denominator: Number of incidents of non-compliance identified/reported.	75%	79.00%	83.00%	87.00%	91.00%	95%	Monthly	Quarterly

Service Area (Col 1)		Performance Standard (Col 3)	Measurement Methodology (Col 4)	Minimum Tolerable Level (Col 5)	Performance Bands				Standard Service Level (Col 10)	Reporting Period (Col 12)	Measurement Period (Col 13)
					Interval 1 (Col 6)	Interval 2 (Col 7)	Interval 3 (Col 8)	Interval 4 (Col 9)			
		<ul style="list-style-type: none"> be in healthy growth offering substantially complete ground cover in accordance with Table 6; provide free draining; be of reasonable length (as defined by Table 1) and neatly cut to the edge of borders, fence lines, building lines, path edges, hedge bases, tree bases etc; be cut as to avoid 									

Service Area (Col 1)		Performance Standard (Col 3)	Measurement Methodology (Col 4)	Minimum Tolerable Level (Col 5)	Performance Bands				Standard Service Level (Col 10)	Reporting Period (Col 12)	Measurement Period (Col 13)
					Interval 1 (Col 6)	Interval 2 (Col 7)	Interval 3 (Col 8)	Interval 4 (Col 9)			
		<p>arisings on adjoining surfaces.</p> <p>No Deductions will apply where the incident of non-compliance is due to inclement weather and/or planned maintenance such that it would not be in line with Good Industry Practice to carry out such corrective action within the stated rectification period.</p>									
	37	Borders, planted areas, shrubs and trees are maintained in a tidy and healthy condition in accordance	Numerator: Number of incidents of non-compliance identified/reported and redressed within 3 Business Days	75%	79.00%	83.00%	87.00%	91.00%	95%	Monthly	Quarterly

Service Area (Col 1)		Performance Standard (Col 3)	Measurement Methodology (Col 4)	Minimum Tolerable Level (Col 5)	Performance Bands				Standard Service Level (Col 10)	Reporting Period (Col 12)	Measurement Period (Col 13)
					Interval 1 (Col 6)	Interval 2 (Col 7)	Interval 3 (Col 8)	Interval 4 (Col 9)			
		with BS7370 part 4: 1993 and BS: 3998: 1989 to ensure: <ul style="list-style-type: none"> • they are stocked and in healthy growth; • shrubs are kept to acceptable height and form and are pruned to ensure abundance of flowering, desirable growth and shape as applicable; • trees are maintained in accordance with the tree protocol • plants or 	Denominator: Number of incidents of non-compliance identified/reported.								

Service Area (Col 1)		Performance Standard (Col 3)	Measurement Methodology (Col 4)	Minimum Tolerable Level (Col 5)	Performance Bands				Standard Service Level (Col 10)	Reporting Period (Col 12)	Measurement Period (Col 13)
					Interval 1 (Col 6)	Interval 2 (Col 7)	Interval 3 (Col 8)	Interval 4 (Col 9)			
		shrubs do not obstruct pedestrian or vehicular traffic routes. No Deductions will apply where the incident of non-compliance is due to inclement weather and/or planned maintenance such that it would not be in line with Good Industry Practice to carry out such corrective action within the stated rectification period, and provided that any deferred actions are advised to the Authority and subsequently									

Service Area (Col 1)		Performance Standard (Col 3)	Measurement Methodology (Col 4)	Minimum Tolerable Level (Col 5)	Performance Bands				Standard Service Level (Col 10)	Reporting Period (Col 12)	Measurement Period (Col 13)
					Interval 1 (Col 6)	Interval 2 (Col 7)	Interval 3 (Col 8)	Interval 4 (Col 9)			
		executed at the earliest opportunity.									
	38	<p>Non-adopted hard landscaped areas (including pathways, paved areas, gutters, etc.) are maintained in good condition in accordance with BS7370-2:1994 Category B:</p> <ul style="list-style-type: none"> Free of weeds, lichen or any other organic growth as defined by Table 1. Free from trip hazards or unevenness as defined by paragraph 	<p>Numerator: Number of incidents of non-compliance identified/reported and redressed within 3 days</p> <p>Denominator: Number of incidents of non-compliance identified/reported.</p>	75%	79.00%	83.00%	87.00%	91.00%	95%	Monthly	Quarterly

Service Area (Col 1)		Performance Standard (Col 3)	Measurement Methodology (Col 4)	Minimum Tolerable Level (Col 5)	Performance Bands				Standard Service Level (Col 10)	Reporting Period (Col 12)	Measurement Period (Col 13)
					Interval 1 (Col 6)	Interval 2 (Col 7)	Interval 3 (Col 8)	Interval 4 (Col 9)			
		3.5. <ul style="list-style-type: none"> Free from excessive ponding or other defect adversely affecting usage. In the case of gullies, free from blockages Free from stains in accordance with Table 1 									
	39	Water areas shall be maintained in good condition in accordance with BS7370-5:1998 so as to be in healthy condition.	Numerator: Number of incidents of non-compliance identified/reported and redressed within 3 Business Days Denominator: Number of incidents of non-compliance	75%	79.00%	83.00%	87.00%	91.00%	95%	Monthly	Quarterly

Service Area (Col 1)		Performance Standard (Col 3)	Measurement Methodology (Col 4)	Minimum Tolerable Level (Col 5)	Performance Bands				Standard Service Level (Col 10)	Reporting Period (Col 12)	Measurement Period (Col 13)
					Interval 1 (Col 6)	Interval 2 (Col 7)	Interval 3 (Col 8)	Interval 4 (Col 9)			
			identified/reported.								
	40	Street furniture and public art shall be kept in a safe, clean and functional condition: <ul style="list-style-type: none"> Free from damage that impairs usage Clean (including appropriate cleansing of litter bins to prevent odours/bacterial growth) 	Numerator: Number of incidents of non-compliance identified/reported and redressed within 3 Business Days Denominator: Number of incidents of non-compliance identified/reported.	75%	79.00%	83.00%	87.00%	91.00%	95%	Monthly	Quarterly
	41	Children's play equipment shall be modern and kept in a safe, clean and functional condition to BS 1176 parts 1 to	Numerator: Number of incidents of non-compliance identified/reported and redressed within 1	80%	83.40%	86.80%	90.20%	93.60%	97%	Monthly	Quarterly

Service Area (Col 1)		Performance Standard (Col 3)	Measurement Methodology (Col 4)	Minimum Tolerable Level (Col 5)	Performance Bands				Standard Service Level (Col 10)	Reporting Period (Col 12)	Measurement Period (Col 13)
					Interval 1 (Col 6)	Interval 2 (Col 7)	Interval 3 (Col 8)	Interval 4 (Col 9)			
		7 such that it is: <ul style="list-style-type: none"> Free from damage that impairs usage Clean Modern, where modern is less than 20 years of age, and maintained in a playable condition; 	Business Day (making safe within 1 day) Denominator: Number of incidents of non-compliance identified/reported.								
	42	Regularly clean all common areas to blocks on the Project Site to required standards as per Contractor's Proposals. NOTE: "thorough cleans" to be carried out	Numerator: Number of thorough cleans undertaken to the required standard in period Denominator: Number of thorough cleans scheduled for	85%	87.60%	90.20%	92.80%	95.40%	98%	Monthly	Quarterly

Service Area (Col 1)		Performance Standard (Col 3)	Measurement Methodology (Col 4)	Minimum Tolerable Level (Col 5)	Performance Bands				Standard Service Level (Col 10)	Reporting Period (Col 12)	Measurement Period (Col 13)
					Interval 1 (Col 6)	Interval 2 (Col 7)	Interval 3 (Col 8)	Interval 4 (Col 9)			
		weekly.	the period								
	43	Regularly clean all Common Areas to Blocks on the PFI Project Site to required standards as per the Contractor's Proposals. NOTE: "routine cleans" will be carried out daily.	Numerator: Number of routine cleans undertaken to the required standard in period Denominator: Number of routine cleans scheduled for the period	85%	87.60%	90.20%	92.80%	95.40%	98%	Monthly	Monthly
	44	Provide efficient support to the Authority in managing abandoned vehicles	Numerator: Responses made by Contractor to potentially abandoned vehicles within 5 Business Days Denominator: Number of actual or potential abandoned cars in the period.	80%	83.60%	87.20%	90.80%	94.40%	98%	Monthly	Annually

Service Area (Col 1)		Performance Standard (Col 3)	Measurement Methodology (Col 4)	Minimum Tolerable Level (Col 5)	Performance Bands				Standard Service Level (Col 10)	Reporting Period (Col 12)	Measurement Period (Col 13)
					Interval 1 (Col 6)	Interval 2 (Col 7)	Interval 3 (Col 8)	Interval 4 (Col 9)			
	45		Numerator: Number of vehicles removed by Contractor within 24 hrs of the expiration of the statutory notification period Denominator: Number of actual abandoned cars in the period.	70%	74.00%	78.00%	82.00%	86.00%	90%	Monthly	Annually
	46		Numerator: Number of notifications to the Authority made by Contractor within 5 Business Days of potential abandoned cars located on adopted highways. Denominator: Number of	90%	91.80%	93.60%	95.40%	97.20%	99%	Monthly	Annually

Service Area (Col 1)		Performance Standard (Col 3)	Measurement Methodology (Col 4)	Minimum Tolerable Level (Col 5)	Performance Bands				Standard Service Level (Col 10)	Reporting Period (Col 12)	Measurement Period (Col 13)
					Interval 1 (Col 6)	Interval 2 (Col 7)	Interval 3 (Col 8)	Interval 4 (Col 9)			
			actual and/or potential abandoned cars in the period located on adopted highways.								
Provision of Information	47	Timely and accurate provision of the information required by the Authority to monitor the TEMS and meet its statutory return obligations.	Numerator: Number of reports falling due that are accurate and timely provided within the timescales Denominator: Number of reports falling due	75%	79.00%	83.00%	87.00%	91.00%	95%	Monthly	Monthly
	48		Numerator: Provision of any reasonably required individual piece of information requested by the Authority within 10 Business Days. Denominator: Total requests	70%	74.00%	78.00%	82.00%	86.00%	90%	Monthly	Monthly

Service Area (Col 1)		Performance Standard (Col 3)	Measurement Methodology (Col 4)	Minimum Tolerable Level (Col 5)	Performance Bands				Standard Service Level (Col 10)	Reporting Period (Col 12)	Measurement Period (Col 13)
					Interval 1 (Col 6)	Interval 2 (Col 7)	Interval 3 (Col 8)	Interval 4 (Col 9)			
			for reasonably required information made								
	49	Provide a quotation for additional works reasonably requested by the Authority (including those works where a Dwelling is considered to have a Category 2 failure under HHSRS) within 20 Business Days of receipt.	Numerator: Number of quotations provided within 20 Business Days. Denominator: Total requests made	75%	79.00%	83.00%	87.00%	91.00%	95%	Monthly	Quarterly
	50	Not used									
Leaseholder Services	51	Provide and maintain a leaseholder handbook, ensuring all leaseholders have a copy of such		90%	91.60%	93.20%	94.80%	96.40%	98%	Monthly	Annually

Service Area (Col 1)		Performance Standard (Col 3)	Measurement Methodology (Col 4)	Minimum Tolerable Level (Col 5)	Performance Bands				Standard Service Level (Col 10)	Reporting Period (Col 12)	Measurement Period (Col 13)
					Interval 1 (Col 6)	Interval 2 (Col 7)	Interval 3 (Col 8)	Interval 4 (Col 9)			
Community Centre Management	52	Ensure effective utilisation of the Community Centre	Numerator: Total number of hours used divided in period by total number of required hours available in period (as per 6.3). Denominator: Total number of hours available for events.	50%	55.00%	60.00%	65.00%	70.00%	75%	Monthly	Quarterly
	53	Provide a high level of community centre user satisfaction. By means of user satisfaction surveys (format to be agreed) to be carried out by the Contractor quarterly and responded to by at least 50	Numerator: Number of satisfied users. Denominator: Total number of satisfied users responding to each satisfaction survey	65%	69.00%	73.00%	77.00%	81.00%	85%	Quarterly	Quarterly

Service Area (Col 1)		Performance Standard (Col 3)	Measurement Methodology (Col 4)	Minimum Tolerable Level (Col 5)	Performance Bands				Standard Service Level (Col 10)	Reporting Period (Col 12)	Measurement Period (Col 13)
					Interval 1 (Col 6)	Interval 2 (Col 7)	Interval 3 (Col 8)	Interval 4 (Col 9)			
		users.									

Rent Collection and Arrears Indicator

Service Area		Performance Standard	Measurement Methodology	Minimum Tolerable Level	Standard Service Level	Reporting Period	Measurement Period
Rent Collection and Arrears	54	<p>Reduce the Starting Arrears at Service Commencement Date to the Target Arrears by the end of the Arrears Reduction Period.</p> <p>From the Contract Year commencing immediately after the Arrears Reduction Period keep the balance of Rent Arrears at the Target Arrears (i.e. Rent Collection rate = 100%).</p>	<p>Quarterly Rent Collection Adjustment</p> <p>At the end of each Measurement Period:</p> <p>1) Contract Years within the Arrears Reduction Period:</p> <p>For the first three Quarters of each Contract Year, there will be a Quarterly Rent Collection Adjustment calculated as follows:</p> <p>Quarterly Rent Collection Adjustment = (Arrears Reduction in Quarter – Quarterly Arrears Reduction Target) x F</p> <p>Where:</p> <p>Quarterly Arrears Reduction Target = Annual Arrears Reduction Target / 4</p> <p>Arrears Reduction = balance of Rent Arrears at beginning of Measurement Period – balance of Rent Arrears at end of Measurement Period.</p> <p>F = a factor which shall:</p> <p>where the Arrears Reduction is greater than the Quarterly Arrears Reduction Target, be 0.5</p>	Starting Arrears at Service Commencement Date + £10,000	<p>Annual Arrears Reduction Target during Contract Years within the Arrears Reduction Period</p> <p>£90,000 after the end of the Arrears Reduction Period.</p>	Monthly	Quarterly

Service Area		Performance Standard	Measurement Methodology	Minimum Tolerable Level	Standard Service Level	Reporting Period	Measurement Period
			<p>in all other circumstances, be 1.0</p> <p>Annual Rent Collection Adjustment</p> <p>At the end of each Contract Year except the last Contract Year within the Arrears Reduction Period, the Annual Rent Collection Adjustment shall be calculated as follows:</p> <p>Annual Rent Collection Adjustment = (Arrears Reduction in that Contract Year – Annual Arrears Reduction Target) x F – Sum of the Quarterly Rent Collection Adjustment for the previous three Quarters</p> <p>Where:</p> <p>F = a factor which shall:</p> <p>where the Arrears Reduction is greater than the Annual Arrears Reduction Target, be 0.5</p> <p>in all other circumstances, be 1.0</p> <p>At the end of the last Contract Year within the Arrears Reduction Period, the Annual Rent Collection Adjustment shall be calculated as follows:</p> <p>Annual Rent Collection Adjustment in the that Contract Year = (Total Arrears Reduction in the Arrears Reduction Period – Total Arrears Reduction Target) x F – Sum of the Quarterly Rent Collection Adjustments and the Annual Rent Collection Adjustments for Contract Years within the Arrears Reduction Period</p> <p>Where:</p> <p>F = a factor which shall:</p>				

Service Area		Performance Standard	Measurement Methodology	Minimum Tolerable Level	Standard Service Level	Reporting Period	Measurement Period
			<p>where the Total Arrears Reduction in the Arrears Reduction Period is greater than the Total Arrears Reduction Target, be 0.5</p> <p>in all other circumstances, be 1.0</p> <p>2) Contract Years commencing after the Arrears Reduction Period:</p> <p>Quarterly Rent Collection Adjustment = Arrears Reduction x F</p> <p>F = a factor which shall:</p> <p>where the Arrears Reduction is greater than or equal to 0, be 0.5</p> <p>in all other circumstances, be 1.0</p>				

ANNEX IV: Void Relet Standard

Ref	Void Relet Standard	Std Met Y/N
1	Inspection for compliance with Full Availability Standard in Annex II (Availability Standards) of this Output Specification completed and shortcomings rectified.	
2	All rubbish cleared from the Dwelling (including external areas within curtilage, sheds, Garages, etc.) and disposed of.	
3	Full clean completed to Dwelling, including sanitary ware, kitchen facilities and all floor surfaces and coverings.	
4	Gas inspection completed, passed and Landlords Gas Safety Certificate issued.	
5	Electrical inspection completed and passed	
6	External door locks changed and two sets of keys provided. Two key fobs provided to Tenants of flats with communal entrances.	
7	Redecoration vouchers issued in accordance with LB Lambeth Policy.	

ANNEX V: Community Centre & Park Zones

	Community Centre Zone
CC/01	Main Hall
CC/02	Kitchen
CC/03	Community Room
CC/04	Youth Room
CC/05	Store
CC/06a	WC areas (male)
CC/06b	WC areas (female)
CC/07	Reception
CC/08	External Storage
CC/09	Housing Management Office
CC/10	Café & Waiting Area
CC/11	Male WCs and Changing Rooms (including access corridor)
CC/12	Female WCs & Changing Rooms (including access corridor)
CC/13	Office
CC/14	Office
CC/15	Bin Store
CC/16	M&E Plant Room

Payment Mechanism Weightings – Community Centre

For the purposes of the payment mechanism, the above Zones are grouped for measurement purposes as set out below. In each instance, a failure in one or more of the Zones within a group will result in a deduction being made as per the group weighting.

CC/01	25%
CC/02	15%
CC/03 and CC/04	18%
CC/05 and CC/15	2%
CC/06a and CC/11	10%
CC/06b and CC/12	10%
CC/07 and CC/10	20%

	Park Zone
PK/001	Multi Use Games Area
PK/002	Children's Playground (Toddlers)
PK/003	Children's Playground (Juniors)
PK/004	Cycleways/Pathways/Hard Landscaping
PK/005	Adventure Playground
PK/006	Melbourne Square
PK/007	Soft Landscaping and Meadow
PK/008	Community Gardens
PK/009	Sensory Garden
PK/010	7-A-Side Football Pitch
PK/011	7-A-Side Football Pitch

Payment Mechanism Weightings – Park and Public Realm

For the purposes of the payment mechanism, the above Zones are grouped for measurement purposes as set out below. In each instance, a failure in one or more of the Zones within a group will result in a deduction being made as per the group weighting.

PK/01	25%
PK/02	15%
PK/03	15%
PK/04, PK/06, PK/08 and PK/09	15%
PK/05	15%
PK/07	5%
PK/10 and PK/11	10%

ANNEX VI: Schedule of Sockets

The table below sets out the minimum number of double sockets that must be provided in each room for all Dwellings at the Full Standard.

Room	Number of Double Sockets	Other
Hallway	1	
Landing	1 (single socket)	
Lounge	4	
Dining Room	2	
Kitchen	4 (excluding sockets required for white goods – washing machine, fridge/freezer)	Cooker Point
Double Bedroom(s)	4	
Single Bedroom(s)	3	
Bathroom	0	Electric Shaver point

ANNEX VII: Adaptations Protocol

Generally

The Contractor will make all reasonable efforts to try and let adapted Dwellings to tenants with appropriate needs, rather than adapt further Dwellings.

Adaptations

During the Services Period, the following process will be applied in respect of the adaptation of properties.

- The Tenant (or another party on their behalf, for example their GP) will notify either the Contractor or the Authority that, in their opinion, an adaptation may be necessary to the Dwelling.
- Where such notification is made to the Contractor, this will be communicated on to the Authority within 3 Business Days.
- Requests will be passed to LB Lambeth's Social Services' Occupational Therapist Team (who may also be notified direct by the tenant in some cases). The Occupational Therapist will assess the request and make a recommendation which will then be passed back to the Authority.
- The Authority, accounting for this recommendation, will determine whether adaptations should be carried out, and notify this decision to both the Tenant and the Contractor.
- Where an adaptation is required, the Authority will provide the Contractor with the referral provided by the Occupational Therapist, which will form the scope of Works.
- The Contractor will provide to the Authority, using open book procedures, provide an estimate to complete the works within 10 Business Days of receipt of the referral notice. Where possible, the Contractor will use stored adaptation equipment (see below) rather than source new.
- The Authority will either confirm acceptance or raise any queries on the estimate within 10 Business Days of receipt. Where queries are raised, the Parties will agree a procedure to resolve them within the shortest reasonable timescales.
- The Contractor will contact the Tenant and arrange for, and subsequently complete the works. Upon completion, the Contractor will update tenancy and Dwelling records as appropriate.

De-Adaptations

In the event that a Dwelling is let to residents without any adaptation needs, the Contractor is to remove all adaptations from the Dwelling, with the exception of:

- Permanent ramps to external doors.
- Raised sockets or lowered light switches.
- Fitted lifts
- Fitted showers

Where adaptations are identified as re-useable, the Contractor will place them into appropriate storage, developing and subsequently maintaining an inventory of adaptations for future re-use.

The cost of de-adapting a Dwelling will be borne by the Contractor.

ANNEX VIII: Provision Of Information

The following information to be supplied to the Authority within 21 calendar days of date of request unless otherwise specified.

(R) = Residual information – only required as long as the Blocks remain. This information requirement will fall away once all of these have been demolished.

BVPI & LPI INFORMATION

	PI	Description	Contract KPI	Reporting frequency		2011/12 Target
Helpdesk	HMPI 30	Average time taken for inbound calls	Yes	Monthly		
	HMPI 50	Average time to respond to initial complaint	Yes	Monthly		
	Stage 1	Percentage of stage 1 complaints responded to within target time	Yes	Monthly		
	Stage 2	Percentage of stage 2 complaints responded to within target time	Yes	Monthly		

	PI	Description	Contract KPI	Reporting frequency		2011/12 Target
Customer Profiling	HMPI 60a	% of tenants on whom the landlord has diversity information : Age	Yes	2 Years		
	HMPI 60b	% of tenants on whom the landlord has diversity information : Gender	Yes	2 Years		
	HMPI 60c	% of tenants on whom the landlord has diversity information : Ethnicity	Yes	2 Years		
	HMPI 60d	% of tenants on whom the landlord has diversity information : Disability	Yes	2 Years		
	HMPI 60e	% of tenants on whom the landlord has diversity information : Sexuality	Yes	2 Years		
	HMPI 60f	% of tenants on whom the landlord has diversity information : Religion or belief	Yes	2 Years		

	PI	Description	Contract KPI	Reporting frequency		2011/12 Target
Repairs and Maintenance	HMPI 70	% of repairs completed within target	Yes	Monthly		
	GNPI 18	% emergency repairs completed on time	Yes	Monthly		
	GNPI 19	% urgent repairs completed on time	Yes	Monthly		
	BV 73	Average time taken to complete non-urgent repairs	Yes	Monthly		
	GNPI 20	% routine repairs completed on time	Yes	Monthly		
	BV 185	% of response repairs where an appointment was made and kept	Yes	Monthly		
	HMPI 90	Average End to End Repairs Time	No	Monthly		Report only
	HMPI 100	% of repairs completed right first time	No	From completion of works only		95%
	HMPI 120	% of Gas Safety Certificates outstanding at end of period	Yes	Monthly		NOTE: this will be reportable only until the end of the Construction Phase

	PI	Description	Contract KPI	Reporting frequency		2011/12 Target
Property Management	HMPI 160	Number of new ASB cases per 1000 properties	No	Monthly		Report only
	HMPI 190	% of closed ASB cases that have been resolved	No	Monthly		Report only

	PI	Description	Contract KPI	Reporting frequency		2011/12 Target
Property Management	BV212	Average relet times (cal. days)	Yes	Monthly		
		Number of Voids	No	Monthly		Report only

	PI	Description	Contract KPI	Reporting frequency		2011/12 Target
Income collection	HMPI 210	Proportion of rent collected (excluding rent arrears) - in-year (DHS16)	Yes	Monthly		
	BV66a	% of Collectable rent, collected	Yes	Monthly		
	BV66b	% Tenants with >7 weeks arrears	No	Monthly		
	BV66c	% Tenants in arrears served with a NOSP for arrears	No	Monthly		
	[BV66d]	% Tenants evicted for rent arrears	No	Monthly		

	PI	Description	Contract KPI	Reporting frequency		2011/12 Target
Satisfaction	NI 160	% Satisfaction of tenants with landlord services	Yes	2-Years		
	BV74b	% Satisfaction of ethnic minority tenants with landlord services	No	2-Years		Report only
	BV74c	% Satisfaction of non-ethnic minority tenants with landlord services	No	2-Years		Report only
	HMPI 80	% Satisfaction of tenants with the repairs and maintenance service	Yes	2-Years		
	HMPI 150	% of tenants satisfied with the major repair and improvement of their home	No	2-Years		Report for full refurb homes only
	HMPI 200	% of tenants satisfied with estate services	Yes	2-Years		
	HMPI 340	% of tenants satisfied that their views are taken into account	Yes	2-Years		
	HMPI 170	% of tenants satisfied with the landlord's handling of ASB cases	No	2-Years		Report only
	HMPI 180	% of tenants satisfied with the outcome of their ASB case	No	2-Years		Report only
	HMPI 230	% of new tenants satisfied with the allocation and letting process	No	Monthly		Report only
	HMPI 270	% of leaseholders satisfied with the service provided by their landlord	No	2-Years		Report only
	HMPI 280	% of ethnic minority leaseholders satisfied with the service provided by their landlord	No	2-Years		Report only
	HMPI 290	% of non-ethnic minority leaseholders satisfied with the service provided by their landlord	No	2-Years		Report only
	HMPI 300	Satisfaction of leaseholders with the communal repairs and maintenance service	No	2-Years		Report only

Please note that the financial information for the HIP returns require accrual figures. The returns for housing capital expenditure and receipts require cash figures. This means that

we require two sets of figures in some circumstances in order to complete both returns.
Any monetary amount where the type of figure is not indicated should be an accrual.

ANNEX IX: Action Plan Protocol

The Authority will require an Action Plan to be developed by the Contractor in the following instances:

- Any Step-In event occurs in respect of the Works or Services;
- Performance levels on any individual TEMS measure fall below the Minimum Tolerable Level for either of 2 consecutive calendar months or 3 individual months in any 6 month period; and/or
- Any individual complaint reaches the Stage 3 level, whereby it is passed to the Authority for action.

Within the Action Plan, the Contractor is expected to (as a minimum):

- Identify the causes of failure, and provide a clear plan of action to remedy such faults to prevent future reoccurrence.
- Propose monitoring and reporting measures to assess the effectiveness of any remedial action taken.
- Provide a clear timescale for the implementation of such remedial measures and the period of monitoring.

A draft Action Plan is to be presented by the Contractor to the Authority for comment and approval within 10 Business Days of any of the above measures being triggered. Where the Authority has comments, these should be made within 15 Business Days of receipt of the draft – failure to do so will deem approval of the Action Plan. The Authority may also approve the Action Plan.

Where comments are made by the Authority, within a further period of 5 Business Days these should be considered by the Contractor, who should then amend the draft Action Plan accordingly and re-present it to the Authority who should respond as above. In the event that this process continues for 3 cycles without agreement, then the matter will be passed to the Chief Executive of the Authority and the General Manager of the Contractor for resolution.

The Authority cannot unreasonably withhold approval of the Action Plan. Any approval by the Authority does not remove any liability from the Contractor in meeting its obligations under the Project.

Once approved, the Action Plan is to be implemented, managed and monitored in accordance with its agreed content. Where subsequent amendments are required to the Action Plan, these should be presented to the Authority for its comment and approval under the same process as outlined above.

ANNEX X: Community Centre Data Sheets

The total internal useable area of the Community Centre excluding the Energy Centre provision and excluding circulation, will be approximately as below.

Data Sheet Reference	Space Name	Area
CC/01	Main Hall	173m2
CC/02	Kitchen	37m2
CC/03	Community Room	36.5m2
CC/04	Youth Room	12m2
CC/05	Store	24m2
CC/06	WC	TBA
CC/07	Reception	18.6m2
CC/08	External Storage	32m2
CC/09	Housing Management Office	111m2
CC/10	Café & Waiting Area	93m2
CC/11	Male Toilets and Changing Rooms	36m2
CC/12	Female Toilets & Changing Rooms	36m2
CC/13	Office	12m2
CC/14	Office	12m2
CC/15	Bin Store	11m2
CC/16	M&E Plant Room	24.5m2

Space Name	Main Hall
Data Sheet Reference	CC/001
Primary Uses	Large scale community meetings Community events Playgroups Youth club
Potential Occupancy	
Adjacency Requirements	
Heating Requirements	Minimum temperature of 19°C when in use
Ventilation Requirements	Mechanical ventilation
Power Requirements	At least 8 nr RDA protected power sockets
Lighting Requirements	350 Lux
Other Requirements	TV aerial point (licence to be maintained by the Contractor) At least 8 nr IT CAT 5 Data points cabled back to agreed location
Floor finishes	Sprung timber flooring
Wall finishes	Plaster/eggshell paint or similar
Ceiling finishes	Plaster/paint or similar
Furniture	10 nr folding table 20 nr children's' stackable chairs 20 nr adult stackable chairs
Other Fixtures/Fittings	5 nr large notice boards

Space Name	Kitchen
Data Sheet Reference	CC/002
Primary Uses	Small scale catering
Potential Occupancy	
Adjacency Requirements	Café & Waiting Area
Heating Requirements	Minimum temperature of 19°C when in use
Ventilation Requirements	Mechanical extract 8 changes/hour
Power Requirements	At least 4 nr RDA protected power sockets and 2 nr cleaners' sockets
Lighting Requirements	500 lux
Other Requirements	Fitted kitchen cupboards for storage. Cooker Fridge Sink and large drainer
Floor finishes	Heavy duty non-slip vinyl sheet
Wall finishes	Plaster/paint, tiled splashbacks above worktops and sinks
Ceiling finishes	Plaster/paint
Furniture	Not supplied
Other Fixtures/Fittings	Wall mounted, plumbed in water boiler

Space Name	Community Room
Data Sheet Reference	CC/003
Primary Uses	Community meetings
Potential Occupancy	
Adjacency Requirements	Youth Room, Main Hall, Reception
Heating Requirements	Minimum temperature of 19 °C when in use
Ventilation Requirements	Natural ventilation
Power Requirements	At least 4 nr RDA protected power sockets and cleaners' sockets
Lighting Requirements	300 lux
Other Requirements	At least 4 nr IT CAT 5 Data points cabled back to agreed location
Floor finishes	Carpet tiles
Wall finishes	Plaster/eggshell paint or similar
Ceiling finishes	Plaster/paint or similar
Furniture	Large Meeting table with min 14 chairs
Other Fixtures/Fittings	2 nr large notice Boards

Space Name	Youth Room
Data Sheet Reference	CC/004
Primary Uses	
Potential Occupancy	
Adjacency Requirements	
Heating Requirements	Minimum temperature of 18 °C when in use
Ventilation Requirements	Natural ventilation
Power Requirements	At least 4 nr RDA protected power sockets and cleaners sockets
Lighting Requirements	to LG7 requirements 350 lux
Other Requirements	At least 4 nr IT CAT 5 Data points cabled back to agreed location
Floor finishes	Carpet tiles
Wall finishes	Plaster/eggshell paint or similar
Ceiling finishes	Plaster/paint or similar
Furniture	To be provided by Community Organisation
Other Fixtures/Fittings	1 medium notice board

Space Name	Store
Data Sheet Reference	CC/005
Primary Uses	Secure store for Community Centre equipment
Potential Occupancy	
Adjacency Requirements	Next to Main Hall
Heating Requirements	Minimum temperature of 18 °C when in use
Ventilation Requirements	Natural ventilation
Power Requirements	Cleaners' sockets
Lighting Requirements	150 lux
Other Requirements	
Floor finishes	Non-slip sheet vinyl
Wall finishes	Blockwork
Ceiling finishes	Plaster/paint or similar
Furniture	
Other Fixtures/Fittings	

Space Name	WC
Data Sheet Reference	CC/006a (Male) and CC/006b (Female)
Primary Uses	Male/Female/Disabled access WC facilities
Potential Occupancy	
Adjacency Requirements	Community room/ Hall
Heating Requirements	Minimum temperature of 19°C when in use
Ventilation Requirements	Mechanical extract 8 changes/hour
Power Requirements	Mains wired hand dryers
Lighting Requirements	150 lux
Other Requirements	Suitable sanitary ware, hand dryers, cubicles, etc.
Floor finishes	Suitable non-slip to WC environment
Wall finishes	Plaster/eggshell paint, tiling
Ceiling finishes	Plaster/paint
Furniture	
Other Fixtures/Fittings	Mirror above each washbasin

Space Name	Reception
Data Sheet Reference	CC/007
Primary Uses	Waiting area and information point
Potential Occupancy	
Adjacency Requirements	Lobby & Café/Waiting Area
Heating Requirements	Minimum temperature of 19°C when in use
Ventilation Requirements	Natural Ventilation
Power Requirements	Cleaners' sockets
Lighting Requirements	100 lux
Other Requirements	cctv
Floor finishes	Non-slip vinyl tiles
Wall finishes	Plaster/eggshell paint or similar, low level vinyl wall protection
Ceiling finishes	Plaster/paint or similar
Furniture	Reception Desk
Other Fixtures/Fittings	Leaflet stand Minimum 2 nr large notice boards

Space Name	External Storage
Data Sheet Reference	CC/008
Primary Uses	Storage, Building Services Equipment
Potential Occupancy	
Adjacency Requirements	External access for maintenance
Heating Requirements	
Ventilation Requirements	Mechanical ventilation
Power Requirements	4 double sockets
Lighting Requirements	350 lux
Other Requirements	Separation of technical equipment from storage area which is lockable
Floor finishes	Power Floated concrete with water proof sealant. Bunding to areas with "wet" plant
Wall finishes	Fair faced concrete/blockwork with waterproof sealant
Ceiling finishes	Fair faced concrete with water proof sealant
Furniture	
Other Fixtures/Fittings	

Space Name	Housing Management Office
Data Sheet Reference	CC/009
Primary Uses	The Contractor's Neighbourhood Management Office, including Reception , Interview Rooms and internal working space for Pinnacle and Rydon (repairs & maintenance services) and breakout area for refreshments, storage of files
Potential Occupancy	17 people plus interview rooms (CC/13 and CC/14)
Adjacency Requirements	Toilets
Interview rooms	
Back office can be on separate floor	
Heating Requirements	Minimum temperature of 19oC when in use
Ventilation Requirements	Natural ventilation
Power Requirements	16 double sockets, plus 2 Cleaners sockets
Lighting Requirements	To LG7 Requirements 350 lux
Other Requirements	Telephone and IT Data points
Floor finishes	Carpet tiles
Wall finishes	Plaster/ Eggshell Paint
Ceiling finishes	Plaster/Paint
Furniture	N/A
Other Fixtures/Fittings	

Space Name	Café and Waiting Area
Data Sheet Reference	CC/010
Primary Uses	Central meeting point for the community, refreshments, waiting for appointments
Potential Occupancy	
Adjacency Requirements	Kitchen
Access to outdoor terrace	Yes
Heating Requirements	Minimum temperature of 19oC when in use
Ventilation Requirements	Mechanical ventilation
Power Requirements	Cleaners sockets
Lighting Requirements	200 lux
Other Requirements	External access to terrace, cctv, telephone points
Floor finishes	Non-slip vinyl tiles
Wall finishes	Plaster/Eggshell Paint/low level vinyl wall protection
Ceiling finishes	Plaster/ Paint
Furniture	To be provided by Cafe tenant
Other Fixtures/Fittings	

Space Name	Male Toilets and Changing Rooms
Data Sheet Reference	CC/011
Primary Uses	Male/Disabled access sports changing facilities
Potential Occupancy	
Adjacency Requirements	
WC	Appropriate toilet and hand basin facilities
External access	
Heating Requirements	Minimum temperature of 19oC when in use
Ventilation Requirements	Mechanical ventilation
Power Requirements	Cleaners sockets
Lighting Requirements	200 lux
Other Requirements	Suitable shower cubicles, showers, hairdryers, etc.
Floor finishes	Suitable non-slip to WC environment
Wall finishes	Plaster/waterproof paint, ceramic tiling
Ceiling finishes	Plaster/waterproof paint
Furniture	Fixed changing benches, Lockable Lockers
Other Fixtures/Fittings	Mirrors

Space Name	Female Toilets and Changing Rooms
Data Sheet Reference	CC/012
Primary Uses	Female/Disabled access sports changing facilities
Potential Occupancy	
Adjacency Requirements	
WC	Appropriate toilet and hand basin facilities
External access	

Heating Requirements	Minimum temperature of 19oC when in use
Ventilation Requirements	Mechanical ventilation
Power Requirements	Cleaners sockets
Lighting Requirements	200 lux
Other Requirements	Suitable shower cubicles, showers, hairdryers, etc.
Floor finishes	Suitable non-slip to WC environment
Wall finishes	Plaster/waterproof paint, ceramic tiling
Ceiling finishes	Plaster/waterproof paint
Furniture	Fixed changing benches, Lockable Lockers
Other Fixtures/Fittings	Mirrors

Space Name	Office
Data Sheet Reference	CC/013
Primary Uses	For use as an additional office space and as an interview room.
Potential Occupancy	4
Adjacency Requirements	
Heating Requirements	Minimum temperature of 18 °C when in use
Ventilation Requirements	Natural ventilation
Power Requirements	At least 4 nr RDA protected power sockets and cleaners sockets
Lighting Requirements	to LG7 requirements 350 lux
Other Requirements	At least 4 nr IT CAT 5 Data points cabled back to agreed location
Floor finishes	Carpet tiles
Wall finishes	Plaster/eggshell paint or similar
Ceiling finishes	Plaster/paint or similar
Furniture	N/A
Other Fixtures/Fittings	

Space Name	Office
Data Sheet Reference	CC/014
Primary Uses	For use as an additional office space and as an interview room.
Potential Occupancy	8
Adjacency Requirements	
Heating Requirements	Minimum temperature of 18 °C when in use
Ventilation Requirements	Natural ventilation
Power Requirements	At least 6 nr RDA protected power sockets and cleaners sockets
Lighting Requirements	to LG7 requirements 350 lux
Other Requirements	At least 6 nr IT CAT 5 Data points cabled back to agreed location
Floor finishes	Carpet tiles
Wall finishes	Plaster/eggshell paint or similar
Ceiling finishes	Plaster/paint or similar
Furniture	N/A
Other Fixtures/Fittings	

Space Name	Bin Store
Data Sheet Reference	CC/015
Primary Uses	Storage of bins
Potential Occupancy	
Adjacency Requirements	External access
Heating Requirements	
Ventilation Requirements	Mechanical ventilation
Power Requirements	
Lighting Requirements	150 Lux
Other Requirements	
Floor finishes	Power Floated concrete with water proof sealant.
Wall finishes	Fair faced concrete/blockwork with waterproof sealant
Ceiling finishes	Fair faced concrete with water proof sealant
Furniture	
Other Fixtures/Fittings	

ANNEX XI : Park Data Sheets

The following data sheets set out the new park facilities and associated services that will be provided by the Myatts Field North PFI project.

All zones are identified within drawing no AA117/2.1/L0001.

Zone Name	MUGA
Zone Sheet Reference	PK/001
Primary Uses	Football, Ball Games
Size	Approximately 40m x 25 (Overall)
Equipment/Assets	Football goalposts (one set of 2 goals) Netball hoops (one set) Tennis Net and Posts
Other Requirements	Visible pitch markings for Football and Netball and Tennis Suitable height mesh railings (3m) General wayfinding lighting allowing safe and secure use Functional drainage system Maintained to BS7370, BS5370-3, BS3882 as appropriate Sport England Design Requirement for Multi Use Game Areas (MUGA)

Zone Name	Children's Play Area
Zone Sheet Reference	PK/002
Primary Uses	Play for toddlers up to 5 years
Size	Approximately 30m2
Equipment/Assets	<p>Suitable play equipment as required under Planning Condition 19</p> <p>Diverse surface textures/colours and attractive surface robust enough to allow substantial use</p> <p>Lighting to allow safe and secure use</p> <p>Litter bins</p> <p>Benches (all FFE must be present and in safe and functional condition)</p> <p>Signage</p> <p>Functional drainage system</p>
Other Requirements	<p>Maintained to relevant BS Standards</p> <p>1.2m high railings with lockable, child secure gate</p> <p>Wayfinding lighting</p> <p>Annual RoSPA inspection and report (with any required remedial works addressed within 21 days from date of report)</p>

Zone Name	Children's Play Area
Zone Sheet Reference	PK/003
Primary Uses	Play for children ages 5 to 12
Size	Approximately 40m2
Equipment/Assets	<p>Suitable play equipment as required under Planning Condition 19</p> <p>Litter bins</p> <p>Benches (all FFE must be present and in safe and functional condition)</p> <p>Signage</p>
Other Requirements	<p>Maintained to relevant BS Standards</p> <p>1.2m high railings to perimeter, with lockable gate</p> <p>Wayfinding Lighting allowing safe and secure use</p> <p>Functional drainage system</p> <p>Annual RoSPA inspection and report (with any remedial works addressed within 21 days from date of report)</p>

Zone Name	Pathways/Cycleways
Zone Sheet Reference	PK/004
Primary Uses	Passage for pedestrians and cyclists through park
Size	Pathways minimum 1.8m wide. Pathway combined with cycleway minimum 3.0m wide.
Equipment/Assets	Litter Bins
	Lighting to allow safe and secure use
	Cycle visitor stands
	Signage
	Visible path markings
	Functional drainage system
Other Requirements	Maintained to relevant BS Standards (as per Annex III PI 38)
	FFE as indicated within planning application drawings for soft landscaping areas

Zone Name	Adventure Playground
Zone Sheet Reference	PK/005
Primary Uses	Play for children ages 12 to 16
Size	Approximately 60m2
Equipment/Assets	Suitable Play Equipment as required under Planning Condition 19
	Litter Bins
	Benches (all FFE must be present and in safe and functional condition)
	Wayfinding signage
Other Requirements	1.2m high railings with lockable gate
	Wayfinding lighting allowing safe and secure use
	Functional drainage system
	Maintained to relevant BS Standards (as per Annex III PIs 36, 37 and 39)

Zone Name	Soft Landscaping
Zone Sheet Reference	PK/007
Primary Uses	Leisure activities
Size	N/A
Equipment/Assets	Litter bins
	Benches (all FFE must be present and in safe and functional condition) in accordance with planning.
	Wayfinding Signage
	Planted areas
	Trees
	In accordance with planning consent and relevant drawings.
Other Requirements	Lighting allowing safe and secure use
	Functional drainage system
	Maintained to relevant BS Standards (as per Annex III PIs 36, 37 and 39)

Zone Name	Community Gardens
Zone Sheet Reference	PK/008
Primary Uses	Horticulture
Size	Approximately 125m2
Equipment/Assets	Composting facility
Other Requirements	2.0m high security fence (rabbit proof) with lockable access
	Maintained to relevant BS Standards (as per Annex III Pls 36, 37 and 39)

Zone Name	Linear Sensory Garden
Zone Sheet Reference	PK/009
Primary Uses	Leisure/Sensory stimulation
Size	Approx 75m2
Equipment/Assets	Litter bins
	Benches
	Relevant signage
Other Requirements	To be designed in accordance with Sensory Trust Guidance
	Maintained to relevant BS Standards (as per Annex III PIs 36, 37 and 39)

Zone Name	7-A-Side Football Pitch
Zone Sheet Reference	PK/010
Primary Uses	Football
Size	30x50m with 2m runoff
Equipment/Assets	Pitch Markings
Other Requirements	Visible pitch markings for football

Zone Name	7-A-Side Football Pitch
Zone Sheet Reference	PK/011
Primary Uses	Football
Size	30x50m with 2m runoff
Equipment/Assets	Pitch Markings
Other Requirements	Visible pitch markings for football

ANNEX XII: Tree Maintenance Protocol

Establishing the Baseline Position

- A. The Contractor shall procure that the Arboriculturalist undertakes an initial tree survey within 12 weeks of the Service Commencement Date (the "Initial Trees Survey"). The Trees Survey shall include the following:
- The identification of every tree located within the curtilage or boundary of each of the Dwellings, Blocks, Communal Area or Exterior Common Area; the location of each tree will be plotted using the Geographic Information System and mapped; each tree shall be identified as a Contractor responsibility (on behalf of the Authority) or Leaseholder responsibility.

The following details of each tree shall be recorded:

- (i) its species in Latin and English;
- (ii) its approximate height;
- (iii) other relevant information regarding the nature of the tree;
- (iv) the approximate distance between the tree and neighbouring structures;
- (v) other relevant information regarding the relationship of the tree to neighbouring structures, including walls and fences. The recommended works for each tree shall be identified and classified as follows:
 - 1. Emergency works (trees that are dead, dying, dangerous or are imminently dangerous).
 - 2. Essential works being:
 - a. trees that are causing obvious structural damage or are so close to a neighbouring structure that physical damage is unavoidable;
 - b. trees that are dead, dying or are becoming physically unsound but not imminently;
 - c. trees in respect of which there is a statutory obligation to prune e.g. blocking the public highway (section 154 of the Highways Act 1980).
 - 3. Necessary works (trees that are considered likely to cause damage to neighbouring structures in the future unless avoidance action is taken e.g. large trees, self sown trees).

Desirable works (trees in respect of which future action is considered to be desirable in order to protect a neighbouring structure but not essential).

4. No action required (trees where no action is required).

- Trees that require cyclical pruning will be identified and recommendations will be made for the length of the pruning cycle.

Maintenance of Trees

B. The Contractor shall undertake a visual inspection of all trees in the Project Area each year. This visual survey will establish any changes to the Initial Trees Survey, and will be used to prepare an "Annual Tree Maintenance Plan". Works within the Annual Tree Maintenance Plan will be scheduled as:

- a. Emergency Works (as defined above)
- b. Essential Works (as defined above)
- c. Necessary Works (as defined above)

A copy of this plan will be provided to the Authority, together with an estimate on the expenditure required to deliver each of the categories above. Works to trees that are the responsibility of leaseholders shall be excluded (see paragraph E below).

C. It is acknowledged that an allowance of £5,385 per annum (indexed) has been allowed for carrying out the works contained within the Annual Tree Maintenance Plan (the "Tree Maintenance Fund"). Any unspent funds in any year will be retained within the Tree Maintenance Fund with any residual balances at Expiry being shared between the Authority and Contractor on a 90:10 basis. To the extent that the Tree Maintenance Fund has insufficient funds to undertake the works, then the Contractor will request additional funds from the Authority as a Pass through Cost under Schedule 4 of the Project Agreement. Unless works are identified as Emergency Works within the Annual Tree Maintenance Plan, any such request shall be in advance, and provide sufficient detail to the Authority to allow the Authority to elect to reduce/discontinue the works as it sees fit.

Where works are undertaken by a specialist sub-contractor (i.e. an arboriculturalist), the Contractor shall be entitled to add a management cost to any sub-contractor cost of no more than 10%.

D. In executing the works, the Contractor shall procure that work on trees protected by Tree Preservation Orders ("TPOs") shall be managed by an Arboriculturalist.

The Contractor shall be responsible for ensuring that Leaseholders comply with their Leaseholder's Lease in carrying out their own works or meeting such proportion of such costs.

- E. Where tree works are required to be undertaken on behalf of a Leaseholder the Contractor shall consult with the Leaseholder in accordance with **clause 31.1** of the Project Agreement. Where a Leaseholder elects to undertake the tree works himself and fails to do so within a reasonable period, the Contractor shall take such enforcement action as may be provided for under the Leaseholder's Lease in order to facilitate the carrying out of such tree works by the Leaseholder.

ANNEX XIII: Energy Benchmarking Arrangements

- A. The Sub-Contractor is required to provide energy to residents at a cost equivalent to or less than the costs that would on average be incurred through the use of a 'traditional' gas fired condensing boiler solution. Energy will be charged as follows:
- a. A fixed service charge of £275.74 per annum (indexed to March 2013) for tenanted dwellings. This will not be chargeable to Tenants of the Dwellings.
 - b. A fixed service charge of £376.18 per annum (indexed to March 2013) for leasehold dwellings. This will be chargeable to Leaseholders of the Dwellings.
 - c. Actual consumption in kWh.

Tariff Setting

- B. The tariff will be calculated on 1 April each year, and fixed for the following 12 month period. It shall be the lower of the Heat Charge and the Gas Comparator.
- C. The Heat Charge, based on the wholesale cost of gas, is calculated as follows:

$$(2.60 \times ((G \times 1.05) + \text{ISNEC})) - (0.89 \times E \times 0.9) + \text{NFVC}$$

where

- G is the wholesale annual gas price (p/kWh) as published in the NBP Price Assessment index produced by ICIS Heren.
- E is the wholesale annual electricity price (p/kWh) as published in the UK OTC Power Price Assessments index produced by ICIC Heren.
- ISNEC is the Industry Standard Non Energy Costs, being:
 - National Gas Transmission Charges as levied by the National Grid, as published by the Joint Office of Gas Transporters as amended from time to time
 - Distribution Network Transportation Charges as levied by the local Distribution Network Operator as published by the Joint Office of Gas Transporters as amended from time to time
 - Gas Metering Charges as levied by National Grid Metering and published by the National Grid Plc as amended from time to time
- NFVC is 3.27p/kWh (indexed to March 2013).

D. The Gas Comparator, based on a traditional boiler system, is calculated as follows::

$$\frac{AEU \times AGT}{GEA}$$

where

- AEU is the average energy used in kWh, based on the following table:

Property Type	Property Size/Type	Forecast Annual Heat Demand (kWh)
Dwellings identified in Schedule 31 Part 1	1 bed flat	6,250
	3 bed house	13,500
	3 bed maisonette	13,500
	4 bed house	15,625
	5 bed house	16,250
New Dwellings	1 bed flat	3,449
	2 bed flat	5,244
	3 bed house	6,292
	3 bed maisonette	5,460
	4 bed house	6,869
	5 bed house	7,006

- AGT is the average gas tariff at the date of the price review, based on the published Standard Gas Tariff (non-standing charge, single fuel, payment on demand, non on-line) of each of the 6 principle UK energy companies, being:
 - British Gas
 - EDF Energy
 - Eon
 - Npower
 - Scottish Power
 - Southern Electric

or such other numbers or companies as might be agreed by the Parties acting reasonably. In the event that individual tariffs used utilise a tiered pricing mechanism then the threshold for the average price change from one tier to the next shall be the average of the threshold levels for all tariffs.

- GEA is the gas efficiency adjustment, which has a fixed value of 80%

- E. The threshold levels and prices charges for the Heat Charge can be varied, provided that a single, transparent charging structure remains across the system. Any thresholds may be adjusted on an annual basis.

SCHEDULE 2

Contractor's Proposals

The following documents in the Agreed Form:

1. Contractor's Contractual Method Statements:

Reference	Title	Version No.
5.4.1	Project Management Plan	Rev H
5.4.2	Mobilisation & Transition	Rev C
5.4.4	Planning Process	Rev E
5.7.1	Design Specification	Rev I
5.7.1-001	Sustainability	Rev E
5.7.2-002	ESCO	Rev I
5.7.2-003	Waste	Rev G
5.8.2	Overall Works Plan	Rev L
5.8.3	Construction Management Plan	Rev I
5.8.4	Works In Occupation	Rev H
5.8.5	Decant Plan	Rev J
5.8.6	Demolition Plan	Rev H
5.8.7	Refurbishment Plan	Rev I
5.8.8	New Build Plan	Rev T
5.8.9	Property Maintenance Plan	Rev G
5.8.10	Planned Replacement Plan	Rev G
5.8.11	Cyclical Maintenance Plan	Rev G
5.8.12	Responsive Maintenance & Repairs Plan	Rev F

Reference	Title	Version No.
5.8.13	Community Centre Maintenance Plan	Rev G
5.10	Contract Management	Rev C
5.11	Service Delivery Plan	Rev F
5.12	Park Maintenance Plan	Rev F
5.15	Creating an Environment For Change	Rev D
5.16	Involving Residents	Rev E

2. Development Works Delivery Plan
3. Construction and Refurbishment Programme
4. Cyclical Maintenance and Replacement Programme
5. Planned Maintenance Programme

SCHEDULE 3

Change in Law - Contractor's Share

Cumulative Capital Expenditure	Contractor's Share
that part up to £500,000 (inclusive)	100%
that part in excess of £500,001 up to £1,000,000 (inclusive)	80%
that part in excess of £1,000,001 up to £2,000,000 (inclusive)	60%
that part in excess of £2,000,001 up to £3,000,000 (inclusive)	40%
that part in excess of £3,000,001 up to £5,000,000 (inclusive)	20%
that part in excess of £5,000,001 up to £7,000,000 (inclusive)	10%
that part in excess of £7,000,000	0%

SCHEDULE 4

Payment Mechanism

Part I	Definitions
Part II	The Unitary Charge
Part III	Unavailability Deduction
Part IV	Performance Deduction
Part V	Other Deductions
Part VI	Limitations on Deductions

SCHEDULE 5

Collateral Warranties

The Collateral Warranties in the Agreed Form as follows:

1. Building Contractor
2. Building Sub-Contractor and Professional Team Member
3. Responsive, Repairs and Cyclical Maintenance and Renewal Contractor
4. Housing Management Contractor
5. Energy Services Contractor
6. Development Contractor

SCHEDULE 6

Review Procedure

1. Review Procedure

1.1 The provisions of this **Schedule 6** (Review Procedure) shall apply whenever any relevant item, document or course of action is required by the provisions of this Agreement to be reviewed, approved or otherwise processed in accordance with the Review Procedure.

1.2 Each submission under the Review Procedure shall be accompanied by a copy of the proposed document to be reviewed or a statement of the proposed course of action (the entire contents of a submission being referred to in this **Schedule 6** (Review Procedure) as a "**Submitted Item**"). In relation to each Submitted Item, the following procedure in this **Schedule 6** (Review Procedure) shall apply:

1.2.1 As soon as possible and, if the Submitted Item comprises:

1.2.1.1 a revised Works Delivery Plan; or

1.2.1.2 a document approved course of action submitted in case of an emergency,

within ten (10) Business Days (or such longer period as the Authority may determine and notify to the Contractor in writing) of the date or receipt of a submission (or re-submission, as the case may be) of the Submitted Item to the Authority's Representative (or such other period as the parties may agree), the Authority's Representative shall return one copy of the relevant Submitted Item to the Contractor endorsed "no comment" or (subject to and in accordance with **paragraph 3** (Objections) or "objections" or "comments" as appropriate; and

1.2.2 if the Authority's Representative fails to return a copy of any Submitted Item (including any re-submitted Submitted Item) duly endorsed in accordance with **paragraph 1.2.1**, within ten (10) Business Days (or such longer period as the Authority may determine and notify to the Contractor in writing) of the date of its submission to the Authority's Representative, then the Authority's Representative shall be deemed to have returned the Submitted Item to the Contractor endorsed "no comment".

1.3 If the Authority's Representative makes objections on any Submitted Item in accordance with **paragraph 3** (Objections) he shall state the ground upon which such objections are based and the evidence or other information necessary to

substantiate that ground. To the extent that the Authority's Representative objects to a Submitted Item other than on the basis set out in **paragraph 3** (Objections), or fails to comply with the provisions of this **paragraph 1.3** (Review Procedure), the Contractor may, in its discretion, either:

1.3.1 request written clarification of the basis for such comments and, if clarification is not received within five (5) Business Days of such request by the Contractor, refer the matter for determination in accordance with the Disputes Resolution Procedure; or

1.3.2 proceed disregarding such comments.

2. **Further Information**

2.1 The Contractor shall submit any further or other information, data and documents that the Authority's Representative reasonably requires in order to determine whether he has a basis for raising comments or making objections to any Submitted Item in accordance with **paragraph 3** (Objections). If the Contractor does not submit any such information, data and documents, the Authority's Representative shall be entitled to:

2.1.1 raise comments or make objections on the Submitted Item in accordance with **paragraph 3** (Objections) on the basis of the information, data and documents which have been provided; or

2.1.2 make objections to the Submitted Item on the grounds that insufficient information, data and documents have been provided to enable the Authority's Representative to determine whether he has a legitimate basis for commenting or objecting in accordance with **paragraph 3** (Objections).

3. **Objections**

3.1 Subject to **paragraph 2** (Further Information) the Authority may raise objections in relation to any Submitted Item only in accordance with the grounds in this **paragraph 3**, but in any event may comment on any Submitted Item.

3.2 The Authority may raise objections in relation to any Submitted Item on the grounds that:

3.2.1 implementation of the Submitted Items would breach any Legislation or not be in accordance with any Consent;

3.2.2 implementation of the Submitted Item would (on the balance of probabilities) adversely affect the Contractor's performance of its obligations under this Agreement; or

- 3.2.3 implementation of the Submitted Item would adversely effect any right of the Authority under the Agreement or its ability to enforce any such right; and

in relation to any Submitted Item concerned with a change to the Development Works Delivery Plan, on the grounds that implementation of the Submitted Item would:

- 3.2.4 fail to provide continuity of community provision;
- 3.2.5 result in a reduction of the community and retail provision in the Development Works Delivery Plan;
- 3.2.6 result in a reduction in the overall quality of the Development Works below that agreed in the Development Works Delivery Plan;
- 3.2.7 significantly change the density of population and housing on the Project Site;
- 3.2.8 affect the diversity and integration of tenures on the Project Site between private housing and council housing, sheltered accommodation and other social housing or alter the proportions of such housing to each other from that agreed in the Development Works Delivery Plan;
- 3.2.9 alter the appearance of the Development Works as envisaged by the Development Works Delivery Plan such that it would distinguish further between the Dwellings and the Development Works or would change the external appearance of any of the Development Works;
- 3.2.10 alter the phases in which the Works are delivered;
- 3.2.11 cause the Contractor to be in breach of any terms of this Agreement;
- 3.2.12 fail to met the requirements of the Output Specification;
- 3.2.13 alter the Contractor's accepted original decant proposals in a manner which, would adversely affect resident movement on or off site; and/or
- 3.2.14 impact adversely on the obligations of the Contractor to comply with its resident consultation requirements.

- 3.3 Subject to **paragraph 3.2**, the Authority may raise objections in relation to any Submitted Item which comprises a revised Project Document on the grounds that:

- 3.3.1 the proposed revision would (on the balance of probabilities) result in the Additional Permitted Borrowing Limit being exceeded or any other material increase in the Authority's contractual liabilities (whether actual, potential or contingent);
 - 3.3.2 the proposed revision would adversely affect the Authority's performance of its obligations under this Agreement;
 - 3.3.3 the proposed revision would (on the balance of probabilities) significantly reduce the direct or indirect liabilities of a key sub-Contractor to the Contractor;
 - 3.3.4 the proposed course of action would reduce any cap on any indemnity in any Sub-Contract; or
 - 3.3.5 the proposed revision would cause increased resident/leaseholder disruption.
- 3.4 The Authority may raise objections in relation to any Submitted Item which comprises a revised Works Delivery Plan, Contractor's Contractual Method Statements, Service Delivery Plan, Cyclical Maintenance and Replacement Programme, Design and Construction Plan and Planned Maintenance Programme or Reviewable Design Data on the grounds that:
- 3.4.1 the proposed revision is not in accordance with Good Industry Practice;
 - 3.4.2 the performance of the relevant Works or Service in accordance with the proposed revision would (on the balance of probabilities):
 - 3.4.2.1 mean that compliance with relevant parts of the Output Specification will not occur;
 - 3.4.2.2 not (on the balance of probabilities) enable the Works to be completed by the Planned Services Commencement Date;
 - 3.4.2.3 cause the Authority to incur material additional cost or expense;
 - 3.4.2.4 not pay due and reasonable regard to the needs of Tenants in a frail or vulnerable condition
 - 3.4.2.5 materially increase disruption to or have an adverse effect on the health and safety of Tenants or Leaseholders;

- 3.4.2.6 result in an inferior quality of components within the Works;
- 3.4.2.7 result in the period for carrying out any Works being extended beyond the period reasonably required for those Works; or
- 3.4.2.8 requires further resident consultation on a new matter previously not communicated to residents/leaseholders.

4. **Effect of Review**

- 4.1 Any Submitted Item which is returned or deemed to have been returned by the Authority's Representative endorsed "no comment" may be implemented by the Contractor in accordance with its terms.
- 4.2 In the case of any Submitted Item, if the Authority's Representative returns the Submitted Item to the Contractor endorsed "objections", the Contractor shall comply with such Submitted Item after amendment in accordance with the objections unless the Contractor disputes that any such objection is on grounds permitted by this Agreement, in which case the Contractor or the Authority may refer the matter for determination under the Disputes Resolution Procedure.
- 4.3 In the case of any Submitted Item, if the Authority's Representative returns the Submitted Item to the Contractor endorsed "comments", the Contractor shall give due and proper consideration to those comments.

5. **Documentation Management**

- 5.1 The Contractor shall compile and maintain a register of the date and contents of the submission of all Submitted Items.
- 5.2 The Contractor shall compile and maintain a register of the date of receipt and content of all Submitted Items that are returned or deemed to be returned by the Authority's Representative.
- 5.3 No review, comment or approval by the Authority shall operate to exclude or limit the Contractor's obligations or liabilities under this Agreement (or the Authority's rights under the Agreement).

6. **Variations**

- 6.1 No approval or comment or any failure to give or make an approval or comment under this **Schedule 6** (Review Procedure) shall constitute an Authority Change save to the extent provided in **paragraph 6.2**.

- 6.2 If, having received comments from the Authority's Representative, the Contractor considers that compliance with those comments would amount to an Authority Change, the Contractor shall notify the Authority of the same and, if it is agreed by the parties or determined pursuant to the Disputes Resolution Procedure that an Authority Change would arise if the comments were complied with, the Authority may, if it wishes, implement the Authority Change and it shall be dealt with in accordance with **Clause 56** (Authority and Contractor Changes).

No alteration or modification to the design, quality and quantity of the Works arising from the development of detailed design or from the co-ordination of the design shall be construed or regarded as an Authority Change.

SCHEDULE 7

Prohibited Materials

1. Unacceptable Materials and Processes

The materials and processes set out below must not be used:

- 1.1 high alumina cement in structural elements;
- 1.2 woodwool slabs in permanent formwork to concrete or in structural elements;
- 1.3 calcium chloride as a concrete additive;
- 1.4 sea dredged aggregates or aggregates for use in reinforced concrete which do not comply with BS requirements;
- 1.5 calcium silicate bricks or tiles;
- 1.6 asbestos cement products; or asbestos in any other form including vermiculite containing asbestiform fibrous dust;
- 1.7 lead or any products containing lead for use in connection with drinking water;
- 1.8 materials which are generally composed of mineral fibres either man made or naturally occurring which have a diameter of 3 microns or less and a length of 200 microns or less or which contain any fibres not scaled or otherwise stabilised to ensure that fibre migration is prevented;
- 1.9 urea formaldehyde foam and cellulose fibre;
- 1.10 plastics for water storage and delivery that release toxic materials;
- 1.11 materials containing vinyl chloride unless risk from carcinogen is shown to be negligible;
- 1.12 polyurethane foam or polyisocyanurate foam unless the risk is shown to be negligible;
- 1.13 plywood with glues, resins and surface treatments that produce irritant volatiles;
- 1.14 decorative finishes containing lead;
- 1.15 materials containing chlorofluorocarbons (CFCs);
- 1.16 paints and wood preservatives containing pentachlorophenols (PCP's), tributyl tin oxide (TBTO) or Lindane;

- 1.17 timber, notably tropical hardwoods unless from a FSC or PEFC timber accredited source with chain of custody. (DeFRA has created a Central Point of Expertise in Timber (CPET) which offers online advice on procurement);
- 1.18 perforated bricks in manholes and hollow walling blocks in dwellings;
- 1.19 composts, mulches and soil conditioners containing peat;
- 1.20 any treatment of materials either before or after installation which give rise to toxic or hazardous emissions or particles;
- 1.21 other substances generally known at the time of use to be deleterious to health and safety or to the durability of the works in the particular circumstances they are used.

SCHEDULE 8

Liaison Procedure

1. Project Liaison Group

- 1.1 The Authority and the Contractor shall establish and maintain throughout the Contract Period a project liaison group (the "Project Liaison Group"), consisting of three members from the Authority, three members from the Contractor three residents from the Project Site, a chairperson (the "Chairperson"), and, where a majority of the Project Liaison Group so determines, additional members being properly qualified to participate in discussions relating to any particular matter, these members having no voting rights, which shall have the functions described below.
- 1.2 The Contractor and the Authority agree that for the duration of the Works the Contractor shall procure the attendance of the Building Contractor during such parts of meetings of the Project Liaison Group as the parties shall agree. The Contractor and the Authority agree that the Contractor shall procure the attendance of the Housing Management Contractor during such parts of meetings of the Project Liaison Group as the parties shall agree.
- 1.3 Each party will have the right to make reasonable objections to the other party's proposed members or the Chairperson but not so as to frustrate the rotation of the chairmanship.
- 1.4 Should the Authority and the Contractor agree that the best interests of the Project would be served by the removal of one or more members of the Project Liaison Group, they may so direct in writing and the Authority or the Contractor, as the case may be, will put forward to the Authority and Contractor the name of a substitute member of the Project Liaison Group.
- 1.5 The relevant person shall with the consent of the other party, such consent not to be unreasonably withheld or delayed, become a member of the Project Liaison Group as from the date of its next meeting.

2. Functions

The functions of the Project Liaison Group shall be:

- 2.1 to provide a means for the joint review of all aspects of the performance of this Agreement;
- 2.2 to provide a forum for joint strategic discussion and consideration of all aspects with regard to this Agreement including ensuring dissemination of information

and consideration of the views of all the stakeholders connected with the Project;
and

2.3 consideration of issues relating to:

2.3.1 Consents;

2.3.2 provision of the Works and Services, including transition between the phases;

2.3.3 Authority Changes; and

2.3.4 Any other relevant issues.

2.4 **Role**

The role of the Project Liaison Group is to make recommendations to the Authority and to the Contractor, which the Authority and the Contractor may accept or reject at their complete discretion. Neither the Project Liaison Group itself, nor its members acting in that capacity, shall have any authority to vary any of the provisions of this Agreement or to make any decision binding on the parties. The Authority and the Contractor shall not rely on any act or omission of the Project Liaison Group, or any members of the Project Liaison Group acting in that capacity, so as to give rise to any waiver or personal bar in respect of any right, benefit or obligation of the Authority or of the Contractor under this Agreement. No discussion, review or recommendation by the Project Liaison Group shall relieve the Authority or the Contractor of any liability or vary any such liability or any right or benefit.

3. **Representatives**

The Authority and the Contractor may appoint their representatives on the Project Liaison Group and remove those representatives and appoint replacements, by written notice delivered to the other at any time. A representative on the Project Liaison Group may appoint and remove an alternate (who may be another representative of that party) in the same manner. If a representative is unavailable (and the other parties' representative may rely on the alternate's statement that the representative is unavailable) his alternate shall have the same rights and powers as the representative.

4. **Practices and Procedures**

Subject to the provisions of this **Schedule 8** (Liaison Procedure), the members of the Project Liaison Group may adopt such procedures and practices for the conduct of the activities of the Project Liaison Group as they consider appropriate, from time to time, provided that the quorum for a meeting of the

Project Liaison Group shall be four (with at least two members of the Authority and two members of the Contractor present).

5. **Recommendations**

Recommendations and other decisions of the Project Liaison Group must have the affirmative vote of all those voting on the matter, which must include not less than one representative of the Authority and not less than one representative of the Contractor.

6. **Voting**

Each member of the Project Liaison Group shall have one vote.

7. **Chairperson**

The Chairperson of the Project Liaison Group shall be nominated by the Authority and by the Contractor alternately every six months during the Contract Period (commencing with the Authority). The Chairman shall be in addition to each party's representatives on the Project Liaison Group. The Chairman shall not have a vote.

8. **Frequency of Meetings**

The Project Liaison Group shall meet at least once every month during the Refurbishment Works Period and thereafter at least once every quarter.

9. **Convening of Meetings**

Any member of the Project Liaison Group may convene a meeting of the Project Liaison Group at any time.

10. **Notices of Meetings**

Not less than ten (10) Business Days notice (identifying the agenda items to be discussed at the meeting) shall be given to convene a meeting of the Project Liaison Group, except that in emergencies, a meeting may be called at any time on such notice as may be reasonable in the circumstances.

11. **Attendance at Meetings**

Meetings of the Project Liaison Group should normally involve the attendance (in person or by alternative) of representatives at the meeting. Where the representatives of the Project Liaison Group consider it appropriate (by affirmative vote of all those voting on the matter which must include not less than one representative of the Authority and one representative of the Contractor) meetings may also be held by telephone or another form of

telecommunication by which each participant can hear and speak to all other participants at the same time.

12. **Minutes**

Minutes of all decisions (including those made by telephone or other telecommunication form) and meetings of the Project Liaison Group shall be kept by the Contractor and copies circulated promptly to the Authority and the Contractor, normally within ten (10) Business Days of the making of the decision or the holding of the meeting. A full set of minutes shall be kept by the Contractor and shall be open to inspection by the Authority or the Contractor at any time, upon request.

SCHEDULE 9

Warranted Data

Part 1: Authority Warranted Data – Housing Information

1. Extent of Project

1.1 The list of Dwellings contained in the Warranted List of Dwellings, in the Agreed Form, comprise the entirety of the Project.

1.2 [REDACTED]

2. Ownership of Properties

2.1 Subject to the Leaseholder Leases and Tenancy Agreements the Authority has sufficient unencumbered legal title or interest in the Project Site to permit the Contractor to carry out the Works and/or Services without the interference of any third party claiming title to or the benefit of any encumbrance over the Project Site.

3. Terms of Tenancies and Leases

3.1 The form of all secure tenancy agreements and introductory tenancy agreements entered into with Tenants [REDACTED] reflects the entire agreement between the Authority and the Tenants and is the only form of tenancy agreement relating to the Dwellings comprising the Project (with the exceptions of the Leasehold Dwellings).

3.2 The forms of leases entered into with the Leaseholder [REDACTED] reflect the entire agreement between the Authority and the Leaseholders and there are no other forms of Leaseholder Lease materially different relating to the Leasehold Dwellings.

3.3 [REDACTED]

3.4 [REDACTED]

4. Current Rents and Arrears

4.1 [REDACTED]

4.2 [REDACTED]

[REDACTED]

5. Contents of Section 125 Notices

6. **Consent Possession Notices**

7. **Consent Court Orders**

8. **CP12 Certificates**

9. **Litigation**

10. **Authority Capital Works**

All works (other than responsive repair and maintenance works) undertaken by the Authority to any Dwelling or Property between the date of the Stock Condition Survey and the Services Commencement Date have been undertaken with all reasonable skill and care and in accordance with Good Industry Practice.

11. **Property Matters**

11.1 Where rights have been reserved in a transfer dated 1 November 2010 over the land comprised within Title Number TGL339959 in favour of the Authority, the Authority will grant the same rights to the Contractor only in so far as they are required to deliver the Service Works and Services without limitation and will use all reasonable endeavours to enforce the same as reasonably required.

11.2 The rights referred to at Entries 4, 7 and 8 of the Charges Register of Title Number TGL73863 (dated 16 January 2012 at 17:54:51) and at Entry 9, 10, 11 and 13 of the Charges Register of Title Number TGL59573 (dated 17 January 2012 at 10:20:01) and Entries 3, 4 and 6 of the Charges Register of Title Number TGL73930 (dated 16 January 2012 at 17:58:33) shall not impede, delay or otherwise adversely affect the Works.

11.3 The Authority warrants that it shall have full lawful authority to grant each of the Development Works Leases when required to do so, in accordance with Schedule 39 and that the land shown tinted pink on the Appropriation Plan in the Agreed Form will be validly appropriated to planning purposes before the Works are commenced.

11.4 To the extent that any compensation is payable pursuant to section 237 of the Town and Country Planning Act 1990 it shall be for the account of the Authority.

- 11.5 The Authority owns the unregistered land within the Project Site on which the Development Works are to be carried out (excluding works to adopted highways) and such land is not encumbered by any matters that would impede, delay or otherwise adversely affect the Development Works to be carried out on it.
- 11.6 The Authority warrants that the information set out in the Warranted Replies to Enquiries at **Part 2** of this **Schedule 9** has been prepared after due and careful enquiry and is in all material respects true, accurate and complete as at the date of this Agreement.
- 11.7 The Authority will within 20 Business Days from the Commencement Date apply to the Land Registry to update title registers TGL73930 and TGL59573 to remove the entries on such title registers relating to the covenants and rights granted and reserved in a Transfer of land within the Project Site dated 25 March 1997 made between the Authority and Lambeth Primary Care Trust and will respond to any requisitions raised by the Land Registry in connection with the Authority's application.

Part 2: Authority Warranted Replies to Enquiries

The Authority or its solicitors have confirmed in replies to enquiries that:

1. the Authority has acquired 36 Treherne Court (an RTB Leasehold Property) and has granted an additional RTB Lease of 45 Carlton Court since 25 July 2008 (which is the date of the report on title prepared by Steeles (Law) LLP for the Authority).
2. the Authority acquired 33 Bramah Green (an RTB Freehold Property) on 13 March 2012 and has registered its acquisition at the Land Registry.
3. the two parcels of freehold land shown shaded yellow on the Open Space Plan in the Agreed Form which are owned by the Authority and are registered under Title Number TGL73930 form part of the "Housing Estate" and are either open ground or planted shrubbery beds, not statutory open space requiring any specific "open space" statutory consents to permit development.
4. the Authority does not have any documentation in relation to the occupation of the following premises:
 - 4.1 40, 41 and 44 Foxley Square;
 - 4.2 46 Foxley Square; and
 - 4.3 Mostyn Youth Centre.
5. 40, 41 and 44 Foxley Square are occupied by Myatts Field North Tenant Management Organisation.
6. 46 Foxley Square is occupied by the Authority's PFI team.
7. 40 Bramah Green is occupied by Myatts Field North Tenant Management Organisation. The tenancy agreement for these premises has been signed. The security of tenure provisions under the 1954 Act have been excluded from the new tenancy. A Notice to Treat under the London Borough of Lambeth (Myatts Field North Estate) Compulsory Purchase Order 2007 ("CPO") has been issued in respect of these premises and, if necessary, the Authority will use those powers.
8. Mostyn Youth Centre is used from time to time by the Lambeth Tigers football team without the authority of the Authority. The Authority has found alternative accommodation for the football team outside the Project Site Possession proceedings in respect of Mostyn Youth Centre began in April 2012.
9. none of the land outside the CPO Land boundary is statutory open space and the Authority regards all recreation areas within the Project Site as amenity land.

10. the Authority is unable to provide any further information in relation to the "rights of user" to which the recreational areas noted on title numbers TGL73863 and TGL59573 are subject. The Authority has obtained all requisite statutory consents to permit development or no such statutory consents are required.
11. the Authority is unable to provide a copy of an 1878 Deed of Covenant referred to on the title of the land tinted pink and edged and lettered "D" in red on the title plan to title number TGL59573.
12. the Notices to Treat were served in respect of those properties contained within the List of Notices to Treat, in the Agreed Form, on the respective dates of service specified within that list.
13. the garages at the Project Site are undercroft garages, there are no leases subsisting and that there are no arrangements for the occupation of those garages.
14. the car parks within the Project Site are not allocated, they are free-for-all.
15. three environmental and pollution notices revealed by the local search have not been located and are believed to have been mislaid. The notices are thought to relate to noise nuisance. The Authority is not aware of having served statutory notices in relation to land contamination.
16. the Authority is not able to confirm whether or not any of the land subject to Section 106 Agreement dated 20 July 2009 falls within the Project Site.
17. the various listed building consents and charges revealed by the local search do not relate to buildings within the Project Site.
18. the whole site for the project is currently Housing land and that an advertisement to appropriate the open spaces to planning purposes is to be, or has been, published by the Authority.
19. the rights reserved in favour of the Normandy Arms Public House through the conducting media on or under the land in title number TGL73863 have not been/do not continue to be exercised by the owner of the Normandy Arms. The Authority is not aware of any such conducting media passing through the land in title number TGL73863.
20. the rights reserved in a Conveyance dated 25 March 1955 made between (1) the Church Commissioners of England and (2) The London County Council have not been/do not continue to be exercised over the Project Site by the owner of the benefitting land. The Authority is not aware of any conducting media passing through the land coloured yellow or the land coloured pink on the title plan of

title number TGL73863. The Authority does not hold a copy of such 1955 Conveyance.

21. the Authority thinks it has all necessary consents to permit development in relation to the land coloured pink on the title plan of title number TGL73863. The Authority also understands that no statutory consents to permit development are required anywhere else on the Project Site where there is to be building on open space.
22. in relation to the "recreation and common areas" noted on title numbers TGL73863 and TGL59573, the Authority has obtained all requisite statutory consents to permit development or no such statutory consents are required.
23. the Authority has served formal notices on the owner of ABC Pharmacy regarding the redevelopment and the ending of its tenancy at 42A Foxley Square. The pharmacy has appointed an agent to negotiate with the Contractor for the tenancy of two refurbished shop units facing onto Cromwell Road.
24. [REDACTED]

Part 3: Employee Information

Part 4: Contractor Warranted Data

1. **Registered Name of Contractor:**

Regenter Myatts Field North Limited

2. **Registered Office of Contractor:**

Allington House, 150 Victoria Street, London SW1E 5LB

3. **Company Registration Number of Contractor:**

7489177

4. **Directors of Contractor:**

Andrew Pearson, Nuria Puig-Mas, Gaynor Barrett, Nick Wright, Michael Penny,
Andrew Saunders

5. **Shareholders of Contractor (with respective shareholdings):**

Regenter Myatts Field North Holding Company Limited (100%)

6. **Registered Name of Contractor's Holding Company:**

Regenter Myatts Field North Holding Company Limited

7. **Registered Office of Contractor's Holding Company:**

Allington House, 150 Victoria Street, London SW1E 5LB

8. **Company Registration Number of Contractor's Holding Company:**

7485873

9. **Directors of Contractor's Holding Company:**

Andrew Pearson, Nuria Puig-Mas, Gaynor Barrett, Nick Wright, Michael Penny,
Andrew Saunders

10. **Shareholders of Contractor's Holding Company (with respective shareholdings):**

Pinnacle Regeneration Group Limited (50%)

John Laing Investments Limited (50%)

SCHEDULE 10

Relevant Discharge Terms

1. The sums referred to in paragraph 2 and the adjustment between the parties of the rights and liabilities relating to the Assets referred to in paragraph 3 (and to the extent needed to give effect to paragraphs 2 and 3, the remainder of this **Schedule 10**) shall be the relevant discharge terms in relation to this Agreement for the purposes of Section 6 of the Local Government (Contracts) Act 1997.
2. In the event of the making of a determination or order by a court of final jurisdiction on an application for judicial review or audit review (within the meaning of the Local Government (Contracts) Act 1997), the result of which is that this Agreement does not have effect or is otherwise unenforceable, then the Contractor shall be entitled to be paid by the Authority the sum equivalent to the amount of compensation payable by the Authority to the Contractor pursuant to **clause 47** (Compensation on Termination for Authority Default/Voluntary Termination);
3. The Authority shall have the option to require the Contractor to transfer its right, title and interest in and to the Assets to the Authority or as directed by the Authority.
4. The compensation payable pursuant to paragraph 2 shall be paid in a lump sum within six months of the order of the court referred to in paragraph 2.
5. Any payment of compensation and adjustment of rights in accordance with this **Schedule 10** (Relevant Discharge Terms) shall be in full satisfaction of any claim of the Contractor in relation to the termination of this Agreement and shall be the sole remedy of the Contractor against the Authority in the circumstances contemplated by paragraph 2.

SCHEDULE 11

Insurances

This is **Schedule 11** comprising the Required Insurances referred to in the Contract and sets out the minimum requirements

This **Schedule 11** comprises five Parts:

1. **PART 1:** Policies to be taken out by the Contractor and maintained during the design and construction phase
2. **PART 2:** Policies to be taken out by the Contractor and maintained during the Service Period
3. **PART 3:** Endorsements
4. **PART 4:** Broker's Letter of Undertaking
5. **PART 5:** Definitions

Part 1: Policies to be taken out by the Contractor and maintained during the design and construction phase.

Common to each policy in this Part 1 (unless stated otherwise):

Insureds:

1. Authority;
2. Contractor;
3. Building Contractor;
4. Housing Management Contractor;
5. Responsive Repairs and Cyclical Maintenance and Renewals Contractor;
6. Construction sub-contractors of any tier to insureds 2 and 3;
7. Senior Lenders;
8. Subordinated Lenders; and
9. Consultants - for their site activities only.

each for their respective rights and interests in the Project.

1. Contractors' 'All Risks' Insurance (CAR)

1.1 Insured Property

The permanent and temporary works, materials (including but not limited to equipment supplied by the Authority) goods, plant and equipment for incorporation in the works (other than constructional plant, tools, accommodation and equipment belonging to or the responsibility of the Building Contractor or the Building Contractor's sub-contractors) and all other property used or for use in connection with works associated with the Project.

1.2 Coverage

"All risks" of physical loss or damage to the Insured Property unless otherwise excluded.

1.3 Sum Insured

At all times an amount not less than the full reinstatement or replacement value of the Insured Property, but not less than the value specified in the building contract plus provision to include extensions as appropriate.

1.4 Maximum Deductible

£ 10,000 increasing to £150,000 in respect of DE5/LEG3, but £25,000 in respect of DE3, and 20% co-insurance in respect of additional costs of completion.

1.5 Territorial Limits

United Kingdom including offsite storage and during inland transit.

1.6 Period of Insurance

From the Commencement Date until the relevant Planned Service Commencement Date and thereafter in respect of defects liability until expiry of the 12 months defects liability period.

1.7 Cover Features & Extensions

1.7.1 Terrorism.

1.7.2 Munitions of war clause.

1.7.3 Additional costs of completion clause.

1.7.4 Professional fees clause.

1.7.5 Debris removal clause.

- 1.7.6 72 hour clause.
- 1.7.7 European Union local authorities clause.
- 1.7.8 Free issue materials clause.
- 1.7.9 10% escalation clause.
- 1.7.10 Automatic reinstatement of sum insured clause.
- 1.7.11 Loss minimisation.
- 1.7.12 Repair/reinstatement basis of claim settlement with cash option.
- 1.7.13 Plans and documents clause.
- 1.7.14 Payments on account.

1.8 **Principal Exclusions**

- 1.8.1 War and related perils (UK market agreed wording).
- 1.8.2 Nuclear/radioactive risks (UK market agreed wording).
- 1.8.3 Pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds.
- 1.8.4 Wear, tear and gradual deterioration.
- 1.8.5 Consequential financial losses.
- 1.8.6 Cyber risks.
- 1.8.7 Inventory losses, fraud and employee dishonesty.
- 1.8.8 Design improvement DE5/LEG3, with DE3 option.

2. **Delay in Start Up Insurance (DSU)**

2.1 Insureds:

2.1.1 Contractor.

2.1.2 Senior Lenders.

2.1.3 Subordinated Lenders.

each for their respective rights and interests in the Project.

2.2 **Indemnity**

In respect of:

2.2.1 loss of anticipated Revenue during at least the Minimum Indemnity Period arising from a delay in completion of the Project as a result of loss or damage covered under the Contractors' All Risks' Insurance effected in accordance with Item 1 of Part 1 of this Schedule, including physical loss or damage which would be indemnifiable but for the application of any deductible;

2.2.2 the economic additional expenditure necessarily and reasonably incurred for the purpose of avoiding or reducing the loss of Revenue of the Contractor which without such expenditure would have taken place, during the Minimum Indemnity Period.

2.3 **Sum Insured**

An amount sufficient to cover the sums the subject of the Indemnity for the Minimum Indemnity Period.

2.4 **Maximum Excess**

45 days.

2.5 **Minimum Indemnity Period**

New Build:

12 months in respect of Phase 1, Site 4 (Rent) houses.

14 months in respect of Phase 1, Site 13 (Rent) maisonettes.

14 months in respect of Phase 1, Site 15 (Rent) maisonettes.

15 months in respect of Phase 1, Site 16 (Rent) maisonettes.

14 months in respect of Phase 1, Site 13 (Rent) maisonettes.

23 months in respect of Phase 1, Site 19 (Rent) maisonettes, houses and flats.

13 months in respect of Phase 2, Site 3 (Rent) houses.

20 months in respect of Phase 1, Site 23 (Rent) maisonettes and houses.

20 months in respect of Phase 1, Site 18 (Rent) houses and flats.

21 months in respect of Phase 2, Site 25 (Rent) maisonettes and houses.

13 months in respect of Phase 2, Site 11 (Rent) houses.

18 months in respect of Phase 2, Site 9 (Rent) maisonettes and houses.

13 months in respect of Phase 2, Site 8 (Rent) maisonettes and houses.

12 months in respect of Phase 2, Site 5 (Rent).

Refurbishment:

18 months in respect of Carlton Court Flats (Rent).

12 months in respect of Carlton Court House (Rent).

18 months in respect of Carlton Court Maisonettes (Rent).

12 months in respect of Fairbairn Green House (Rent).

18 months in respect of Fairbairn Green Maisonettes (Rent).

12 months in respect of Fountain Place House.

18 months in respect of Foxley Square Flats (Rent).

18 months in respect of Hammelton Green Maisonettes (Rent).

12 months in respect of Hamilton Green House (Rent).

18 months in respect of Carlton Court Flats (Leasehold).

18 months in respect of Carlton Court Maisonettes (Leasehold).

18 months in respect of Foxley Square Flat (Leasehold).

18 months in respect of Hammelton Green Maisonettes (Leasehold).

Other:

18 months in respect of the Community Centre.

12 months in respect of the Energy Centre.

12 months in respect of the infrastructure works.

2.6 Period of Insurance

As per the Contractors' "All Risks" Insurance, excluding the defects liability period.

2.7 Cover Features & Extensions

2.7.1 Denial of access;

2.7.2 Utilities;

2.7.3 Terrorism;

2.7.4 Automatic Reinstatement of sum insured;

2.7.5 Professional Fees;

2.7.6 Construction Plant; and

2.7.7 Payments on accounts.

2.8 Principal Exclusions

2.8.1 The exclusions under the Contractors' 'All Risks' Insurance, other than for consequential financial losses;

2.8.2 Delayed response by a public body or state authority; and

2.8.3 Delay due to rectification of defects.

3. Construction Third Party Liability Insurance

3.1 Interest

To indemnify the Insured in respect of all sums that they may become legally liable to pay (including claimant's costs and expenses) as damages in respect of accidental:

3.1.1 death, or bodily injury, illness, death, disease contracted by any person;

3.1.2 loss or damage to property; or

3.1.3 interference to property or any easement right of air, light, water or way or the enjoyment or use thereof by obstruction, trespass, nuisance, loss of amenities, or any like cause.

happening during the Period of Insurance and arising out of or in connection with the Project.

3.2 Limit of Indemnity

Not less than £50,000,000 in respect of any one occurrence, the number of occurrences being unlimited, but in the aggregate in respect of pollution liability.

3.3 Maximum Deductible

£5,000 for each and every occurrence of property damage. (Personal injury claims will be paid in full).

3.4 Territorial Limits

UK and elsewhere in the world in respect of non manual visits (other than the USA, Canada and Australia).

3.5 Jurisdiction

UK and elsewhere in the world in respect of non manual visits (other than the USA, Canada and Australia).

3.6 Period of Insurance

As per the Contractors' "All Risks" Insurance, including the defects liability period.

3.7 Cover Features & Extensions

3.7.1 Munitions of war;

- 3.7.2 Cross liability clause;
- 3.7.3 Contingent motor;
- 3.7.4 Legal defence costs; and
- 3.7.5 Contract liability.

3.8 Principal Exclusions

- 3.8.1 Liability for death, illness, disease or bodily injury sustained by employees of the insured.
- 3.8.2 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by legislation in respect of such vehicles.
- 3.8.3 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.
- 3.8.4 Liability in respect of loss or damage to property in the care, custody and control of the insured but this exclusion is not to apply to all property belonging to the Authority which is in the care, custody and control of another Insured.
- 3.8.5 Events more properly covered under a professional indemnity policy.
- 3.8.6 Liability arising from the ownership, possession or use of any aircraft or marine vessel.
- 3.8.7 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.
- 3.8.8 Losses indemnified under the CAR policy or DSU policy.
- 3.8.9 Asbestos liability.
- 3.8.10 Cyber risks.
- 3.8.11 Terrorism in excess of £2,500,000.
- 3.8.12 Sexual harassment or assault.
- 3.8.13 Toxic mould.

Part 2: Policies to be taken out by the Contractor and maintained during the Service Period

Common to all policies in this Part 2 (unless stated otherwise):

Insureds:

1. Authority;
2. Contractor;
3. Building Contractor up to the end of the defects liability period;
4. Housing Management Contractor;
5. Responsive Repairs and Cyclical Maintenance and Renewals Contractor;
6. Construction sub-contractors of any tier to insureds 2 and 3 up to the end of the Defects Liability Period;
7. Senior Lenders;
8. Subordinated Lenders; and
9. Sub-contractors to insureds 4 and 5 to the extent required by contract.

each for their respective rights and interests in the Project.

1. Property Damage Insurance

1.1 Insured Property

The project assets which are the property of the Contractor or for which the Contractor may be responsible including but not limited to the new facilities, but excluding the properties scheduled for demolition.

1.2 Coverage

"All risks" of physical loss or damage to the Insured Property from any cause not excluded, including machinery breakdown (building services plant only).

1.3 Sum Insured

At all times an amount not less than the total reinstatement or replacement value of the Insured Property plus provision to include other Principal Extensions as appropriate (escalated periodically as appropriate).

1.4 Maximum Deductible

£10,000 each and every claim (escalated periodically as appropriate).

1.5 Territorial Limits

United Kingdom including whilst in inland transit.

1.6 Period of Insurance

From the Services Commencement Date for the duration of the Contract and renewable on an annual basis unless agreed otherwise by the Parties.

1.7 Cover Features & Extensions

1.7.1 Terrorism

1.7.2 Automatic reinstatement of sum insured.

1.7.3 Capital additions clause.

1.7.4 72 hour clause.

1.7.5 European Union local authorities clause.

1.7.6 Professional fees.

1.7.7 Debris removal.

- 1.7.8 Pollution and contamination to the Insured Property arising from an event which itself is not otherwise excluded.
- 1.7.9 Repair / reinstatement basis of claims settlement with cash option for non-reinstatement.
- 1.7.10 Payment on account.
- 1.7.11 Temporary repairs.

1.8 **Principal Exclusions**

- 1.8.1 War and related perils (UK market agreed wording).
- 1.8.2 Nuclear/radioactive risks (UK market agreed wording).
- 1.8.3 Pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds.
- 1.8.4 Wear, tear and gradual deterioration.
- 1.8.5 Consequential financial losses.
- 1.8.6 Cyber risks.
- 1.8.7 Losses recovered under the CAR policy.
- 1.8.8 Latent Defects.
- 1.8.9 Inventory shortages.
- 1.8.10 Toxic mould.

2. Business Interruption Insurance

2.1 Insureds

2.1.1 Contractor.

2.1.2 Senior Lenders.

2.1.3 Subordinated Lenders.

each for their respective rights and interests in the Project.

2.2 Indemnity

In respect of:

2.2.1 loss of anticipated Revenue during at least the Minimum Indemnity Period arising from an interruption or interference in the operation of the Project as a result of loss or damage covered under Property Damage Insurance effected in accordance with paragraph 1 of Part 2 of this Schedule including physical loss or damage which would be indemnifiable but for the application of any deductible;

2.2.2 the economic additional expenditure necessarily and reasonably incurred for the purpose of avoiding or reducing the loss of Revenue of the Contractor which without such expenditure would have taken place, during the Indemnity Period.

2.3 Sum Insured

An amount sufficient to cover the sums the subject of the Indemnity for the Minimum Indemnity Period.

2.4 Maximum Excess

£10,000 each and every claim (escalated periodically as appropriate).

2.5 Minimum Indemnity Period

New Build:

12 months in respect of Phase 1, Site 4 (Rent) houses.

14 months in respect of Phase 1, Site 13 (Rent) maisonettes.

14 months in respect of Phase 1, Site 15 (Rent) maisonettes.

15 months in respect of Phase 1, Site 16 (Rent) maisonettes.

14 months in respect of Phase 1, Site 13 (Rent) maisonettes.

23 months in respect of Phase 1, Site 19 (Rent) maisonettes, houses and flats.

13 months in respect of Phase 2, Site 3 (Rent) houses.

20 months in respect of Phase 1, Site 23 (Rent) maisonettes and houses.

20 months in respect of Phase 1, Site 18 (Rent) houses and flats.

21 months in respect of Phase 2, Site 25 (Rent) maisonettes and houses.

13 months in respect of Phase 2, Site 11 (Rent) houses.

18 months in respect of Phase 2, Site 9 (Rent) maisonettes and houses.

13 months in respect of Phase 2, Site 8 (Rent) maisonettes and houses.

12 months in respect of Phase 2, Site 9 (Rent).

Refurbishment:

18 months in respect of Carlton Court Flats (Rent).

12 months in respect of Carlton Court House (Rent).

18 months in respect of Carlton Court Maisonettes (Rent).

12 months in respect of Fairbairn Green House (Rent).

18 months in respect of Fairbairn Green Maisonettes (Rent).

12 months in respect of Fountain Place House.

18 months in respect of Foxley Square Flats (Rent).

18 months in respect of Hammelton Green Maisonettes (Rent).

12 months in respect of Hamilton Green House (Rent).

18 months in respect of Carlton Court Flats (Leasehold).

18 months in respect of Carlton Court Maisonettes (Leasehold).

18 months in respect of Foxley Square Flat (Leasehold).

18 months in respect of Hammelton Green Maisonettes (Leasehold).

Other:

18 months in respect of the Community Centre.

12 months in respect of the Energy Centre.

3 months in relation to infections and contagious diseases.

3 months in relation to machinery breakdown of building services plant.

12 months in respect of the infrastructure works.

2.6 Period of Insurance

From the relevant Services Commencement Date for the duration of the Contract Period and renewable on an annual basis unless agreed otherwise by the Parties.

2.7 Cover Features & Extensions

2.7.1 Denial of access.

2.7.2 Terrorism.

2.7.3 Utilities - full cover basis with a minimum limit £10,000,000.

2.7.4 Accountants Clause.

2.7.5 Automatic reinstatement of sum insured and indemnity period.

2.8 Principal Exclusions

2.8.1 Exclusions under the Property Damage Insurance, other than for consequential financial losses.

2.8.2 Delayed response by a public body or state authority.

3. Third Party Public and Products Liability Insurance

3.1 Interest

To indemnify the Insured in respect of all sums that they may become legally liable to pay (including claimant's costs and expenses) as damages in respect of accidental:

3.1.1 death, or bodily injury, illness, death, disease contracted by any person;

3.1.2 loss or damage to property;

3.1.3 interference to property or any easement right of air, light, water or way or the enjoyment or use thereof by obstruction, trespass, nuisance, loss of amenities, or any like cause.

happening during the period of insurance and arising out of or in connection with the Project and the provision of the Services.

3.2 Limit of Indemnity

Not less than £50m (escalated periodically as appropriate) in respect of any one occurrence, the number of occurrences being unlimited, but in the aggregate in respect of pollution and products liability.

3.3 Maximum Deductible

£10,000 for each and every occurrence of property damage (escalated periodically as appropriate). (Personal injury claims will be paid in full).

3.4 Territorial Limits

UK and elsewhere in the world in respect of non manual visits except the USA, Canada and Australia.

3.5 Jurisdiction

Worldwide except the USA, Canada and Australia.

3.6 Period of Insurance

From the relevant Services Commencement Date for the duration of the Contract and renewable on an annual basis unless agreed otherwise.

3.7 Cover Features & Extensions

3.7.1 Munitions of war.

- 3.7.2 Cross liability clause.
- 3.7.3 Contingent motor.
- 3.7.4 Legal defence costs.
- 3.7.5 Contract liability.
- 3.7.6 Corporate manslaughter.

3.8 **Principal Exclusions**

- 3.8.1 Liability for death, illness, disease or bodily injury sustained by employees of the insured.
- 3.8.2 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by legislation in respect of such vehicles.
- 3.8.3 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the insured.
- 3.8.4 Liability in respect of loss or damage to property in the care, custody and control of the insured but this exclusion is not to apply to all property belonging to the Authority which is in the care, custody and control of another Insured Party.
- 3.8.5 Liability arising out of technical or professional advice (given for a fee) other than in respect of death or bodily injury to persons or damage to third party property.
- 3.8.6 Liability arising from the ownership, possession or use of any aircraft or marine vessel.
- 3.8.7 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.
- 3.8.8 Losses under the property damage policy or business interruption policy.
- 3.8.9 Asbestos liability.
- 3.8.10 Cyber risks.
- 3.8.11 Toxic mould.
- 3.8.12 Terrorism in excess of £2,500,000.

- 3.8.13 Nuclear risks.
- 3.8.14 War risks.
- 3.8.15 Sexual harassment or assault.

Part 3: Endorsements

Unless the context otherwise requires defined terms set out in the following endorsements shall have the meaning set out in the Contract.

1. Endorsement 1

Cancellation

This policy shall not be cancelled or terminated before the original expiry date is to take effect except in respect of non-payment of premium.

The insurer shall by written notice advise the Authority:

- 1.1 at least 20 days before any such cancellation or termination is to take effect;
- 1.2 at least 20 days before any reduction in limits or coverage or any increase in deductibles is to take effect; and
- 1.3 of any act or omission or any event of which the insurer has knowledge and which might invalidate or render unenforceable in whole or in part this policy.

2. Endorsement 2

Multiple Insured/Non-Vitiation Clause

Each of the parties comprising the insured shall for the purpose of this policy be considered a separate co-insured entity, insured on a composite basis, with the words "the insured" applying to each as if they were separately and individually insured provided that the total liability of the insurers under each section of this policy to the insured collectively shall not (unless the policy specifically permits otherwise) exceed the limit of indemnity or amount stated to be insured under that section or policy. Accordingly, the liability of the insurers under this policy to any one insured shall not be conditional upon the due observance and fulfilment by any other insured party of the terms and conditions of this policy or of any duties imposed upon that insured party relating thereto, and shall not be affected by any failure in such observance or fulfilment by any such other insured party.

It is understood and agreed that any payment or payments by insurers to any one or more of the insureds shall reduce, to the extent of that payment, insurers' liability to all such parties arising from any one event giving rise to a claim under this policy and (if applicable) in the aggregate.

Insurers shall be entitled to avoid liability to or (as may be appropriate) claim damages from any insured party in circumstances of fraud misrepresentation non-disclosure or material breach of warranty or condition of this policy (each

referred to in this clause as a "Vitiating Act") committed by that insured party save where such misrepresentation non-disclosure or breach of warranty or condition was committed innocently and in good faith.

For the avoidance of doubt it is however agreed that a Vitiating Act committed by one insured party shall not prejudice the right to indemnity of any other insured who has an insurable interest and who has not committed the Vitiating Act.

Insurers hereby agree to waive all rights of subrogation and/or recourse which they may have or acquire against any insured party (together with their employees and agents) except where the rights of subrogation or recourse are acquired in consequence of a Vitiating Act in which circumstances insurers may enforce such rights against the insured responsible for the Vitiating Act notwithstanding the continuing or former status of the vitiating party as an insured.

Notwithstanding any other provision of this policy or any other document or any act and/or omission by any insured party insurers agree that:

- 2.1 no party other than the Authority has any authority to make any warranty, disclosure or representation in connection with this policy on behalf of the Authority;
- 2.2 where any warranty, disclosure or representation is required from the Authority in connection with this policy insurers will contact the Authority in writing (in accordance with Endorsement 3 to the Contract) and set out expressly the warranty, disclosure and/or representation required within a reasonable period of time from the Authority (regarding itself); and
- 2.3 save as set out in a request from insurers to the Authority in accordance with (2) above, the Authority shall have no duty to disclose any fact or matter to insurers in connection with this policy save to the extent that for the Authority not to disclose a fact or matter would constitute fraudulent misrepresentation and/or fraudulent non-disclosure.

3. **Endorsement 3**

Communications

All notices or other communications under or in connection with this policy shall be given to each insured (and the Authority) in writing or by facsimile. Any such notice will be deemed to be given as follows:

- 3.1 if in writing, when delivered;

- 3.2 if by facsimile, when transmitted but only if, immediately after transmission, the sender's facsimile machine records a successful transmission has occurred.

The address and facsimile number of the Authority for all notices under or in connection with this policy are those notified from time to time by the Authority for this purpose to the Contractor at the relevant time. The initial address and facsimile number of the Authority are as follows:

The Authority: The London Borough of Lambeth

Address: 3rd floor Olive Morris House, 18 Brixton Hill,
 SW2 1RL

Facsimile No: 020 792 69764

Attention: Risk & Insurance Manager

It is further agreed that a notice of claim given by the Authority or any other insured shall in the absence of any manifest error be accepted by the insurer as a valid notification of a claim on behalf of all insureds.

4. **Endorsement 4**

Loss Payee (applicable only to the Physical Damage Policies)

Subject to the provision of **Clause 61.2** all proceeds of this policy shall be payable without deduction or set-off to the Joint Insurance Account.

5. **Endorsement 5**

Primary Insurance

It is expressly understood and agreed that this policy provides primary cover for the insured parties and that in the event of loss destruction damage or liability covered by this policy which is covered either in whole or in part under any other policy or policies of insurance effected by or on behalf of any of the insured parties the insurers will indemnify the insured parties as if such other policy or policies of insurance were not in force and the insurers waive their rights of recourse if any against the insurers of such other policy or policies of insurance.

6. **Endorsement 6**

Ringfencing

The level of any indemnity available to an insured party under this policy in relation to any claim(s) concerning the Project shall not be affected and/or reduced by any claim(s) unrelated to the Project.

Part 4: Broker's Letter of Undertaking

To: The Authority

Dear Sirs

Agreement dated [DATE] entered into between [NAME] Limited (the "Contractor") and the London Borough of Lambeth (the "Authority") (the "Agreement")

1. We refer to the Agreement. Unless the context otherwise requires, terms defined in the Agreement shall have the same meaning in this letter.
2. We act as insurance broker to the Contractor in respect of the Required Insurances and in that capacity we confirm that the Required Insurances which are required to be procured pursuant to **clause 60** and **Schedule 11** of the Agreement:
 - 2.1 where appropriate name you and such other persons as are required to be named pursuant to the Agreement for their respective interests;
 - 2.2 are, in our reasonable opinion as insurance brokers, as at today's date, in full force and effect in respect of all the matters specified in the Agreement; and
 - 2.3 that all premiums due to date in respect of the Required Insurances are paid and the Required Insurances are, to the best of our knowledge and belief, placed with insurers which, as at the time of placement, are reputable and financially sound. We do not, however, make any representations regarding such insurers' current or future solvency or ability to pay claims; and
 - 2.4 that the endorsements set out in **Part 3** to **Schedule 11** of the Agreement are as at today's date in full force and effect in respect of the Required Insurances.
3. We further confirm that the attached cover notes confirm this position.
4. Pursuant to instructions received from the Contractor and in consideration of your approving our appointment or continuing appointment as brokers in connection with the Required Insurances, we hereby undertake in respect of the interests of the Authority in relation to the Required Insurances:
 - 4.1 **Notification Obligations**
 - 4.1.1 to notify you at least 30 (thirty) days prior to the expiry of any of the Required Insurances if we have not received instructions from the Contractor to negotiate renewal and in the event of our receiving instructions to renew, to advise you promptly of the details thereof;

- 4.1.2 to notify you at least 30 (thirty) days prior to ceasing to act as brokers to the Contractor unless, due to circumstances beyond our control, we are unable to do so in which case we shall notify you as soon as practicable; and
- 4.1.3 to pay into the Joint Insurance Account without set off or deduction of any kind for any reason all payments in respect of claims received by us from insurers in relation to the Required Insurances specified in **clause 60** and **Schedule 11** of the Agreement.

4.2 **Advisory Obligations**

- 4.2.1 to notify you promptly of any default in the payment of any premium for any of the Required Insurances;
- 4.2.2 to notify you if any insurer cancels or gives notification of cancellation of any of the Required Insurances, at least 30 (thirty) days before such cancellation is to take effect or as soon as reasonably practicable in the event that notification of cancellation takes place less than 30 (thirty) days before it is to take effect;
- 4.2.3 to notify you of any act or omission, breach or default of which we have knowledge which in our reasonable opinion may either invalidate or render unenforceable in whole or in part any of the Required Insurances or which may otherwise materially impact on the extent of cover provided under the Required Insurances; and
- 4.2.4 to advise the Contractor of its duties of disclosure to insurers and to specifically advise upon:
 - 4.2.4.1 the facts, circumstances and beliefs that should generally be disclosed to insurers; and
 - 4.2.4.2 the obligation not to misrepresent any facts, matters or beliefs to insurers.

4.3 **Disclosure Obligations**

- 4.3.1 to disclose to insurers all information made available to us from any source and any fact, change of circumstances or occurrence made known to us from any source which in our reasonable opinion is material to the risks insured against under the Required Insurances and which properly should be disclosed to insurers as soon as practicable after we become aware of such information, fact, change of circumstance or occurrence whether prior to inception or renewal or otherwise; and

- 4.3.2 to treat as confidential all information so marked or otherwise stated to be confidential and supplied to us by or on behalf of the Contractor or the Authority and not to disclose such information, without the prior written consent of the supplier, to any third party other than those persons who, in our reasonable opinion have a need to have access to such information from time to time, and for the purpose of disclosure to the insurers or their agents in respect of the Required Insurances in discharge of our obligation set out at **clause 4.3.1** of this letter. Our obligations of confidentiality shall not conflict with our duties owed to the Contractor and shall not apply to disclosure required by an order of a court of competent jurisdiction, or pursuant to any applicable law, governmental or regulatory authority having the force of law or to information which is in the public domain.

4.4 **Administrative Obligations**

- 4.4.1 to hold copies of all documents relating to or evidencing the Required Insurances, including but without prejudice to the generality of the foregoing, insurance slips, contracts, policies, endorsements and copies of all documents evidencing renewal of the Required Insurances, payment of premiums and presentation and receipt of claims;
- 4.4.2 to supply to the Authority and/or its insurance advisers (or the Authority's or its insurance advisers' authorised representatives) promptly on written request copies of the documents set out in **clause 4.4.1** of this letter, and to the extent available, to make available to such persons promptly upon the Authority's request the originals of such documents;
- 4.4.3 to administer the payment of premiums due pursuant to the Required Insurances such that, in so far as we hold appropriate funds, all such premiums shall be paid to insurers in accordance with the terms of the Required Insurances;
- 4.4.4 to administer the payment of claims from insurers in respect of the Insurances (the "Insurance Claims") including:
- 4.4.4.1 negotiating settlement of Insurance Claims presented in respect of the Required Insurances;
 - 4.4.4.2 collating and presenting all information required by insurers in relation to Insurance Claims presented in respect of the Required Insurances, and

- 4.4.4.3 insofar as it is relevant and practicable, liaising with and reporting to each Authority throughout the settlement, payment and administration of such Insurance Claims.
- 4.4.5 to advise the Authority promptly upon receipt of notice of any material changes which we are instructed to make in the terms of the Required Insurances and which, if effected, in our opinion as Insurance Brokers would result in any material reduction in limits or coverage or in any increase in deductibles, exclusions or exceptions;
- 4.4.6 to advise the Authority in advance of any change to the terms of, or any lapse, non-renewal and/or cancellation of any policy maintained in respect of the Required Insurances; and
- 4.4.7 to use our reasonable endeavours to have endorsed on each and every policy evidencing the Required Insurances (when the same is issued) endorsements substantially in the form set out in part 3 to Schedule 11 of the Agreement.

4.5 **Insurance Cost Reporting Procedures**

to prepare following request, at the expense of the Contractor, a Joint Insurance Cost Report on behalf of both the Contractor and the Authority in accordance with the Insurance Review Procedure as set forth in **Schedule 20** (Insurance Premium Risk Sharing) of the Agreement. We shall ensure that the information in the Joint Insurance Cost Report is fairly represented, based on the information available to us.

5. **Notification Details**

- 5.1 Our obligations at clause 4 of this letter to notify or inform you shall be discharged by providing the requisite information in hard copy to:

The Authority: The London Borough of Lambeth

Address: 3rd floor Olive Morris House, 18 Brixton Hill,
SW2 1RL

Facsimile No: 020 792 69764

Attention: Risk & Insurance Manager

- 6. We shall supply further letters substantially in this form on renewal of each of the Required Insurances and shall supply copies of such letters to those parties identified to us by the Authority for such purposes.

7. Our aggregate liability to any persons companies or organisation who acts in reliance on this letter, or on any other broker's letter of undertaking issued by us in respect of the Required Insurances for this Project, for any and all matters arising from them and the contents thereof shall in any and all events be limited to the sum of £5,000,000, even if we are negligent. We do not limit liability for our fraud.

Yours faithfully

For and on behalf of [Contractor's broker]

Part 5: Definitions

Revenue	the projected Unavoidable Fixed Costs and Senior Debt Service Costs of the Contractor;
Senior Debt Service Costs	<p>interest and debt service costs incurred in respect of the Senior Financing Agreements less:</p> <ul style="list-style-type: none">(a) sums which are in arrears;(b) all sums reserved by the Contractor and which the Contractor is entitled to use to make such payments, without breaching the Senior Financing Agreements
Unavoidable Fixed Costs	<p>the fixed costs incurred by the Contractor which first fall due for payment by the Contractor during the period of indemnity but excluding:</p> <ul style="list-style-type: none">(a) costs which could have reasonably been mitigated or avoided by the Contractor;(b) payments to the Contractor's Associated Companies which are not entirely at arm's length;(c) payments which are not entirely at arm's length;(d) payments to holders of equity in the Contractor, Subordinated Lenders and any other financing costs other than Senior Debt Service Costs;(e) indirect losses suffered or allegedly suffered by any person;(f) fines, penalties or damages for unlawful acts, breaches of contract

or other legal obligations;

- (g) payments the Contractor can recover under contract or in respect of which the Contractor has a remedy against another person in respect of the same liability;
- (h) payments to the extent that the Contractor has available to it:
 - (i) reserves which the Contractor can draw upon without breaching the Senior Financing Agreement;
 - (ii) standby or contingent facilities or funds of Senior Debt or equity which the Contractor is entitled to have available;
- (i) payments representing any profits of the Project (to the extent not already excluded in paragraph (e) above).

SCHEDULE 12

Authority's Policies

The following documents in the Agreed Form:

1. Data Protection Protocol
2. Environmental Charter
3. Sustainable Construction Policy
4. Sustainable Timber Purchasing Policy
5. Equal Opportunities Statement
6. Corporate Health and Safety Policy
7. Privacy Policy
8. Corporate Complaints Policy
9. Freedom of Information policy
10. IT Policies and Procedures, which incorporates the provisions of the:
 - 10.1 ICT Services: Service Standards;
 - 10.2 Third Party Site to Site Code of Connection Policy;
 - 10.3 Third Party Code of Connection Standard; and
 - 10.4 Using Systems and Data Policy for all Users

SCHEDULE 13

Initial Financing Agreements

Part 1 – Senior Financing Agreements

Part 2 – Subordinated Financing Agreements

SCHEDULE 14

Project Documents

1. Building Contract
2. Housing Management Agreement
3. Responsive Repairs and Cyclical Maintenance and Renewal Contract
4. Energy Services Contract
5. Development Agreement

SCHEDULE 15

Change in the Number of Dwelling by Tenure

Category	Nature of Change of Tenure	Nature of Cost	Saving
Refurbishment Costs			
	Tenanted Leasehold	to Refurbishment Works	
	Tenanted Freehold	to Refurbishment Works	
Variable Costs	Tenanted Leasehold	to Lifecycle works to Dwellings (Refurbishment and New Build) – internal and external	
	Tenanted Freehold	to Lifecycle works to Dwellings (Refurbishment and New Build) – internal and external	
	Tenanted Leasehold	to Cyclical maintenance & servicing – HRA	
	Tenanted Freehold	to Cyclical maintenance & servicing – HRA	
Semi Variable Costs	Repairs/ responsive maintenance – HRA	Tenanted to Leasehold or Freehold	
	Voids	Tenanted to Leasehold or Freehold	

Category	Nature of Change of Tenure	Nature of Cost	Saving
	Housing Manangement	Tenanted to Leasehold or Freehold	
	SPV Operating Insurance Costs	Tenanted to Leasehold	
		Tenanted to Freehold	

SCHEDULE 16

Housing Management Functions

1. Allocations and Lettings

- 1.1 Transfers and exchanges administration (in part)
- 1.2 Dealing with tenancy applications (in part)
- 1.3 Letting of garages, stores, etc

2. Tenant Management

- 2.1 Maintaining tenancy agreements and enforcing conditions of tenancy
- 2.2 Providing information and advice to tenants on rights, duties and welfare matters
- 2.3 Liaison with tenants' groups
- 2.4 Liaison with other local authority departments (e.g. Social Services) and local authority groups
- 2.5 Dealing with enquiries and complaints from tenants
- 2.6 Dealing with disputes between tenants/harassment
- 2.7 Consulting tenants
- 2.8 Supporting tenant participation
- 2.9 Publishing reports to tenants on performance indicators
- 2.10 Decanting

3. Rents and service charges

- 3.1 Ensuring payment and action against non-payment
- 3.2 Issuing Notices of Seeking Possession and Notices to Quit and attending court
- 3.3 Benefit, review, initial administration of housing benefit application and liaison with authority on housing benefit claim

4. Repairs and Maintenance

- 4.1 Maintenance and upkeep of common areas and communal services under HRA

- 4.2 Receipt and transmission of requests for responsive repairs
- 4.3 Dealing with works contractors
- 4.4 Planning and managing major (non-capital) repairs programmes
- 4.5 Supervision and management of repairs, improvements and modernisation
- 4.6 Administration of Right to Repair scheme
- 4.7 Lighting of lifts, staircases, unadopted roads, etc
- 4.8 Deinfestation
- 5. **VOIDS CONTROL**
- 5.1 Inspection and letting
- 5.2 Repairing and cleaning as necessary
- 5.3 Security against squatting and Third Party Damage
- 5.4 Control of void losses
- 5.5 Short-life lettings (as required)
- 6. **OTHER**
- 6.1 Provision of Right to Buy information to authority
- 6.2 Leasehold management
- 6.3 Insurance of HRA buildings
- 6.4 Neighbourhood office management
- 6.5 Provision of performance information and reports
- 6.6 Eviction and Forfeiture as appropriate

SCHEDULE 17

Planned Completion Programme and Planned Services Commencement Date

Month	(1) Planned Completion Programme								(2) Planned Services Commencement Dates
	Number of Certificate of Availability Rented (Full Standard) - Tenanted Dwellings to be Refurbished	Number Certificate of Availability Leasehold (Full Standard) - Leasehold Dwellings to be Refurbished	Number of Certificate of Availability Rented (Full Standard) - New Build Tenanted Dwellings	Number of Certificate of Availability Leasehold (Full Standard) - New Build Leasehold Dwellings	Number of Certificate of Availability Leasehold (Full Standard) - New Build Freehold Dwellings	Delivery of the Certificate of Availability Community Centre (Full Standard)	Delivery of the Certificate of Availability Park (Full Standard)	Delivery of the Certificate of Availability Public Realm and Infrastructure Works (Full Standard)	
Month 1 May 2012	0	0	0	0	0	0	0	0	1 st Jun 2012
Month 2 Jun 2012	11	2	0	0	0	0	0	0	1 st Jul 2012
Month 3 Jul 2012	10	2	0	0	0	0	0	0	1 st Aug 2012
Month 4 Aug 2012	10	2	0	0	0	0	0	0	1 st Sep 2012
Month 5 Sep 2012	10	2	0	0	0	0	0	0	1 st Oct 2012
Month 6 Oct 2012	10	2	0	0	0	0	0	0	1 st Nov 2012
Month 7 Nov 2012	10	2	0	0	0	0	0	0	1 st Dec 2012
Month 8 Dec 2012	5	1	0	0	0	0	0	0	1 st Jan 2013
Month 9 Jan 2013	5	1	0	0	0	0	0	0	1 st Feb 2013

	(1) Planned Completion Programme								(2) Planned Services Commencement Dates
Month	Number of Certificate of Availability Rented (Full Standard) - Tenanted Dwellings to be Refurbished	Number of Certificate of Availability Leasehold (Full Standard) - Leasehold Dwellings to be Refurbished	Number of Certificate of Availability Rented (Full Standard) - New Build Tenanted Dwellings	Number of Certificate of Availability Leasehold (Full Standard) - New Build Leasehold Dwellings	Number of Certificate of Availability Leasehold (Full Standard) - New Build Freehold Dwellings	Delivery of the Certificate of Availability Community Centre (Full Standard)	Delivery of the Certificate of Availability Park (Full Standard)	Delivery of the Certificate of Availability Public Realm and Infrastructure Works (Full Standard)	
Month 10 Feb 2013	10	2	0	0	0	0	0	0	1 st Mar 2013
Month 11 Mar 2013	10	2	0	0	0	0	0	0	1 st Apr 2013
Month 12 Apr 2013	10	2	5	0	0	0	0	0	1 st May 2013
Month 13 May 2013	10	2	2	18	0	0	0	0	1 st Jun 2013
Month 14 Jun 2013	10	2	0	0	0	0	0	0	1 st Jul 2013
Month 15 Jul 2013	4	0	9	7	0	0	0	0	1 st Aug 2013
Month 16 Aug 2013	4	0	0	0	0	0	0	0	1 st Sep 2013
Month 17 Sep 2013	0	0	0	0	0	0	0	0	1 st Oct 2013
Month 18 Oct 2013	0	0	36	2	0	0	0	0	1 st Nov 2013
Month 19 Nov 2013	0	0	16	0	0	0	0	0	1 st Dec 2013
Month 20 Dec 2013	0	0	26	2	0	0	0	0	1 st Jan 2014
Month 21 Jan 2014	0	0	0	0	0	0	0	0	1 st Feb 2014
Month 22 Feb 2014	0	0	0	0	0	0	0	0	1 st Mar 2014

	(1) Planned Completion Programme								(2) Planned Services Commencement Dates
Month	Number of Certificate of Availability Rented (Full Standard) - Tenanted Dwellings to be Refurbished	Number of Certificate of Availability Leasehold (Full Standard) - Leasehold Dwellings to be Refurbished	Number of Certificate of Availability Rented (Full Standard) - New Build Tenanted Dwellings	Number of Certificate of Availability Leasehold (Full Standard) - New Build Leasehold Dwellings	Number of Certificate of Availability Leasehold (Full Standard) - New Build Freehold Dwellings	Delivery of the Certificate of Availability Community Centre (Full Standard)	Delivery of the Certificate of Availability Park (Full Standard)	Delivery of the Certificate of Availability Public Realm and Infrastructure Works (Full Standard)	
Month 23 Mar 2014	0	0	30	0	0	0	0	0	1 st Apr 2014
Month 24 Apr 2014	0	0	0	0	0	0	0	0	1 st May 2014
Month 25 May 2014	0	0	0	0	0	0	0	0	1 st Jun 2014
Month 26 Jun 2014	0	0	0	15	1	0	0	0	1 st Jul 2014
Month 27 Jul 2014	0	0	0	5	3	0	0	0	1 st Aug 2014
Month 28 Aug 2014	0	0	23	0	0	1	0	0	1 st Sep 2014
Month 29 Sep 2014	0	0	29	4	0	0	0	0	1 st Oct 2014
Month 30 Oct 2014	0	0	0	0	0	0	0	0	1 st Nov 2014
Month 31 Nov 2014	0	0	4	0	1	0	0	0	1 st Dec 2014
Month 32 Dec 2014	0	0	0	0	0	0	0	0	1 st Jan 2015
Month 33 Jan 2015	0	0	0	0	0	0	0	0	1 st Feb 2015
Month 34 Feb 2015	0	0	0	0	0	0	0	0	1 st Mar 2015
Month 35 Mar 2015	0	0	0	0	0	0	0	0	1 st Apr 2015

	(1) Planned Completion Programme								(2) Planned Services Commencement Dates
Month	Number of Certificate of Availability Rented (Full Standard) - Tenanted Dwellings to be Refurbished	Number of Certificate of Availability Leasehold (Full Standard) - Leasehold Dwellings to be Refurbished	Number of Certificate of Availability Rented (Full Standard) - New Build Tenanted Dwellings	Number of Certificate of Availability Leasehold (Full Standard) - New Build Leasehold Dwellings	Number of Certificate of Availability Leasehold (Full Standard) - New Build Freehold Dwellings	Delivery of the Certificate of Availability Community Centre (Full Standard)	Delivery of the Certificate of Availability Park (Full Standard)	Delivery of the Certificate of Availability Public Realm and Infrastructure Works (Full Standard)	
Month 36 Apr 2015	0	0	16	0	0	0	0	0	1 st May 2015
Month 37 May 2015	0	0	8	0	0	0	0	0	1 st Jun 2015
Month 38 Jun 2015	0	0	0	0	0	0	0	0	1 st Jul 2015
Month 39 Jul 2015	0	0	0	0	0	0	0	0	1 st Aug 2015
Month 40 Aug 2015	0	0	8	0	0	0	0	0	1 st Sep 2015
Month 41 Sep 2015	0	0	15	0	0	0	0	0	1 st Oct 2015
Month 42 Oct 2015	0	0	0	0	0	0	0	0	1 st Nov 2015
Month 43 Nov 2015	0	0	4	0	0	0	0	0	1 st Dec 2015
Month 44 Dec 2015	0	0	0	0	0	0	0	0	1 st Jan 2016
Month 45 Jan 2016	0	0	0	0	0	0	0	0	1 st Feb 2016
Month 46 Feb 2016	0	0	16	0	0	0	0	0	1 st Mar 2016
Month 47 Mar 2016	0	0	0	0	0	0	0	0	1 st Apr 2016
Month 48 Apr 2016	0	0	0	0	0	0	1	1	1 st May 2016

	(1) Planned Completion Programme								(2) Planned Services Commencement Dates
Month	Number of Certificate of Availability Rented (Full Standard) - Tenanted Dwellings to be Refurbished	Number Certificate of Availability Leasehold (Full Standard) - Leasehold Dwellings to be Refurbished	Number of Certificate of Availability Rented (Full Standard) - New Build Tenanted Dwellings	Number of Certificate of Availability Leasehold (Full Standard) - New Build Leasehold Dwellings	Number of Certificate of Availability Leasehold (Full Standard) - New Build Freehold Dwellings	Delivery of the Certificate of Availability Community Centre (Full Standard)	Delivery of the Certificate of Availability Park (Full Standard)	Delivery of the Certificate of Availability Public Realm and Infrastructure Works (Full Standard)	
Month 49 May 2016	0	0	0	0	0	0	0	0	1 st Jun 2016 (the Full Services Commencement Date)
TOTAL	129	24	247	53	5	1	1	1	

SCHEDULE 18

Works Procedures

Part 1 Works Procedures

1. During the carrying out of the Works, the Contractor shall procure that the Building Contractor and any Building Sub-Contractor shall not use or occupy or permit the Project Site or any land upon which the Works are being undertaken to be used or occupied for any purpose other than the carrying out of the Works.
2. The Contractor shall procure that the Building Contractor and any Building Sub-Contractor shall;
 - 2.1 Not deposit or manufacture or permit to be deposited or manufactured on the Project Site or any land upon which the Works are being undertaken any materials which are not required for the carrying out of the Works;
 - 2.2 Not sell or dispose of any earth, clay, sand, gravel, chalk or other material from the Project Site or any land upon which the Works are being undertaken or permit or suffer the same to be removed, except so far as shall be necessary for the proper execution of the Works, without the consent of the Authority which shall not be unreasonably withheld;
 - 2.3 At the Contractor's sole cost transport all surplus materials arising from the Works and arrange for the tipping of the same at such places as may lawfully be used for tipping and the Contractor shall ensure that such materials will not cause or give rise to pollution of the environment as defined by section 29(3) Environmental Protection Act 1990;
 - 2.4 Not permit or suffer the storage of materials or the parking of vehicles in the immediate external vicinity of the boundaries of the Project Site by the Contractor, the Building Contractor or any Building Sub-Contractor other than for reasonable periods necessary for loading and unloading or as set out in the Contractor's Proposals;
 - 2.5 Ensure that all vehicles leaving the Project Site are adequately cleaned to prevent the deposit of waste materials and debris on the Adjoining Property or the public highway and if any such material or debris is so deposited the Contractor shall forthwith employ such measures as shall be necessary to remove the material and debris and to clean and reinstate the Adjoining Property to the reasonable satisfaction of the owners or occupiers of the Adjoining Property as the case may be;
 - 2.6 Not, in breach of any Legislation, permit any oil, grease or deleterious, dangerous, poisonous, explosive or radioactive matter to be discharged from the

Project Site into any rivers or any ditches or services media on the Sites and/or any Adjoining Property and shall not permit or suffer the blockage of any of such rivers, ditches and services media by reason of anything done or omitted on the Project Site or any land upon which the Works are being undertaken, and shall comply at the Contractor's expense with any requirements of the Environment Agency or any other Relevant Authority so far as such requirements relate to or affect the Works;

- 2.7 Not gain access to and egress from the Dwellings, Blocks, Communal Areas or Project Site except as contemplated by the Contractor's Proposals;
- 2.8 Save as set out in the Development Works Delivery Plan, not without the written consent of the Authority erect or permit or suffer to be erected on the Project Site any temporary structure except site accommodation usual in connection with works of a like nature to the Works or as contemplated by the Contractor's Proposals;
- 2.9 Save as set out in the Development Works Delivery Plan, not erect or exhibit or permit or suffer to be erected or exhibited on any part of the Project Site any signs or trade boards save those previously approved in writing by the Authority (such approval not to be unreasonably withheld or delayed). The size and location of project information boards shall be agreed with the Authority; and
- 2.10 Take all necessary steps in accordance with Legislation with regard to ensuring the health and safety of all:
 - 2.10.1 occupants of the Project Site;
 - 2.10.2 individuals invited onto the Project Site; and
 - 2.10.3 occupants of Adjoining Properties,is not adversely impacted upon by the undertaking of the Works.
- 2.11 Provide an annual energy report after the Works have been completed which confirms:
 - 2.11.1 that the renewable technologies are providing the set CO² targets;
 - 2.11.2 that the renewable technologies are in good working order; and
 - 2.11.3 that the heating systems (including CHP) are delivering affordable warmth and are in good working orderalongside a methodology on how the Contractor, Building Contractor or any Building Sub-Contractor will achieve the above.

- 2.12 Provide a copy of the following as soon as reasonably practicable:
 - 2.12.1 considerate constructors scheme methodology;
 - 2.12.2 environmental management plans and policies;
 - 2.12.3 site waste management plan; and
 - 2.12.4 demolition methodology.
- 2.13 Provide a copy of the following when required the Authority or the Authority's Representative:
 - 2.13.1 code for sustainable homes;
 - 2.13.2 BREEAM certificates; and
 - 2.13.3 post construction reviews.
- 2.14 The Contractor shall keep the approaches and access routes to the Dwellings, Blocks and/or Communal Areas clear of debris resulting from the carrying out of the Works, and shall carry out regular cleaning so as to ensure that all such approaches and access routes are kept reasonably clean at all times from dirt, debris and the like arising from the carrying out of the Works.

Part 2 – Works Procedures (Refurbishment)

1. The Dwellings

- 1.1 The Contractor shall not use or enter the Dwellings, Blocks, Communal Areas and/or Exterior Common Area for any purpose other than that of carrying out the Works and providing the remainder of the Services.
- 1.2 The Contractor shall not, without the prior written consent of the Authority permit or display advertisements on and surrounding the Dwellings, Blocks, Communal Areas and/or Exterior Common Area. The size and location of project information boards shall be agreed with the Authority who shall act reasonably in that regard.
- 1.3 The Contractor will be responsible for keeping the approaches and access routes to the Dwellings, Blocks, Communal Areas and/or Exterior Common Areas clear of debris resulting from the carrying out of the Works, and shall carry out regular cleaning so as to ensure that all such approaches and access routes are kept reasonably clean at all times from dirt, debris and the like arising from the carrying out of the Works.
- 1.4 The Contractor will not be allowed to utilise metered utilities within the Dwellings without the residents' written consent. The Contractor will not be allowed to utilise metered utilities within the Common Parts, Communal Area or Exterior Common Areas to carry out the Works but will be allowed to use property water utilities where not metered.

2. Programme and Progress

2.1 Programme of Works

Before a relevant Planned Services Commencement Date or (as the case may be) before any revised Cyclical Maintenance and Replacement Programme and Planned Maintenance Programme is agreed or determined, the Contractor will provide the Authority with the Programme of Works in a Gantt chart format (together with commentary identifying the key activities in detail) showing the programme for the carrying out and completion of the Works in accordance with this Agreement and which shall include durations for all detailed activities in connection with the following (so far as relevant). The programme should also clearly identify key milestone dates that if missed would affect the critical path end date through the particular phase of the works or the project:

- 2.1.1 phasing of individual packages;
- 2.1.2 the likely time of undertaking the Refurbishment Works to individual Dwellings whether occupied or void; and

- 2.1.3 detailed decant plan for each phase of works where decant (temporary or other) is necessary.

This **paragraph 2.1** shall not apply to Responsive Repairs.

2.2 **Progress**

- 2.2.1 Progress of the Works shall be monitored against the relevant Programme of Works and the Contractor shall at 4 week intervals from the Commencement Date update the programme in accordance with progress to date along with information of any divergence from the programme of Works and submit the updated programme to the Authority or the Authority's Representative.
- 2.2.2 The Contractor's Representative shall inform the Authority's Representative as soon as he becomes aware of any matter which may, in his reasonable judgment, materially adversely affect the timing or quality of the Works.

2.3 **Progress Photographs**

- 2.3.1 The Authority may take such photographs of the Works and any part of the Project Site which it considers necessary provided always that such persons comply with the Building Contractor's and Responsive Repairs and Cyclical Maintenance and Renewal Contractor's reasonable site rules.
- 2.3.2 The Contractor shall provide a digital photographic library of the works as they proceed. Particular care is to be taken to ensure that digital photographs are provided of all aspects of the works that will be hidden or covered on completion of the work. The photographic library is to be catalogued for ease of future use.
- 2.3.3 The Contractor shall use reasonable endeavours to photograph examples of unacceptable workmanship and unsafe working practices insofar as such matters are brought to its attention.
- 2.3.4 Hard copies of all such digital photographs shall be made available for inspection on demand and shall be copied to the other Party as soon as practicable.

3. **Provision of Information to the Authority by the Contractor**

- 3.1 The Contractor shall on reasonable notice allow the Authority such access during working hours as is reasonably required to the following documents which shall be stored in a location on or adjacent to the Project Sites or at such other

location as previously agreed by the Authority in writing (acting reasonably) as may be appropriate given the nature of the document(s):

- 3.1.1 the Building Contractor's and the Responsive Repairs and Cyclical Maintenance and Renewal Contractor's design and build quality plan;
- 3.1.2 the drawing register and all drawings including layout plans, elevations sections and details;
- 3.1.3 detailed specifications for all building elements and external works;
- 3.1.4 Contractors method statements;
- 3.1.5 detailed M&E plumbing, heating, mechanical and electrical design and specification at a scale of 1:100 or larger (inter alia) showing all services distribution routes within the Dwellings, including positions of services, voids and risers;
- 3.1.6 detailed CHP proposals;
- 3.1.7 detailed security proposals including camera positions and monitoring equipment;
- 3.1.8 detailed proposals for drainage and underground services;
- 3.1.9 detailed communal TV proposals;
- 3.1.10 detailed telephone, internet and IT proposals;
- 3.1.11 detailed door entry system proposals;
- 3.1.12 details of any services that run through a dwelling which is considered to be part of the blocks structure;
- 3.1.13 details of any gas service to the estate and within dwellings proposals;
- 3.1.14 detailed proposal for locations of all utility meters e.g. Gas, Electricity and Water;
- 3.1.15 detailed proposals for refuse collection and recycled waste;
- 3.1.16 room data sheets showing kitchen and bathroom layouts;
- 3.1.17 residents choice of components and finishes;
- 3.1.18 the Building Contractor's and the Responsive Repairs and Cyclical Maintenance and Renewal Contractor's safety policy (including the safety policy produced by any Consultant);

- 3.1.19 any technical commissioning together with all test certificates, statutory certificates and other like documents;
 - 3.1.20 progress photographs produced by or for the Contractor;
 - 3.1.21 operation and maintenance manuals and as built drawings;
 - 3.1.22 information relating to CHP, additional sustainability and environmental information;
 - 3.1.23 sufficient plans and sections of the structural and specialist repair elements of the Works;
 - 3.1.24 the health and safety plan and the health and safety file as defined in the CDM Regulations; and
 - 3.1.25 site waste management plan, considerate constructors methodology and environmental management plans and policies.
- 3.2 Two copies of the documents referred to at **paragraphs 3.1.1 to 3.1.24** shall be provided by the Contractor to the Authority on request and within a reasonable time of such request.
- 3.3 The Contractor shall maintain an updated drawing register for each drawing comprised in the Works Delivery Plans and any Cyclical Maintenance and Replacement Programme and for all design development which will include:
- 3.3.1 drawing number;
 - 3.3.2 drawing title;
 - 3.3.3 discipline;
 - 3.3.4 status of drawing;
 - 3.3.5 current issue;
 - 3.3.6 date of issue; and
 - 3.3.7 distribution.
4. **Authority Report**
- 4.1 An Authority Report will be issued each month to the Authority by the Contractor. The report will provide details, inter alia, of the following:
- 4.1.1 a statement of progress as against any Programme of Works;
 - 4.1.2 status of all consents and approvals;

- 4.1.3 resume of the reasons for any delay;
 - 4.1.4 actions to be taken to mitigate delays;
 - 4.1.5 Works Changes requested by the Contractor and approved
 - 4.1.6 impact of any Works Change requested by the Authority including any possible adjustment of the Unitary Charge;
 - 4.1.7 a statement as to current design development;
 - 4.1.8 outstanding information required from the Contractor;
 - 4.1.9 health and safety issues; and
 - 4.1.10 waste management plan, considerate constructors methodology and environmental management plans and policies.
- 4.2 All drawings are to be produced using CAD and should follow the BS layering convention.
- 4.3 Where it is agreed that there is a material or significant change in any Programme of Works then the Contractor will issue to the Authority all such revisions of the Programme of Works within five (5) Business Days.
- 4.4 This paragraph does not apply to Responsive Repairs.

5. Health and Safety

5.1 Introduction

5.2 Sustainability

- 5.2.1 The design, construction and carrying out of the Works will be undertaken in accordance with all relevant health and safety Legislation.
- 5.2.2 The Contractor shall ensure that the construction of the Dwellings and/or Blocks and/or Communal Areas and all operations of the Dwellings and/or Blocks and/or Communal Areas are conducted with due regard to the health and safety and welfare of persons employed upon the Works and visitors to and occupiers of any part of the Project Site and other persons who may thereby be affected and that in and about the performance of the Works the requirements of the Health & Safety at Work etc Act 1974 are complied with.

- 5.2.3 The Contractor shall take all reasonable safety and other measures to prevent damage or injury.
- 5.2.4 The Contractor is responsible for health and safety, including compliance with the Health and Safety (Construction Design and Management) Regulations 1994 incorporating (Amendments) 2000, in the carrying out of all design, construction and maintenance works. The Contractor is deemed to carry out these responsibilities as agent for the Authority, including the preparation for of the Health and Safety file, which will be kept available and up-to-date for the Authority to inspect both on completion of the construction phase and thereafter.
- 5.2.5 The Contractor shall be the designated Principal Provider under the CDM Regulations. It is the Contractor's responsibility to ensure an appropriate contractor is appointed. A CDM Co-ordinator must also be appointed by the Contractor.

6. Fire Management

The Contractor shall be responsible for fire management and health and safety control at the Dwellings during any period that the Contractor is carrying out Works at the relevant Dwelling.

The Contractor must ensure that works comply with legislation and that on completion of the Works all common and communal areas to the blocks have been risk assessed by a competent person.

7. Fires

No fires shall be lit on the Project Site by the Contractor whether for the purpose of burning rubbish or otherwise.

8. Police Regulations and Traffic Regulations

The Contractor shall satisfy itself as to any police regulations and other regulations affecting the execution of the Works, with particular regard to the control of traffic and the conduct of persons under its care and control and shall pay any costs or expenses incurred in complying therewith.

9. Nuisance, Trespass and Noisy Operations

9.1 The Contractor shall take all reasonable precautions to prevent:

- 9.1.1 trespass on any property;
- 9.1.2 entry on any part of the Project Site not reasonably required at that stage to undertake any of the Works; and

- 9.1.3 or (where not possible to prevent) minimise nuisance, inconvenience or disturbance to any person including the right of quiet enjoyment of the Tenants, Leaseholders and Freeholders;

caused by the Contractor, or any Contractor Related Party.

- 9.2 The Contractor shall take all reasonable precautions to prevent any damage to any part of the Project Site which is not the subject of the Works and to any Adjoining Property, including public or private roadways, fences, trees, shrubs, paths etc caused by the carrying out of the Works on the Project Site and shall be responsible for any damage resulting from the Works. The Contractor shall make good, replace or renew any damage caused to such items as a result of the Works within a reasonable time scale at the Contractors expense.

- 9.3 The Contractor shall:

- 9.3.1 take all reasonable measures to minimise the noise levels produced by its operations on the Project Site;

- 9.3.2 ensure that the noisy Works are only carried out during normal working hours as detailed in the Output Specification unless otherwise agreed with the Authority;

- 9.3.3 provide a copy of the considerate constructors guide including detailed information on the energy efficiency measures, reducing emissions and noise control procedures on site;

- 9.3.4 use all reasonable endeavours to ensure that in carrying out the Works on the Project Site:

- 9.3.4.1 mechanical plant where practicable is electrically powered;

- 9.3.4.2 noise from compressors used on the Project Site is minimised, either by using only models fitted with effective exhaust silencers and properly lined and sealed with acoustic covers all to the design of the manufacturers of the compressors, or by the use of effective acoustic screens around the noise;

- 9.3.4.3 ancillary pneumatic percussion tools used on the Project Site are fitted with silencers of a type recommended by the manufacturers of the tools;

- 9.3.4.4 all compressors, silencers or other contrivance is maintained in good and efficient working order, and shall not have been altered in such a way that the noise caused in operation is made greater by the alteration; and

9.3.4.5 it complies with section 72 Control of Pollution Act 1974 part (iii), so as to reduce noise and vibration levels to a minimum at all times, and have regard to BS 5228 - the BSCP for Noise Control on Construction and Demolition Sites and the Noise at Work Regulations 1989;

and any activities or plant which cause excessive vibration shall be identified and the Authority shall be informed prior to commencement of such activity or use of such plant; and

9.3.5 in relation to the following operations:

9.3.5.1 use of compressors, generators, pneumatic equipment and power tools;

9.3.5.2 drilling/chasing of structure;

9.3.5.3 repetitive noise-producing operations such as pile driving;

9.3.5.4 demolition/movement of debris; and

9.3.5.5 loading, unloading and movement of goods;

where the Contractor foresees that the carrying out of any part of any of these operations by or on behalf of the Contractor for the purpose of the Works will be unreasonably noisy or cause excessive vibration, the Contractor shall provide written notice to the Tenants and Leaseholders prior to the commencement of the operation. The written notice shall include details of when the disruptive Works shall begin, including details as to the likely period of operation. If the Authority becomes aware and is reasonably of the opinion that the carrying out of any such operation will result in unreasonable noise which would impact adversely on neighbouring properties then the Contractor shall take all reasonable measures to minimise the level of noise generated from the carrying out of the operation. The Contractor shall also (where practical to do so) make minor alterations to the programme to lessen the impact and disruption to residents.

10. Dust Control and Suppression

10.1 The Authority recognises that some generation of dust is inevitable. The Contractor shall use all reasonable endeavours to ensure that measures are taken to control and suppress levels of dust generated by operations performed by the Contractor on the Project Site. Tools with dust capture equipment should be used at all times where such equipment is commercially available.

- 10.2 The Contractor shall provide appropriate screening to the Works to minimise dust caused by the carrying out of the Works reaching any adjacent and occupied area.
- 10.3 The siting of any fume emitting devices adjacent to fresh air inlets or ventilation plant shall not be permitted.
- 10.4 The Contractor shall remove on a regular basis accumulated dust and debris within the Project Site caused by the carrying out of the Works.
11. **Working Hours**
- 11.1 Subject to **paragraph 10.2** the Contractor shall limit site operations to the working hours of 8:00 to 5:00 pm Monday to Friday.
- 11.2 If the Contractor wishes to work hours in excess of the agreed working hours in **paragraph 11.1** it shall obtain the prior written consent of the Authority who may not unreasonably or vexatiously refuse to extend the hours of working.
12. **Site Accommodation and Welfare**
- 12.1 The Contractor will provide in a suitable and safe location welfare facilities, mess room accommodation and proper roofed and screen latrines which are to be kept in a clean and decent condition for the use of operatives, where requested.
- 12.2 The Contractor will be responsible for the payment of any rates charged by the Authority in connection with any temporary buildings.
13. **Safeguarding the Works**
- 13.1 No steps, ladders or other plant shall be left accessible for unauthorised persons to enter the Sites. All measures taken should meet the requirements of "HSE Children on Construction Sites" GS (7).
- 13.2 The Contractor shall allow for all requisite watching and lighting and everything else reasonably necessary for the protection of the Works, the Dwellings and the public and for all persons lawfully using the Dwellings, Blocks, Communal Area and/or Exterior Common Areas during the execution of the Works.
14. **Disposal of Materials**
- 14.1 The Contractor shall clear up and cart away all surplus spoil, materials and rubbish arising from the carrying out of the Works as it accumulates on any part of the Project Site and the public highway within or adjacent to the Project Site and maintain the Project Site in a clean, safe and tidy condition at all times.
- 14.2 The Contractor shall use all reasonable endeavours to prevent excavated spoil, rubbish, surplus materials and the like arising from the Works being dumped on

an area other than a public or private tip controlled or recognised by the local authority and shall comply with the Civic Amenities Act 1967 and all other Legislation governing the controlled tipping of refuse.

- 14.3 If any excavated spoil, rubbish, surplus materials and the like arising from the Works have been deposited elsewhere other than at a recognised tip, as defined in **paragraph 14.2** the Contractor will be held responsible for clearing away such deposits at its own cost and ensuring that they are placed in such a recognised tip.
- 14.4 Any fossils, coins, precious metals, jewellery, treasure trove, valuables and other artefacts are and remain the property of the Authority and the Contractor shall notify the Authority forthwith of any such items are found on the Project Site or other Authority owned land.
- 14.5 The Contractor shall have a site waste management plan with specific targets for reuse and recycling materials from the site. All endeavours should be made to reuse materials on site where possible and divert waste from landfill by recycling.

15. **Prevention of Pollution**

The Contractor shall use all reasonable endeavours to be expected of a competent building contractor to prevent pollution arising from the execution of the Works.

16. **Safety, Comfort and Hygiene of Residents**

- 16.1 The Contractor must ensure the safety, comfort and hygiene of Tenants, Leaseholders and their households during and in consequence of the execution of the Works so that, inter alia:
 - 16.1.1 electricity services are kept safe; electrical meters shall be supported and protected from damage in a manner approved by the supply authority.
 - 16.1.2 at all times protection against direct and indirect shock is provided within each Dwelling in accordance with the I.E.E. Regulations.
 - 16.1.3 lighting points function during hours of darkness in the living room, kitchen, stairs, bathroom and bedrooms.
 - 16.1.4 Nothing undertaken in connection with Works should interfere with telephone and TV reception (where currently available)
 - 16.1.5 mains cold water supplies are available at all times from at least one outlet in the Dwelling.

- 16.1.6 The Contractor is not to use the Tenants' facilities i.e. kitchen and WC's without the Tenants' prior written consent.
- 16.1.7 on commencement of each day's work in each Dwelling, the Contractor is to supply and lay clean dustsheets to protect floor coverings and furniture etc and take them up on completion of the work that day.
- 16.1.8 on completion of Works, the Contractor is to clean the floor coverings/finishings and is to replace furniture and effects in position, leave the Dwelling clean and tidy, free from debris, tools and site materials and check with the occupier that he is satisfied with such cleaning, replacements etc.
- 16.1.9 the Contractor shall (where the nature of the Works so demand) provide and maintain within the Dwellings temporary dustproof screens and other temporary protection and shall alter, shift and adapt them from time to time as is necessary.
- 16.1.10 the Contractor shall (where the nature of the Works so demand) provide and maintain temporary weatherproof screens and other temporary protection and shall alter, shift and adapt them from time to time as is necessary.
- 16.1.11 facilities for cooking are maintained and when unavoidably suspended clean and wholesome temporary facilities are provided, safely connected to the energy source and removed when no longer needed. Calor gas or paraffin are forbidden fuels.
- 16.1.12 hot water supplies are to be maintained at all available at all times and if unavoidably suspended then temporary facilities are to be provided.
- 16.1.13 kitchen sink and WC are kept in operation unless replacements are ready to be installed with immediate substitution and minimum discontinuity.
- 16.1.14 the installation of a replacement bath is effected so that the facility is not suspended for longer than one day and is always available with full hot and cold water services at weekends.
- 16.1.15 heat is maintained in the living room and if suspended a facility is provided on a temporary basis to realise a temperature of 18 degrees C.
- 16.1.16 security is maintained at all times and entry kept open to the residents.

- 16.1.17 where works are being carried out at a Dwelling, each such Dwelling is clean and tidy at the end of each Business Day.
- 16.1.18 communal and circulation areas are kept free from hazards at all times to the extent related to the Works. No materials or debris arising from the works is to be stored in the communal or common areas.
- 16.1.19 obstacles, hazards, actions, omissions which expose the residents to danger and risk are avoided. Particular care must be taken to ensure the safety of residents and visitors in the vicinity of scaffolded buildings.
- 16.1.20 temporary footways, clearly signposted, are provided wherever the normal footway is unavailable for use.
- 16.1.21 external doors and windows are removed and replaced within the same Business Day.
- 16.1.22 the identity of operatives is made known to the residents by means of a card or badge system and only those who have been so identified shall be authorised and admitted to enter.
- 16.1.23 care and protection is given to the fabric, fitments, fixtures and finishes of the Dwellings to the extent that the fabric, fitments, fixtures and finishes are likely to be affected by the Works.
- 16.1.24 no explosives are used.
- 16.1.25 no smoking is allowed whilst working on or within a Dwelling.
- 16.1.26 without prejudice to the generality of the foregoing it complies with the Considerate Contractor Code.
- 16.2 The Contractor shall serve written notice to each Tenant and Leaseholder affected of the need to temporarily disconnect either the drainage system, mains or other services, giving a minimum 24 hour notice of such disconnection. These periods shall be limited to the absolute minimum required to carry out the specified work. All services are to be left in a safe working condition at the end of each Business Day.
- 17. **Testing and Sampling**
- 17.1 The Contractor shall carry out all on-site performance tests and sampling as are reasonably necessary in accordance with Good Industry Practice.

- 17.2 All architectural components, plumbing, gas and electrical installations shall meet all requirements of such tests as defined in the relevant British Standard Codes of Practice.
- 17.3 All Tenants are to be provided with all relevant manufacturers instructions (if any) for items installed. In addition operating instructions must be communicated and demonstrated to the Tenant in such a manner that the Tenant can readily understand them.

SCHEDULE 19

Commercially Sensitive Information

Part 1

Column 1	Column 2
Commercially Sensitive Contractual Provisions	For period ending on date below
The defined terms, "Base Cost", "Financing Default", "Joint Insurance Account".	The Expiry Date or the Termination Date if earlier.
The caps on liability in clause 59.3.3 and 59.3.4.	The Expiry Date or the Termination Date if earlier.
Schedule 4 (Payment Mechanism)	The Expiry Date or the Termination Date if earlier.
Schedule 9 (Warranted Data) Part 3 (Employee Information)	The Expiry Date or the Termination Date if earlier.
Schedule 13 (Initial Financing Agreements) and any subsequent agreements or alterations to the Initial Financing Agreements	The Expiry Date or the Termination Date if earlier.
Any cap under Schedule 29 (Third Party Damage Protocol)	The Expiry Date or the Termination Date if earlier.
Schedule 40 (Authority Share of Proceeds of Development Works)	The Expiry Date or the Termination Date if earlier.
Appendix 1 Catalogue of Low Value Change	The Expiry Date or the Termination Date if earlier.
Appendix 2 Pricing Information	The Expiry Date or the Termination Date if earlier.

Part 2

Column 1	Column 2
Commercially Sensitive Material	For period ending on date below
<p>The financial models in respect of the Project and model assumptions and that supporting financial information produced on behalf of the Contractor being:</p> <ul style="list-style-type: none"> • PFI financial model (content, structure, inputs, outputs, sensitivities); • PFI assumptions book; • cost proformas (these provide detailed costs breakdown on an elemental basis, including overheads and profits for each subcontractor for the project); • CNDT model; • Lifecycle model; • DEVCO financial model (content, structure, inputs, outputs, sensitivities); • DEVCO assumptions (sales values in particular); and • Authority reports, evaluation, approvals, meeting notes, minutes etc that make reference to the relevant information . 	<p>The Expiry Date or the Termination Date if earlier.</p>
<p>Financial or corporate information in respect of the Contractor, Holdco, any Shareholder, any Sub-contractor or any of the sub-contractors at any other level relating to the year prior to any request for information except to the extent such information is required to be disclosed in</p>	<p>The Expiry Date or the Termination Date if earlier.</p>

documents lodged at Companies House.	
Information contained within the cost proformas which provide detailed costs breakdown on an elemental basis, including preliminaries, overheads and profits for each sub-contractor and the nature of claims which are subject to a cap on liability, levels and liability for liquidated damages, Deductions and Unavailability and payment terms.	The Expiry Date or the Termination Date if earlier.
The limits of liability or other commercial agreements set out in any Interface Agreement or sub-contract.	The Expiry Date or the Termination Date if earlier.

SCHEDULE 20

Insurance Premium Risk Sharing

1. Definitions

- 1.1 For the purposes of this Schedule, the following words and expressions shall bear the following meanings:

Actual Relevant Insurance Cost means the aggregate of the annual insurance premiums reasonably incurred by the Contractor to maintain the Relevant Insurance during the Insurance Review Period but excluding insurance premium tax and all broker's fees and commissions;

Base Cost



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

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

- (a) the amount by which the Base Relevant Insurance Cost would have been a lesser amount had such a risk been Uninsurable or such a term or condition been unavailable at the Bid Date (which amount, for the avoidance of doubt, can be £0); or
- (b) if it is impossible to determine an

amount pursuant to paragraph (a) above, an amount that is reasonable to be deducted from the Base Relevant Insurance Cost having due regard to:

- (i) the amount by which the Actual Relevant Insurance Cost is less than it would have been as a result of the risk becoming Uninsurable, or the term or condition becoming unavailable (the "Actual Reduction");
- (ii) the size of the Actual Reduction as a percentage of the Actual Relevant Insurance Cost immediately prior to the risk becoming Uninsurable, or the term or condition becoming available; and
- (iii) the effects of RPI since the Bid Date;

Business Interruption Cover

shall bear the meaning ascribed to it in **Schedule 11** (Insurances);

Construction Period Insurance

means the Required Insurance in respect of the period from the date of this Agreement to the Service Commencement Date;

Contract Period

means the period from and including the date of this Agreement to the Expiry Date, or if earlier, the Termination Date;

Contractor Related Party

means the Contractor's agents and contractors (including without limitation the Construction Sub-contractor and the Operating Sub-contractor) and its or their subcontractors of any tier and its or their

	directors, officers, employees and workmen in relation to the Project and any person on or at the Site at the express or implied invitation of the Contractor (other than the Authority or any Authority Related Party);
Exceptional Cost	means, for an Insurance Review Period, the extent to which there is an Insurance Cost Increase which exceeds in amount 30% of the Base Relevant Insurance Cost for that Insurance Review Period;
Exceptional Saving	means, for an Insurance Review Period, the extent to which there is an Insurance Cost Decrease which exceeds in amount 30% of the Base Relevant Insurance Cost for that Insurance Review Period;
First Insurance Review Date	means the first Business Day following the fourth anniversary of the Relevant Insurance Inception Date;
Insurance Cost Decrease	means the Insurance Cost Differential if the value thereof is less than zero, multiplied by minus one;
Insurance Cost Differential	shall, subject to the Insurance Review Procedure, be determined as follows: Insurance Cost Differential = (ARIC – BRIC) – (PIC) where: ARIC is the Actual Relevant Insurance Cost BRIC is the Base Relevant Insurance Cost PIC is the Project Insurance Change
Insurance Cost Increase	means the Insurance Cost Differential if the value thereof is greater than zero
Insurance Cost Index	means any index introduced by the United Kingdom Government or the Office of National Statistics after the date of this Agreement and which is anticipated to be

	published annually to provide an independent and objective measure of changes in prevailing market insurance costs;
Insurance Review Date	means the First Insurance Review Date and, thereafter, each date falling on the second anniversary of the previous Insurance Review Date, except where such date lies beyond the end of the Contract Period, in which case the Insurance Review Date shall be the last renewal date of the Relevant Insurance prior to the end of the Contract Period;
Insurance Review Procedure	means the procedure set out in paragraph 2 of this Schedule 20 ;
Insurance Review Period	means a two year period from the third anniversary of the Relevant Insurance Inception Date and each subsequent two year period commencing on the second anniversary of the Relevant Insurance Inception Date except where the end of such period lies beyond the end of the Contract Period, in which case the Insurance Review Period shall be the period from the end of the penultimate Insurance Review Period to the last day of the Contract Period;
Joint Insurance Cost Report	shall bear the meaning ascribed to it in paragraph 2.2 of this Schedule 20 ;
PFI	means the United Kingdom's Private Finance Initiative;
Portfolio Cost Saving	means any insurance cost saving which arises from the Contractor changing the placement of the Required Insurances from being on a stand-alone project-specific basis assumed at Financial Close and reflected in the Base Cost, to being on the basis of a policy (or policies) also covering risks on other projects or other matters

Project Insurance Change

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

means any net increase (which shall be expressed as a positive number) or net decrease (which shall be expressed as a negative number) in the Actual Relevant Insurance Cost relative to the Base Relevant Insurance Cost, arising from:

- (a) the claims history or re-rating of the Contractor or any Contractor Related Party;
- (b) the effect of any change in deductible unless the following applies:
 - (i) such change is attributable to circumstances generally prevailing in the Relevant Insurance Market; and
 - (ii) the deductible, further to such change, is either greater than or equal to the maximum in **Schedule 11** (Insurances);
- (c) any other issue or factor other than circumstances generally prevailing in the Relevant Insurance Market, except for any Portfolio Cost Saving

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

	shall have a negative value.
Relevant Insurance	means the Required Insurance and any other insurances as may be required by law other than: <ul style="list-style-type: none"> (a) Construction Period Insurance; (b) Business Interruption Cover except to the extent that it relates to Unavoidable Fixed Costs;
Relevant Insurance Inception Date	means the date on which the Relevant Insurance is first providing active insurance cover to the Contractor, being a date no earlier than the Service Commencement Date;
Relevant Insurance Market	means the insurance market which insures the majority of all PFI projects across all of the PFI sectors (as determined by the number of PFI projects). At the date of this Agreement, the Relevant Insurance Market is in the United Kingdom;
Required Insurance	shall bear the meaning ascribed to it in the Agreement; and
RPI	shall bear the meaning ascribed to it in the Agreement.

2. Insurance Review Procedure

- 2.1 This procedure shall be used to determine whether the Authority shall bear any increase or benefit from any decrease in Relevant Insurance costs.
- 2.2 The Contractor's insurance broker shall prepare a report on behalf of both the Contractor and the Authority (the Joint Insurance Cost Report). The Report is to be prepared at the Contractor's expense, and should, as a minimum, contain the following information for the relevant Insurance Review Period:
 - 2.2.1 A full breakdown of the Actual Relevant Insurance Cost;
 - 2.2.2 A full breakdown of the Base Relevant Insurance Cost;
 - 2.2.3 A spreadsheet (the Insurance Summary Sheet) detailing separately:
 - 2.2.3.1 the sum(s) insured/limit of indemnity (i.e. rateable factor) for each of the Relevant Insurances;
 - 2.2.3.2 the premium rate for each of the Relevant Insurances;
 - 2.2.3.3 the net premium paid (or to be paid) for each of the Relevant Insurances (i.e. excluding both insurance premium tax and brokers fees and commissions);
 - 2.2.3.4 the deductible(s) for each Relevant Insurance;
 - 2.2.3.5 details of any claims (paid or reserved) (including incident date, type and quantum) in excess of £20,000, being the amount stated in **clause 60.8**;
 - 2.2.4 An assessment and quantification of each Project Insurance Change together with the reasons therefore;
 - 2.2.5 Full details of any Portfolio Cost Saving;
 - 2.2.6 Any other reasons that the Contractor believes may have caused a change (by way of increase or decrease relative to the Base Relevant Insurance Costs) in the Actual Relevant Insurance Cost;
 - 2.2.7 The opinion of the Contractor's insurance broker as to the reasons why the Actual Relevant Insurance Cost has varied from the Base Relevant Insurance cost, specifying the impact of each of the factors and quantifying the amount attributable to each factor specified above;
 - 2.2.8 The calculation of the Insurance Cost Differential and any Exceptional Cost or Exceptional Saving arising from this calculation; and

- 2.2.9 Evidence satisfactory to the Authority (acting reasonably) of any changes to circumstances generally prevailing in the Relevant Insurance Market that are claimed to account for the Insurance Cost Differential;
- 2.2.10 Details of movements in the CBS Private Capital non marine index plus, if available from other appropriate sources, details of changes in insurance cost across the PFI market as a whole.
- 2.3 The Contractor shall procure that the Broker, no later than the date which is ten (10) Business Days after the Insurance Review Date, delivers to the Authority, at the same time as it delivers to the Contractor, at least two copies of the Joint Insurance Cost Report. At the same time the Contractor should send a copy of the Insurance Summary Sheet to HM Treasury private finance unit or its nominee. Following receipt of the Joint Insurance Cost Report, the Authority shall notify the Contractor in writing within fifteen (15) Business Days whether or not it accepts the Joint Insurance Cost Report including full details of any disagreement. If the Authority does not provide such notification and/or details of any disagreement to the Contractor within fifteen (15) Business Days, the Authority shall be deemed to have accepted the Joint Insurance Cost Report. If the Authority disagrees with any item in the Joint Insurance Cost Report, the Parties shall use their respective reasonable endeavours acting in good faith to agree the contents of the Joint Insurance Cost Report. If the Parties fail to agree the contents of the Joint Insurance Cost Report within thirty five (35) Business Days from the date it was delivered to the Authority, the matter shall be resolved pursuant to the Dispute Resolution Procedure, provided always that references in **clause 64.4** to an expert shall be construed as references to an independent insurance expert agreed by the Parties or, in the absence of agreement, appointed by the President for the time being of the Chartered Institute of Arbitrators.
- 2.4 The Authority may make the Joint Insurance Cost Report available to any of its or HM Treasury's agents or advisers or other body or bodies nominated by HM Treasury for insurance cost verification, benchmarking or similar purpose.
3. **Sharing of Exceptional Cost and Exceptional Saving**
- 3.1 If, following the completion of the Insurance Review Procedure, it is agreed or determined that there is an Exceptional Cost, the Authority shall within thirty (30) days of completion of the Insurance Review Procedure make a one-off lump-sum payment to the Contractor equal to 85% of the Exceptional Cost.
- 3.2 If following the completion of the Insurance Review Procedure, it is agreed or determined that there is an Exceptional Saving, the Contractor shall within (30)

days of completion of the Insurance Review Procedure make a one-off lump-sum payment to the Authority equal to 85% of the Exceptional Saving.

- 3.3 Following the completion of the Insurance Review Procedure, if it is agreed or determined that there is neither an Exceptional Cost nor an Exceptional Saving, any Insurance cost Differential shall be borne by or benefit the Contractor.

4. **Insurance Cost Index**

If at any time an Insurance Cost Index is published and intended for use in PFI contracts of a similar nature to this Agreement, the parties shall meet with a view to agreeing:

- 4.1 its application to the Project, taking account any relevant guidance issued by HM Treasury; and
- 4.2 how a Portfolio Cost Saving may be accounted for when index is in use.

SCHEDULE 21

Equality Requirements

1. **Racial discrimination and the promotion of equality and equal opportunity**

1.1 The Contractor (including its agents and employees) shall not, and shall procure that any Contractor Related Party shall not:

1.1.1 discriminate directly or indirectly (and in relation to disability for a reason related to disability or failure to make reasonable adjustments) or by way of victimisation or harassment, against any person on Prohibited Employment Grounds; and/or

1.1.2 discriminate directly or indirectly or by way of victimisation or harassment against any person on Prohibited Grounds; and/or

1.1.3 contravene sections 19, 39, 108, 109, 111, 112 of the Equality Act 2010 and section 24A of the Equality Act 2006,

where appropriate.

1.2 The Contractor (including its agents and employees) shall, and shall procure that any Contractor Related party shall, for purposes of ensuring compliance with **paragraphs 1.1.1 to 1.1.3** above, in relation to staff engaged in the provision of Works and/or Services observe as far as possible the provisions of:

1.2.1 the Equality and Human Rights Commission's Equality Act 2010 Statutory Code of Practice of Employment;

1.2.2 the Equality and Human Rights Commission's Equality Act 2010 Statutory Code of Practice on Equal Pay;

1.2.3 the Equality and Human Rights Commission's Equality Act 2010 Statutory Code of Practice on Services, Public Functions and Associations;

1.2.4 any other relevant code of practice introduced by a commission or other body set up by Parliament to promote, monitor and enforce Equalities Legislation,

including but not limited to, those provisions recommending the adoption, implementation, and monitoring of an equal opportunities policy.

- 1.3 The Contractor shall, and shall procure that any Contractor Related Party shall, in performing its/their obligations under this Agreement, comply (to the extent permitted by law) with the provisions of:
- 1.3.1 Section 149(1) of the Equality Act 2010, as if it/they were a body within the meaning of Schedule 19 of the Equality Act 2010 in relation to its/their public functions;
 - 1.3.2 Section 189 and Schedule 21 of the Equality Act 2010, as if it/they were a body within the meaning of Schedule 19 of the Equality Act 2010 in relation to its public functions;
 - 1.3.3 Section 149(2) of the Equality Act 2010.
- 1.4 The Contractor shall, and shall procure that any Contractor Related Party shall, notify the Authority's Representative forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against the Contractor or any Contractor Related Party under the Equalities Legislation.
- 1.5 Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with any matter relating to the Contractor's performance of its obligations under this Agreement being in contravention of the Equalities Legislation, the Contractor shall, and shall procure that any Contractor Related Party shall, free of charge:
- 1.5.1 provide any information requested in the timescale allotted;
 - 1.5.2 attend any meetings as required and permit any of its staff to attend;
 - 1.5.3 promptly allow access to and investigation of any documents or data deemed to be relevant;
 - 1.5.4 allow itself and any of its staff to appear as witness in any ensuing proceedings; and
 - 1.5.5 cooperate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.
- 1.6 In the event of any finding of unlawful discrimination under the Equalities Legislation being made against the Contractor and/or Contractor Related Parties during the Contract Period by any court or employment tribunal or of any adverse finding in any formal investigation by any commission with responsibility for equality matters over the same period the Contractor shall inform the Authority of his finding and shall take appropriate steps to prevent repetition of the unlawful discrimination.

- 1.7 The Contractor shall on request provide the Authority with details of any steps taken under **paragraph 1.6**
- 1.8 The Contractor's equal opportunities policy shall be set out in any instructions circulated to those members of the Contractor's employees and/or Contractor Related Party's employees concerned with management of employees, including disciplinary matters, responsibility for recruitment, training and promotion, in relevant documentation available to its employees and others and in its recruitment advertisements and other relevant literature.
- 1.9 The Contractor shall monitor representation amongst its employees and provide such information as the Authority may reasonably request for the purpose of assessing the Contractor's and/or Contractor Related Party's compliance with the above conditions, including, if requested, examples of any instructions, recruitment advertisements or other literature, and details of monitoring applicants and employees.

SCHEDULE 22

Access Protocol

1. Meaning of Access Refusal

1.1 An Access Refusal occurs:

1.1.1 where a Tenant either:

1.1.1.1 refuses access to a Dwelling to undertake Works (whether or not they have been started) or Services;

1.1.1.2 refuses access to a Dwelling to allow an inspection by the Independent Certifier under **clause 23** (Certificate of Availability); or

1.1.1.3 fails to respond to contacts made by the Contractor at the point indicated in the procedure contained in **paragraph 2.2** of this Access Protocol and provided the Contractor is complying with the provisions of this Protocol but does not apply;

1.1.2 to refusals which arise where the Tenant does not want particular items of work to be undertaken on the ground that they wish to retain their own alteration which will be covered by the Tenant Waiver Protocol;

1.1.3 to cases where the relevant Dwelling would otherwise fail to meet the Availability Standards (Initial) applicable at the time. In these cases the Contractor must take all necessary steps that are accordance with Good Industry Practice, the Output Specification and, generally, this Agreement to secure access in order to prevent health or safety being compromised. This may involve the taking of legal proceedings by the Contractor in the Authority's name for this purpose;

1.1.4 to circumstances where access was refused for reasons linked to the failure of the Contractor or any Contractor Related Party to perform its obligations in accordance with Good Industry Practice or with the terms of this Protocol, or if access was refused for reasons linked to any cause within the control or the ability of the Contractor or any Contractor Related Party to manage with respect to works undertaken to the Dwellings. To avoid any doubt, this paragraph does not apply in relation to access refusals that are related to events outside of the Project Site even if they involve the Contractor or any Contractor Related Party;

- 1.1.5 where a Dwelling has been the subject of a new Tenancy Agreement granted to a Tenant other than the Tenant that refused access, unless the new Tenant also refuses access.
- 1.2 This Protocol is set out in two parts, the first covering the period prior to the issue of a Certificate of Availability (Full Standard) in relation to a Dwelling and the second covering Cyclical Maintenance and Renewal Works, whether or not to be carried out before a Certificate of Availability (Full Standard) is issued in relation to a Dwelling.
2. **Access Procedure Prior to Certification**
- 2.1 **Failure to Make Contact**
- 2.1.1 The Contractor in order to secure access to a Dwelling prior to the issue of a Certificate of Availability (Full Standard) in relation to that Dwelling will employ two levels of personnel who will make contact with Tenants in order to subsequently gain access to individual Dwellings. These are:
- 2.1.1.1 Resident Liaison Officers, who will contact Tenants and their households in the build up to the Works being undertaken. Efforts will be made by the Contractor to ensure that contact is by way of direct face-to-face communications. This will assist both the Tenant with his household and the Contractor to plan for the works to be undertaken.
- 2.1.1.2 Site Foreman, who will contact the Tenant on the day that Refurbishment Works are due to commence.
- 2.1.2 In addition to these direct forms of contact, the Contractor will also produce regular and appropriate project newsletters, project bulletin boards, and other similar modes of communication that will help to establish strong links with the community as well as provide robust information as to the scope and timing of the Works to each Dwelling.
- 2.1.3 Specifically, the Contractor will undertake that:
- 2.1.3.1 the Resident Liaison Officer will write to individual Tenants not less than 28 days before the Works are due to commence on their Dwelling. Attempts will be made to deliver this letter personally to establish face- to- face contact. If this is not possible, the letter will provide contact details for the Resident Liaison Officer to allow

Tenants and other members of his household to make an appointment at a mutually convenient time;

2.1.3.2 regardless of whether or not contact was established from the initial letter, a further letter will be issued to the Tenant not less than 7 days prior to the Works commencing. This will confirm arrangements made, or request the Tenant or a member of his household to make urgent contact with the Resident Liaison Officer. Again, attempts will be made to deliver this personally; and

2.1.3.3 in the event of Tenant holidays or pressing personal circumstances, such as family bereavement or illness, the Contractor will agree with a Tenant a mutually convenient alternative time for the Works to be undertaken and on Access Refusal that will have deemed to have taken place.

2.1.4 The Site Foreman will attend the Dwelling on the morning the Works are due to commence. This will allow the Tenant or members of his household to meet those delivering the Works and ask any last minute queries. If no response is received, a card will be posted through the letter box asking the Tenant to make immediate contact with either the Resident Liaison Officer or the site office. This will confirm that the team will attend again the next Business Day. This card will be multi-lingual if the Tenancy Agreement or other information available to the Contractor suggests that the Tenant and/or household belongs to an ethnic minority. The Contractor shall also, if necessary, arrange access to dedicated language line or to a locally available specialist special needs support as the case may require. These services will be provided as soon as it becomes known to the Contractor that the Tenant or his household may need them.

2.1.5 Regardless of whether a response from the procedure contained in **paragraph 2.1.4** above was obtained, that procedure will be repeated the next Business Day.

2.1.6 The procedure contained in **paragraph 2.1.4** above will be repeated for a third consecutive Business Day. In the event that no response is obtained, an Access Refusal Event will have occurred and a card will be left as previously, but this will shortly be followed by a letter confirming that attempts had been made to access the Dwelling to undertake the Works, and that the Works would now be postponed until such time as the Dwelling is vacated by the Tenant.

2.2 Access Refusal

In the event that contact is established, but the Tenant indicates that he will be unwilling to allow access to the Dwelling, the Resident Liaison Officer will take all reasonable steps actively to work with the Tenant to establish reasons for refusal and will develop plans to address these in order that access may be granted. There will be an Access Refusal Event if having taken reasonable steps to work with the Tenant and address reasons for refusal for a period of 14 days the Tenant continues to indicate that he is still unwilling to allow access to the Dwelling. In exceptional circumstances, the Contractor may request the assistance of the Authority. Any assistance provided by the Authority will be at its sole discretion and on a goodwill basis (so that failure to comply is not a breach of this Agreement or this Protocol by the Authority) and the involvement of the Authority will not absolve the Contractor from its responsibilities as set out in this Agreement and this Protocol.

2.3 Procedure for the Refurbishment Works

2.3.1 The Contractor will at all times use all reasonable endeavours to undertake works on a neighbouring property basis, if physically possible, that is to proceed from one Dwelling to the next in the street.

2.3.2 In the event that there is an Access Refusal Event, the following procedure will be followed:

2.3.2.1 if the Contractor believes that there are significant Health & Safety issues in respect of the Dwelling or other potential liabilities to the Authority or the Contractor, then it will take the appropriate steps including taking legal proceedings to gain access at the earliest opportunity;

2.3.2.2 in the event that subsequent phases of the Refurbishment Works are conducive to revisiting Dwellings then the Resident Liaison Officer will again take all reasonable steps to attempt to make contact with the relevant Tenants or members of their households;

2.3.2.3 if the Tenant does subsequently allow access to the Dwelling prior to the end of the Refurbishment Works Period, the Dwelling will be placed on an Access Refusal and Tenant Waiver Waiting List to be maintained by the Contractor but within a dedicated "No Access" Category on a strict date order basis from the date when the Tenant indicated that access would be allowed;

2.3.2.4 the Contractor will during the Refurbishment Works Period return and complete the Refurbishment Works within 2 weeks after the date when the Tenant indicated that

access would be allowed if there is no more than one other Dwelling recorded before it on the "No Access" Category, otherwise within 4 weeks Dwellings will cease to be recorded on the Access Refusal and Tenant Waiver Waiting List for all purposes once the relevant Works have been commenced

2.3.2.5 not more than six (6) months prior to the end of the Refurbishment Works Period, the Contractor will contact all Tenants that have refused access to their Dwellings. This will be by letter, which will be personally delivered by the Resident Liaison Officer to the relevant Dwellings. Dwellings of Tenants subsequently allowing access after the dispatch of this letter will be added to the Access Refusal and Tenant Waiver Waiting List within a dedicated "No Access" Category according to Refusal date order priority;

2.3.2.6 notwithstanding any restrictions elsewhere in this Access Protocol, the Contractor will return and complete the Refurbishment Works within 2 weeks after the expiry of the Refurbishment Works Period to all remaining Dwellings recorded in this category according to their date order priority, when the Tenant vacates the Dwelling or subsequently allows access up to a maximum of 5 Dwellings, including Dwellings subject to Access Refusal recorded in the last three months of the Refurbishment Works Period; and

2.3.3 All copies of written letters and dates and times of delivery and attempted access will be recorded by the Contractor and made available to Authority inspection on two Business Day's notice. The Contractor will also provide a rolling schedule of Dwellings where no response to the 28 and 7 day letters have been received.

3. Responsive Repairs and Cyclical Maintenance and Renewal Works Access Procedure

3.1 Responsive Repairs

3.1.1 This section is concerned with the access procedure to be employed with respect to Responsive Repairs Works both pre-and post the issue of a Certificate of Availability (Full Standard).

3.1.2 Wherever appropriate appointments will be made with the Tenant via the Helpdesk to undertake all such works. However it is anticipated

that on arrival at the appointed time to some appointments the Tenant or other member of his household will not be available. In this instance a calling card will be left at the Dwelling, informing the Tenant that the Contractor called at the appropriate appointment time and that he is now required to contact the Help Desk to re-book an appointment and the job status will be amended in accordance with the following table.

Emergency	3 hours	Leave card requesting Tenant to contact the Help Desk within 24 hours, job closed. If contact is made a further appointment is made and a new job raised.
Performance Priority 1	1 Business Day	Leave card requesting Tenant to contact the Help Desk within 24 hours, job closed. If contact is made a further appointment is made and a new job raised.
Performance Priority 2	3 Business Days	Leave card requesting Tenant to contact the Help Desk within 24 hours, job closed. If contact is made a further appointment is made and a new job raised.
Performance Priority 3	7 Business Days	Leave card requesting Tenant to contact the Help Desk within 24 hours. A second visit is made and a further card left on the 3 rd day requesting tenant to contact the Help Desk within 24 hours. If no contact is made job is closed. If contact is subsequently made a new job will be raised.
Performance Priority 4	25 Business Days	Leave card requesting Tenant to contact the Help Desk within 7 days. A second visit is made and card left requesting Tenant to contact the Help Desk within 7 days. If no contact is made, job is closed. If contact is subsequently made a new job will be raised.
Performance Priority 5	40 Business Days	Leave card requesting Tenant to contact the Help Desk within 7 days. A second visit is made and card left requesting tenant to contact the Help Desk within 7 days. If no contact is made, job is closed. If contact is subsequently made a new job will be raised.

- 3.1.3 Dates and times of delivery of calling cards and attempted access will be recorded by the Contractor and made available to Authority inspection on two Business Day's notice.
- 3.1.4 The Contractor will also provide a rolling schedule of Dwellings where no response to calling cards have been received.
- 3.1.5 Where any job is closed due to failure to gain access the Authority will be informed in writing in the monthly Payment and Performance Report and in such circumstances the Access Refusal shall not be added to the Access Refusal and Tenant Waiver Waiting List.

- 3.1.6 Where relevant the response and rectification periods are reset from the point of the report requesting the repair or maintenance where access is then gained.

3.2 Cyclical Maintenance and Renewal Works

- 3.2.1 For Cyclical Maintenance and Renewal Works undertaken by the Contractor after completion of the Refurbishment Works Period, these by their nature are often more of a 'package' type and the following process will apply;

- 3.2.1.1 the Contractor will write to individual Tenants informing them that either access will be required to carry out a survey or that works will commence in 28 days time as appropriate – wherever possible attempts will be made to deliver the letter personally to establish face to face contact;
- 3.2.1.2 a further reminder letter of the required access will be sent 7 days prior to the start of works. Where the works are to be directly carried out without the need of a survey the Tenant will be requested to make urgent contact;
- 3.2.1.3 where survey work is carried out a further 7 day notice will be forwarded prior to the works actually commencing; and
- 3.2.1.4 on the morning the works are due to commence the Contractor or his appointee will attend the Dwelling. If there is no response a card will be left requesting the Tenant to make immediate contact, confirming that the team will attend again the following day. This card will be multi-lingual if the tenancy agreement or other information available to the Contractor suggests that the Tenant and/or household belongs to an ethnic minority. The Contractor shall also, if necessary, arrange access to a locally available dedicated language line or specialist special needs support as the case may require. These services will be provided as soon as it becomes known to the Contractor that the Tenant or his household may need them.

- 3.2.2 The procedure in **paragraph 3.2.1.4** will be repeated the following day regardless of whether a response was obtained. In the event that no access is available on the second visit, a card will be left. The

Contractor will advise the Authority of this second no access event no later than 3 days.

- 3.2.3 Not less than five Business Days after the Authority has been informed of two such failed no access events, a letter will be sent confirming that attempts had been made to access the Dwelling to undertake the works, and that the works would now be postponed until such time as the Dwelling is vacated by the Tenant (the final letter).
- 3.2.4 Should the Tenant subsequently respond, then decisions to return to complete the works shall be made on an individual case basis but as a minimum, in the event of pressing personal circumstances, such as family bereavement, illness or holidays, the Contractor will agree with a Tenant a mutually convenient alternative date for the Cyclical Maintenance and Renewal Works to be undertaken, within 26 weeks of the date of the final letter unless the nature of the works and tenant circumstances make this impracticable.
- 3.2.5 In the event that no contact is made on two failed no access events in accordance with **paragraph 3.2.2** or that contact is made but access denied, the Authority will be informed in writing and Access Refusal will have occurred.
- 3.2.6 Where there is an Access Refusal Event in relation to Cyclical Maintenance and Renewal Works the following procedure will be followed:
 - 3.2.6.1 if the Contractor believes that there are significant health & safety issues in respect of the Dwelling or other potential liabilities to the Authority or the Contractor, then it will take the appropriate steps including taking legal proceedings to gain access at the earliest opportunity;
 - 3.2.6.2 in the event that subsequent phases of work are conducive to revisiting Dwellings then the Contractor will again take all reasonable steps to attempt to make contact with the relevant Tenants or members of their households;
 - 3.2.6.3 if the Tenant does subsequently allow access, the Dwelling will be placed on the Access Refusal and Tenant Waiver Waiting List but within a dedicated "No Access" Category on a strict date order basis from the date when the Tenant indicated that access would be allowed;

3.2.6.4 the Contractor will return and complete the works within 1 week if there is no more than one other Dwelling recorded before it on the No Access Category, otherwise within 2 weeks.

3.2.6.5 prior to the end of the relevant Cyclical Maintenance and Renewal Works the Contractor will contact all Tenants that have refused access to their Dwellings. This will be by letter, which will be personally delivered by to the relevant Dwellings. Dwellings of Tenants subsequently allowing access after the dispatch of this letter will be added to the Access Refusal and Tenant Waiver Waiting List referred to above within a dedicated No Access Category according to date order priority.

3.3 This Access Protocol shall apply to the provision of those services which are the subject of the Energy Services Contract so that the Energy Services Contractor shall be entitled to exercise its rights under its contract with each Tenant for the supply of energy without such exercise giving rise to a breach by the Contractor of any of its obligations under this Agreement.

4. **General**

4.1 Dwellings subject to Access Refusal and left over from the Refurbishment Works Period will remain on the Access Refusal and Tenant Waiver Waiting List and future Access Refusals will be added in date order. All cases of Access Refusal for the Refurbishment Works or Cyclical Maintenance and Renewal Works (but not Responsive Repairs which must be dealt with whenever the Tenant permits access) will be dealt with before any Tenant Waiver cases.

4.2 For the avoidance of doubt all cases of Access Refusal or tenant waiver under the Tenant Waiver Protocol that occur during the final year of the Contract Period and are not to be dealt with under the terms of this Access Protocol will become the responsibility of the Authority.

4.3 Nothing in this Access Protocol excuses the Contractor from undertaking any works to a Dwelling that does not meet the Availability Standard Rented (Initial) and, for the avoidance of doubt, the Contractor shall take all steps open to it to gain access to a Dwelling that does not meet the Availability Standard Rented (Initial) so as to bring it to the Availability Standard Rented (Initial).

SCHEDULE 23

Tenant Waiver Protocol

1. Introduction

- 1.1 The approach detailed within this Tenant Waiver Protocol will be used by the Contractor in respect of the Works comprising both the Refurbishment Works and the Cyclical Maintenance and Renewal Works to manage instances where a Tenant wishes to waive elements of those Works at the relevant Dwelling. It is intended to complement the Contractor's existing procedures, as well as satisfy the Authority that all reasonable efforts have been made to explain to the Tenant the implications of his/her decision not to have the relevant elements of the Works undertaken at his/her Dwelling.
- 1.2 This Protocol also details the actions required of the Contractor in the event that the Tenant decides that any particular waiver is to be rescinded.
- 1.3 All the procedures described below are intended to be implemented by the Contractor and relevant Contractor Related Parties in the execution of the Works.

2. The Contractor Approach

- 2.1 This Protocol will apply in cases where the Tenant does not want particular items of the Works to be undertaken at the relevant Dwelling on the grounds that it wishes to retain its own fixture, fitting, works and/or Tenant Improvement ("Tenant Waiver(s)") save that Tenants shall not be permitted to waive elements of those Works relevant to the connection of a Rented Dwelling to the district heating system for the provision of heating and hot water.
- 2.2 For the avoidance of doubt, all other refusals to allow the Works to be undertaken at the relevant Dwelling are the subject of the Access Protocol.
- 2.3 In all instances, the Contractor will encourage Tenants not to request Tenant Waiver(s). Subject at all times to **paragraph 3.5** of this Tenant Waiver Protocol, it is recognised by the Authority and the Contractor that, in exceptional circumstances, there will be instances where Tenants will be reluctant for particular items of the relevant Works to be carried out. In such instances, this Tenant Waiver Protocol will apply.

3. The Consultation Period

- 3.1 Prior to the relevant Works commencing at any particular Dwelling, the Contractor will explain to the Tenant the scoped implications of the relevant Works to be carried out at the relevant Dwelling. This process is outlined in the Access Protocol.

- 3.2 It is likely that it is at this stage that the first possible requests for Tenant Waiver(s) will be raised. Should any Tenant Waiver(s) be raised, the Contractor will explain to the Tenant the implications of not having the relevant elements of the Works undertaken. The Contractor will also explain the Tenant Waiver Understanding / Obligation document (appended to this Protocol at Annex 1) (the "**Tenant Waiver Form**") to the Tenant.
- 3.3 A Tenant Waiver Form will be left with the Tenant for completion. The Contractor shall collect the completed form from the Tenant, having first allowed the Tenant 7 days to review the implications as explained to it by the Contractor. No Tenant Waiver(s) shall have effect until a Tenant has agreed to, completed and signed a Tenant Waiver Form. When the Tenant has done this, a Tenant Waiver Event will occur provided the Contractor has complied with the provisions of this Protocol.
- 3.4 All Tenant Waiver(s) will be reported on a monthly Payment and Performance Report by the Contractor to the Authority.
- 3.5 In the event that the Contractor believes the elements comprising the scope of the Tenant Waiver(s) (as detailed on the relevant Tenant Waiver Form) would:
- 3.5.1 constitute a Health and Safety hazard;
 - 3.5.2 constitute a breach of applicable law or relevant codes of practice;
 - 3.5.3 constitute a breach of the Authority's obligations under the relevant Tenancy Agreement or under common law;
 - 3.5.4 otherwise enable the Tenant to withhold any rent and/or other service charges or monies due to the Authority and/or the Contractor; and/or
 - 3.5.5 be detrimental to any other elements of the fabric of the relevant Dwelling (including deterioration below the relevant Availability Standard where relevant),

then the Contractor will not allow such Tenant Waiver(s) and will ensure the proposed Works are carried out at the relevant Dwelling as planned and in accordance with the terms of this Agreement.

4. **Refurbishment Works Period**

- 4.1 During the relevant Works at the Dwelling the Tenant may raise further Tenant Waiver(s). The Contractor will encourage Tenants not to request Tenant Waiver(s) and accordingly prevent the relevant Works from being carried out. However should the Tenant raise any further Tenant Waiver(s), the Contractor will again explain to the Tenant the implications of not having the relevant

elements of the Works completed as planned and the Tenant will be taken through the Tenant Waiver Form as outlined above.

- 4.2 No Tenant Waiver(s) will be granted by the Contractor during the Refurbishment Works Period should the circumstances within **paragraph 3.5** above apply

5. **Revocation or Termination of Tenant Waiver(s)**

- 5.1 The following events or circumstances will revoke or terminate any Tenant Waiver(s) previously agreed with a Tenant:

5.1.1 change of Tenant (unless the incoming Tenant is consulted and the scope of the works detailed on the previous Tenant's Tenant Waiver Form continue in effect and subject to the incoming Tenant signing the relevant Tenant Waiver Form); and/or

5.1.2 health and Safety; if as a result of any inspection process it becomes apparent that any existing Works and/or Tenant Improvements which are the subject of the Tenant Waiver Form have not been maintained by the Tenant and are prejudicial to the health and safety of the Tenant and/or his household, or could cause damage to other elements of the Dwelling and/or adjoining Dwellings or other Dwellings (as relevant), then the Tenant Waiver(s) shall be withdrawn and rectification works shall be carried out immediately at the cost of the Contractor; and/or

5.1.3 Tenant request to revoke or terminate; in such instances the process to be adopted by the Contractor is as follows:

5.1.3.1 request during the Refurbishment Period; in the event that a Tenant chooses to revoke or terminate the Tenant Waiver(s), the Contractor shall:

(a) carry out and complete the relevant Works originally subject to the Tenant Waiver(s) at a time mutually convenient to the Tenant and the Contractor; or

(b) if the Contractor cannot (acting reasonably) complete the relevant Works in accordance with **paragraph 5.1.3.1(a)** log the request on the Access Refusal and Tenant Waiver Waiting List (see below),

but any such requests to revoke or terminate the Tenant Waiver(s) during the final 3 Months of the Refurbishment Works Period will be placed on the Access Refusal and Tenant Waiver Waiting List and actioned in accordance with paragraph 6 below provided that the Contractor,

acting reasonably, has not been able to complete the relevant Works in accordance with **paragraph 5.1.3.1(a)**.

5.1.3.2 Request at any other time; such request will be logged on the Access Refusal and Tenant Waiver Waiting List and actioned in accordance with paragraph 6 below.

6. **Waiting List Procedure**

- 6.1 All revoked or terminated Tenant Waiver(s) not actioned during the Refurbishment Works Period in accordance with **paragraph 5** above will be placed on the Access Refusal and Tenant Waiver Waiting List;
- 6.2 The Contractor will annually allow for 2 (in date order of notification to the Contractor) requests for Tenant Waiver(s) revocation or termination and the elements of the Works required subject to the Tenant Waiver Form will be carried out in relation to those Tenant Waiver(s) by the Contractor to the standards required by this Agreement.
- 6.3 In addition to the works carried out in accordance with **paragraph 6.2**, any Cyclical Maintenance and Renewal Works that are required to Dwellings placed on the Waiting List will be carried out as part of the Responsive Repairs and Cyclic Maintenance and Renewal Plan.

7. **Authority Input**

Subject to an Access Refusal Event, Tenant Waiver Event or a Decant Refusal Event to be completed in addition to the 2 annually due to be carried out under the Access Refusal and Tenant Waiver Waiting List procedure, the Authority may for whatever reason require the elements of the Works required following any revocation or termination of a Tenant Waiver(s) to be carried out to any particular Dwelling at no charge to the Authority.

Tenant Waiver Form

Tenant Waiver Understanding / Obligation

I, [*insert name*] (the "**Tenant**") of the address stated below (the "**Dwelling**"), confirm that I do not wish the elements of the planned Works as expressly detailed below to be carried out at the Dwelling ("**Scope of Tenant Waiver**").

I confirm and agree that:

1. by waiving my rights to the relevant elements of the planned Works from being carried out at the Dwelling, any existing works and/or Tenant Improvements whatsoever that have been undertaken at the Dwelling at the date of this Tenant Waiver Form will become my sole responsibility to maintain and replace, as if the same were the subject of a Tenant Improvement in accordance with the terms of my Tenancy Agreement with the [*Named Authority*] (the "**Council**");
2. if, as a result of any failure to maintain and/or replace any existing works and/or Tenant Improvements which are the subject of this Tenant Waiver Form, any damage or losses are sustained in relation to any fixtures, fittings or any other elements of the Dwelling not the subject of this Tenant Waiver Form, such failure will result in me becoming liable for all rectification costs relating to any such damage or losses;
3. the proposed Works will not now be completed at the Dwelling;
4. I am the recognised Tenant of the Dwelling; and
5. the Contractor may withdraw the waiver detailed within this Tenant Waiver Form at any time.

ADDRESS:

[insert full address details for Tenant]

SCOPE OF TENANT WAIVER:

[Describe nature of works not to be undertaken]

SIGNED BY THE TENANT:

SIGNED BY: ON BEHALF OF THE CONTRACTOR

DATE:/...../.....

SCHEDULE 24

Decant Protocol

1. Application of Decant Protocol

1.1 This Decant Protocol is set out in three parts and applies as follows:

1.1.1 Part 1 ("Short Term Decant Protocol") applies wherever a Tenant (and other occupants as appropriate) need to be temporarily moved out of the Dwelling to which their Tenancy applies due to:

1.1.1.1 the nature of a defect/fault present, rendering it inappropriate for them to continue to inhabit the Dwelling until rectification works are completed. Subject to statutory tests, the need to decant is at the discretion of the Contractor; and/or

1.1.1.2 the nature of the works being undertaken by the Contractor either as part of the Works or Services, having regard to the disruption, consequences of the works (dust, noise, etc.), and the vulnerability of the Tenant or other legitimate occupants. The need to decant is at the discretion of the Contractor.

1.1.2 Part 2 ("Rehousing Tenants Protocol") applies wherever a Tenant (and other occupants as appropriate) are permanently relocated to a new Dwelling.

1.1.3 Part 3 ("Temporary Decant Protocol") applies where a Tenant (and other occupants as appropriate) are temporarily rehoused either within or outside of the Project Site ("Temporary Decant"), thereby enabling their current Dwelling to be demolished as part of the Works, and for whom a replacement property is not yet available. It is anticipated that approximately 69 tenancies will require Temporary Decant outside the Project Site and approximately 16 tenancies will require Temporary Decant within the Project Site.

1.2 If the Contractor has not complied with its obligations under this Decant Protocol, then the Authority shall to the extent of such non-compliance, be entitled to carry out itself, or procure the carrying out of, all such tasks as may be required to complete the decant in accordance with this Decant Protocol and the Contractor shall indemnify the Authority for and against all losses (reasonably and properly incurred) the Authority incurs provided the Authority shall:

- 1.2.1 notify the Contractor within two Business Days of the non-compliance;
and
- 1.2.2 give the Contractor a reasonable period (having regard to the nature of the non-compliance) to remedy the non-compliance before exercising their rights under this **paragraph 1.2**.

Part 1: Short Term Decant Protocol

2. Generally

- 2.1 The Contractor undertakes to minimise disruption and impact to Tenants and their households and wherever possible to avoid the need for decant in accordance with this Short Term Decant Protocol. Wherever possible, Works and Services will be programmed and scheduled to be completed as quickly as reasonably possible to ensure minimal loss of access to kitchens and bathrooms and other amenities in accordance with its responsibilities and obligations as set in the Output Specification and, generally, this Agreement.
- 2.2 It is the responsibility of the Contractor to conclude in every case whether decant arrangements in accordance with this Short Term Decant Protocol are appropriate.
- 2.3 The Contractor is aware that decanting people from their own dwelling into Suitable Alternative Accommodation can be extremely stressful and a source of long term worry (especially for the elderly), and as such the Contractor will aim to minimise the incidence and duration of any decant.
- 2.4 It is the Contractor's responsibility to identify and procure Suitable Alternative Accommodation in order to satisfy the decant of Tenants in accordance with this Short Term Decant Protocol. The Authority will, acting reasonably, support this insofar as is possible having regard to its wider housing responsibilities.

3. Triggers for Decant into Suitable Alternative Accommodation for Tenants

- 3.1 There are a number of trigger points that would mean that a decant in accordance with this Short Term Decant Protocol is necessary for a Tenant and his household into Suitable Alternative Accommodation:
 - 3.1.1 Subject to 3.1.2 and 3.1.3 Tenant request (the Contractor will not move people who do not want to move);
 - 3.1.2 Fact & Degree (see **paragraph 4** below); and
 - 3.1.3 Health & Safety (see **paragraph 5** below).

4. Fact and Degree

- 4.1 For any works being undertaken by the Contractor either as part of the Works or Services, the Contractor shall make an assessment of individual Tenant circumstances based on "fact and degree" comprising to the two variables of "tenant vulnerability" and "level of disruptive works".
- 4.2 The Contractor shall take all reasonable steps to identify possible vulnerable cases as quickly as possible.

- 4.3 Once a case has been identified, the vulnerability of that particular Tenant or a household member must be assessed by the Contractor, through a medical opinion if necessary. This may require inspection of medical or other records. The Contractor must also consider how the Tenant's vulnerability is affected by works for the individual's Dwelling. The Contractor shall decide whether or not, despite the person's vulnerability, the standard respite arrangements (in the case of the Refurbishment Works) or help from family and friends will suffice, due to a low level of "disruptive works". In these cases the Contractor may decide that a full decant in accordance with this Short Term Decant Protocol is not necessary. Any decision as to the need for a medical opinion or the conclusions to be drawn from it is in the Contractor's discretion.
- 4.4 "Vulnerability" may cover a significant number of conditions but principally the Contractor must consider the following: Registered Disabled (mobility issues, mental health issues, blind, deaf, etc.), illness (respiratory conditions, chronically or terminally ill) and household issues (very young children, elderly and frail, etc.).
- 4.5 The Parties recognise that Suitable Alternative Accommodation available for temporary decanting into will likely be standard unmodified units and as such may not be suitable for persons who require a modified accommodation, for example those with severe levels of disability. Where the need for decant in accordance with this Short Term Decant Protocol is identified for such persons, the Contractor will provide the Authority with not less than twenty (20) Business Days' notice of such a need (or in the case of severe disability twenty-five (25) Business Days) unless the need arises as a result of emergency works. The Authority shall, within this period, use reasonable endeavours to identify suitable accommodation from within its housing stock or, where appropriate, propose an alternative solution, including:
- 4.5.1 a management transfer;
 - 4.5.2 disabled adaptations to a specified dwelling; or
 - 4.5.3 another appropriate solution.
- 4.6 Where a solution in accordance with **paragraph 4.5** is not forthcoming, the Contractor will identify Suitable Alternative Accommodation and undertake any required adaptations in accordance with Annex VII (Adaptations Protocol) of the Output Specification.
- 4.7 The costs of any required adaptations arising from **paragraphs 4.5** or **4.6** of this Short Term Decant Protocol shall become a Pass Through Cost reimbursed to the Contractor in accordance with **Schedule 4** (Payment Mechanism).

5. **Health and Safety**

5.1 In the event that a health & safety concern exists then the Contractor must override any Tenant request to remain in situ.

5.2 If in the opinion of the Contractor the works being undertaken by the Contractor either as part of the Refurbishment Works or Services are likely to leave a structure unsafe or expose households to significant health and safety risks (e.g. the wide scale removal of asbestos throughout a Dwelling) then the Contractor must then arrange for that household to be decanted in accordance with this Decant Protocol.

6. **Decanting Methodology**

6.1 If decant is planned in advance in accordance with this Decant Protocol then, four weeks prior to the decant to Suitable Alternative Accommodation taking place, the Contractor will write to the Tenant explaining:

6.1.1 what the Contractor will be doing;

6.1.2 the dates for decant;

6.1.3 the Contractor's responsibilities; and

6.1.4 the Tenant's responsibilities

and giving a contact telephone number for either the Resident Liaison Officer or other suitable point of contact.

6.2 Approximately 1 week before the works are due to start, the Contractor will meet with the tenant and go through the procedure of the decant and explain the scope and nature of the works.

6.3 At this time the Contractor will remind the Tenant that after the move the Dwelling becomes part of the Contractor's construction site and access should only be attempted with the Contractor's knowledge and consent (for safety reasons).

6.4 As is reasonable having regard to the proposed duration of the decant and works to be undertaken within the Dwelling, the Contractor will at least 10 Business Days prior to the agreed date, deliver to the Tenant as many boxes (consumable) that they need for their household items and breakables. The Contractor shall take responsibility for the storage of any items that the household reasonably cannot move, if they cannot be ordinarily stored within the Dwelling itself. The boxes will be able to be securely sealed and be appropriate for storing and transporting household items and breakables.

6.5 All electrical equipment and valuable or fragile household contents shall be visually checked by the Contractor and its condition agreed with the resident prior to the decant.

- 6.6 Where contents insurance has been taken out, the Contractor shall remind Tenants to inform their insurers prior to any move. Valuable items shall be identified and agreed between the Contractor and the Tenant prior to any decant in accordance with **paragraph 6.5**.
- 6.7 On the day of the decant the Contractor shall provide adequate labour and transport to ensure the move is completed expeditiously and in one day. Note that the Contractor will not be responsible for providing labour to pack/unpack boxes save in cases where a Tenant is unable to fulfil this task for reasons of frailty, disability, etc.
- 6.8 The Contractor shall invite the Tenant to get involved in the positioning of the boxes within the Suitable Alternative Accommodation to ensure that there is no unnecessary movement and to check that there are no breakages or damage to the contents.
- 6.9 Having regard to the proposed duration of the decant in accordance with this Short Term Decant Protocol, the Contractor will at its own cost arrange for:
- 6.9.1 disconnection and reconnection of utilities – gas, water, electric and telephone (where required);
 - 6.9.2 disconnection and reconnection of existing appliances – cooker, washing machine, telephone, dishwasher (if applicable) unless alternative facilities are available at the Suitable Alternative Accommodation and the Tenant's own appliances are to remain in situ;
 - 6.9.3 redirection of post if the decant in accordance with this Short Term Decant Protocol is reasonably expected to last longer than two weeks;
 - 6.9.4 storage of possessions if the Suitable Alternative Accommodation is smaller than the Tenant's permanent Dwelling and possessions cannot be stored safely in the Tenant's permanent Dwelling whilst works are undertaken;
 - 6.9.5 removing and refitting carpets and curtains if necessitated by the works; and
 - 6.9.6 ex-gratia payments in cases of particular hardship although no obligation exists on the Contractor in this respect.
- 6.10 The same process set out in this **paragraph 6** will be repeated when the Tenants are due to be moved back to their permanent Dwelling.
- 6.11 There will be a regular and sufficient dialogue between the Resident Liaison Officer and the Tenant during the decant period as to when the move back to the permanent Dwelling is to be expected.

- 6.12 Where necessary, the Contractor shall use interpreters to ensure the Tenant(s) fully understand what is proposed. The Contractor may also use nominated persons (neighbours, family members or others) to assist where the Contractor considers this likely to be successful, as somebody who is known to the Tenant.
- 6.13 Where a decant is unplanned, the Contractor will adhere to the requirements of this paragraph 6 wherever practicable. In such circumstances, timescales for activities will be reduced or activities undertaken retrospectively as might be reasonable having regard to the prevailing circumstances.

Part 2: Rehousing Tenants Protocol

7. Generally

- 7.1 The Contractor undertakes to minimise disruption and impact to Tenants and their households who will be rehoused into the new build tenanted dwellings.

8. Methodology for Rehousing Tenants

- 8.1 The Contractor shall liaise with the Authority on a regular basis and provide relevant and timely information on the programmed rehousing dates for each Tenant to be rehoused in accordance with **Table 1** of this **paragraph 8** and in accordance with the Construction and Refurbishment Programme.
- 8.2 Six months prior to the rehousing of a Tenant, the Contractor shall meet with the Tenant to discuss and agree Resident Choices for the New Build Dwelling.
- 8.3 Six months prior to the rehousing of a Tenant, the Tenant shall confirm their Resident Choices for the New Build Dwelling. This is provided there is a minimum two week period for the Tenant to confirm their Resident Choices.
- 8.4 Three months prior to the rehousing of a Tenant, the Contractor shall write to that Tenant explaining:
- 8.4.1 the date for rehousing;
 - 8.4.2 the Contractor's responsibilities; and
 - 8.4.3 the Tenant's responsibilities
- and giving a contact telephone number for either the Resident Liaison Officer or other suitable point of contact.
- 8.5 Approximately four weeks before rehousing is due to take place, the Contractor shall meet with the Authority's Decant Officer and the Tenant and go through the procedure of the rehousing.
- 8.6 Where necessary, the Contractor shall use interpreters to ensure that the Tenants fully understand what is proposed. The Contractor may also use designated persons (neighbours, family members or others) to assist where the Contractor considers that this is likely to be successful, as somebody who is known to the Tenant.
- 8.7 Where contents insurance has been taken out by the Tenant, the Contractor shall remind Tenants to inform their insurers prior to any move.
- 8.8 The Authority and the Contractor shall assist the Tenant in arranging:

Part 3: Temporary Decant Protocol

9. Overview of Temporary Decant Requirement

9.1 This Part 3 sets out the process for managing this temporary decant process, which is anticipated to last between 12 and 24 months in each case. It includes:

9.1.1 How any refurbishment works required to Temporary Decant Dwellings will be managed; and

9.1.2 The services to be provided by the Contractor for the duration of the Temporary Decant.

9.2 The sum of £1,500,000 has been set aside by the Contractor for all works undertaken in accordance with this Part 3 of the Decant Protocol (the "Temporary Decant Fund").

10. Identifying the Temporary Decant Need

10.1 Appendix A identifies each property that requires demolition and for which no replacement Dwelling immediately exists on the Project Site (each property being a "Temporary Decant Tenancy"). The information within Appendix A shall be reviewed and updated as might be required, save that no dates in Columns 4 and 5 may be brought forward where they occur within or would be moved to within 26 weeks of the date the programme is updated without the express consent of the Authority. The information in Appendix A (and all other dates within this Decant Protocol) shall be subject to extensions of time in accordance with this Agreement.

10.2 For each Temporary Decant Tenancy identified in Appendix A, the Contractor will undertake a tenancy check and identify to the Authority:

10.2.1 Any changes to Appendix A; and

10.2.2 The extent to which the Dwelling has been adapted for an individual's use.

11. Works to the Temporary Decant Dwelling

11.1 To fall within this Temporary Decant Protocol, a Temporary Decant Dwelling must be sited within a 5 mile radius of the Project Site unless otherwise agreed by the Parties.

11.2 It is expected that, prior to relocating Tenants into the Temporary Decant Dwelling it will require some capital works to bring it to an acceptable standard. These works will most likely include some refurbishment activities and, in some instances, property adaptations.

- 11.3 The Authority will identify Temporary Decant Dwellings in order to meet the programme at Appendix A. Upon initial identification of a Temporary Decant Dwelling the Authority will provide:
- 11.3.1 the address;
 - 11.3.2 advice on any entry made against the address on the asbestos register (including any information pertaining to communal areas serving the property); and
 - 11.3.3 confirmation of the expiry date on any CP12 and NICEIC certificates.
- 11.4 Having identified a Temporary Decant Dwelling, the Authority will within 10 Business Days ensure arrangements are in place to allow the Contractor to access the Temporary Decant Dwelling.
- 11.5 The Contractor will undertake a survey of the property to establish the extent of refurbishment works potentially required to the Temporary Decant Dwelling. The Contractor will notify the Authority of the survey date at least 5 Business Days in advance to enable the Authority at their discretion to attend the survey and discuss the scope of works identified.
- 11.6 Subsequent to the survey in **paragraph 11.5** above, the Contractor will within 10 Business Days of the survey date advise to the Authority:
- 11.6.1 The proposed scope of works, including any adaptations. The proposed scope of works will be presented with items of work grouped as follows:
 - 11.6.1.1 Works that are required in order to bring the Temporary Decant Dwelling to the Decent Homes standard;
 - 11.6.1.2 Further works that are required over and above **paragraph 11.6.1.1** above that are required in order to meet an individual Temporary Decant Availability Standard as set out within Appendix C of this Temporary Decant Protocol;
 - 11.6.1.3 Further works over and above **paragraph 11.6.1.1** and **paragraph 11.6.1.2** that, having regard to the nature, condition and occupancy of the Dwelling, would be sensible to undertake in accordance with good industry practice;
 - 11.6.1.4 Adaptation works, replicating those notified under **paragraph 10.2.2** above (or as otherwise instructed by the Authority). Any further amendments to adaptations

will be managed in accordance with **paragraph 11.13** below;

- 11.6.1.5 The start date and duration for such works;
- 11.6.1.6 The cost of the works, calculated in accordance with Appendix B to this Temporary Decant Protocol. Composite tasks will be broken down into individual items to allow ready reference to Appendix B. Note that any works proposed to be subcontracted must be explicitly identified as such. Where subcontractors are proposed, the Contractor shall only be entitled to charge the lesser of:
 - (a) the cost calculated in accordance with Appendix B; or
 - (b) the cost of the Sub-Contractor plus the maximum mark-up as defined in Appendix B.
- 11.6.1.7 An updated statement showing the financial position within the Temporary Decant Fund after the proposed works (and having regard to all monies previously committed/expended).

11.7 The Authority shall review the information resultant from **paragraph 11.6** above and:

- 11.7.1 Raise any query(s) within 10 Business Days of receipt. Where a query(s) is raised, the Parties shall discuss and agree a resolution as soon as reasonably practicable and no later than 5 Business Days from the initial query(s) being raised. Where such resolution requires a change in the proposed works, the Contractor shall resubmit the information in **paragraph 11.6** above to reflect agreed amendments within 5 Business Days.
- 11.7.2 Approve the works within 10 Business Days of receipt, or 10 Business Days following any queries properly raised in accordance with **paragraph 11.7.1** above. Failure to meet this response time will result in deemed approval.

11.8 Once the Authority has approved the works in accordance with **paragraph 11.7.2** above, the Authority shall within 10 Business Days:

- 11.8.1 Provide the Contractor with the keys required to access the Temporary Decant Dwelling;
- 11.8.2 Provide any records on the Temporary Decant Dwelling held by Lambeth Living. At this time, the responsibility for maintaining

Dwelling records will transfer from Lambeth Living to the Contractor;
and

- 11.8.3 Procure that utilities at the Temporary Decant Dwelling are available for connection, advising the Contractor of any site attendance required by the relevant statutory undertaker such that the Contractor can ensure access is permitted.
- 11.9 In the event that the parties cannot agree the works or costs, then the following action may be taken:
 - 11.9.1 The Authority may withdraw the proposed Temporary Decant Dwelling and replace it with an alternative. The Authority may do this on one occasion after which:
 - 11.9.1.1 the Contractor can consider any consequences of delay on the programme and, acting reasonably, identify such measures that are necessary in order to ensure the Temporary Decant Dwelling is available for occupation prior to the Latest Move Date;
 - 11.9.1.2 the Contractor shall be entitled to charge the Authority £500 (five hundred pounds) per survey of an alternative Temporary Decant Dwelling.
 - 11.9.2 Either party may refer the matter to the Dispute Resolution Procedure, which will also consider the consequences of any delay.
- 11.10 Prior to commencing the works, the Contractor shall extend the Required Insurances to the Temporary Decant Dwelling for the duration of the works and subsequent temporary occupation period.
- 11.11 The Contractor will undertake the works to the standards of workmanship set out in section 4 of the Output Specification. Unless directed otherwise, the materials used in carrying out refurbishment works and the subsequent repairs/maintenance works under this Temporary Decant Protocol should be of the same standard to those incorporated into the Works and Services to the Refurbishment Dwellings within the Project Site and in any event in accordance with good industry practice.
- 11.12 Where the nature of works is such that tenant choice is offered under this Agreement, then that same opportunity shall be extended to the tenant for works undertaken under this Temporary Decant Protocol. Tenants will be given a timeframe in which to make a decision in accordance with the process and timescales set out in the Contractor's Proposals for tenant choices.

- 11.13 Where a change to the scope of works arises during the course of the works of a Temporary Decant Dwelling, the Party requesting the change shall notify the other Party as soon as reasonably practicable. Where appropriate, the Parties shall meet as soon as possible to discuss the nature of the change and, acting reasonably, agree the impact (if any) to the cost and programme.
- 11.14 The Contractor shall notify the Authority not less than 10 Business Days before the works to a Temporary Decant Dwelling are due to be completed of the same or where the works are not going to be completed as identified on the programme together with a revised completion date.
- 11.15 Having been advised of the completion date in accordance with **paragraph 11.13** above, the Authority and the Contractor shall arrange to meet at the Temporary Decant Dwelling within 5 Business Days of the works being completed to inspect the works. At this meeting the parties will:
- 11.15.1 review each item of work undertaken against the agreed schedule of works to confirm completion. Any items of non-completion shall be recorded; and
- 11.15.2 note any snagging items to be rectified by the Contractor.
- 11.16 At the conclusion of the inspection, the Authority and the Contractor will agree one of the following outcomes:
- 11.16.1 that all works have been completed satisfactorily;
- 11.16.2 that all works have been completed satisfactorily, subject to minor snagging items that could be undertaken with the Tenant in situ; or
- 11.16.3 that the works have not been completed satisfactorily, either due to the failure to deliver all aspects of the scope or due to the presence of snagging works that are either not minor in nature or could not readily be rectified with a Tenant in situ.
- 11.17 In respect of **paragraphs 11.16.2 and 11.16.3** above:
- 11.17.1 The Contractor will within 3 Business Days advise the Authority of a revised date when the works will be completed.
- 11.17.2 The parties will agree a provisional date not more than 5 Business Days after the revised date for completion for a further site inspection. This inspection will arrive at an agreed outcome as set out in **paragraph 11.16**.

- 11.17.3 The Authority, having been advised by the Contractor of completion, may elect not to have a further site inspection, in which case the works are deemed to have been completed satisfactorily.
- 11.17.4 To the extent that further revisits are necessary through a direct fault of the Contractor, then the Authority shall be entitled to charge the Contractor £200 (two hundred pounds) per visit for additional inspection costs.
- 11.18 The Contractor shall be liable for all defects in the works for a period of one year from the date at which the works were agreed or deemed to be completed satisfactorily (the "Defects Liability Period").
- 11.19 To the extent that further revisits are necessary through a direct fault of the Authority, then the Contractor shall be entitled to charge the Authority £200 (two hundred pounds) per visit for additional inspection costs.
12. **Payment for Works**
- 12.1 The Contractor shall be entitled to drawdown funds from the Temporary Decant Fund by way of payment for works completed once the Authority has agreed (or is deemed to have agreed in accordance with **paragraph 11.17.3**) that the works have been completed satisfactorily. Payment is made through the release of money from the Temporary Decant Fund. Where works to a single property exceed a sum of £25,000 the Authority and the Contractor may agree an interim payment and/or a schedule of payments linked to completion of specific works. Funds cannot be withdrawn from the Temporary Decant Fund ahead of the Base Case.
- 12.2 The Contractor will work with the Authority to manage all works under this Temporary Decant Protocol within the Temporary Decant Fund. On a monthly basis, the Contractor will provide a financial statement that:
- 12.2.1 Identifies the average amount spent per Temporary Decant Dwelling to date;
- 12.2.2 Identifies the total expenditure to date from the Temporary Decant Fund;
- 12.2.3 Identifies amounts already committed against the Temporary Decant Fund for works split by those projects on-site and those with agreed scopes of works yet to start on site; and
- 12.2.4 Forecasts the outturn position of the Temporary Decant Fund, based on the funds expended and committed, and average spend to date

extrapolated over the forecast remaining number of Temporary Decant Tenancies.

12.3 Where the Temporary Decant Fund is or is likely to fall short of that required, the Authority shall in its absolute discretion:

12.3.1 Fund any shortfalls by way of a Pass Through Cost in accordance with **paragraph** Error! Reference source not found. of the Payment Mechanism;

12.3.2 Reduce the scope of works to those Temporary Decant Dwellings for which the scope of works is agreed but not yet commenced or which have yet to be scoped;

12.3.3 Provide Temporary Decant Dwellings outside of this Temporary Decant Protocol and where the Dwelling is beyond the area set out under **paragraph 11.1** above the Contractor shall have no obligation in relation to that Temporary Decant Dwelling.

12.4 It is anticipated that the Temporary Decant Fund will be fully expended, however any surplus funds in the Temporary Decant Fund having completed all the required works will be shared on a 75:25 basis between the Authority and Contractor respectively.

13. **The Temporary Decant Process**

13.1 The Authority will:

13.1.1 Liaise with the Tenant and the Contractor to agree a temporary relocation date (the "Move Date"), having regard to the Contractor's overall programme, the Temporary Decant Dwelling programme, and the needs of the Tenant. This will seek to minimise the period from the completion of works to the Temporary Decant Dwelling and the Move Date.

13.1.2 Work closely with the Contractor to agree a schedule of notices and issue dates required to each Tenant subject to a Temporary Decant Tenancy to ensure the Move Date is complied with.

13.1.3 Liaise with the Tenant to support the move process, including but not limited to:

13.1.3.1 Providing general support and advice on the temporary decant process;

13.1.3.2 Providing assistance on the move;

- 13.1.3.3 Advice on dealing with utility providers, postal diversions, etc;
- 13.1.3.4 Administer home loss payments;
- 13.1.3.5 Agree and administer disturbance payments.

13.2 The Contractor will:

- 13.2.1 Provide details of any commercially advantageous arrangements put in place for removals, handyman services, etc. to both the Authority and the Tenant at the earliest opportunity.
- 13.2.2 On behalf of the Authority, serve the appropriate notices on the Tenant to require them to relocate on the agreed date in accordance with the schedule determined under **paragraph 13.1.2** of this Temporary Decant Protocol. Providing that the Contractor, has complied with this obligation, the Authority shall be liable for any delays incurred through the failure of the Tenant to adhere to the notices.
- 13.2.3 Provide to the Tenant, copied to the Authority, reminder notices at 12 weeks, 8 weeks and 4 weeks prior to the move.
- 13.2.4 Liaise with the Tenant over any tenant choices in respect of works undertaken to the Temporary Decant Dwelling.

13.3 On the Move Date, the Contractor will ensure:

- 13.3.1 Compliance with the requirements of standards 2, 3, 4, 5 and 6 of the Void Relet Standard in Annex IV of the Output Specification in respect of the Temporary Decant Dwelling;
- 13.3.2 Compliance with the requirements of **paragraph 7.1.4.2** of the Output Specification save for **paragraphs 7.1.4.2(e)** and **7.1.4.2(f)** in respect of the vacated Dwelling.

13.4 Where the Move Date occurs after the date shown in column 6 of the table at Appendix A (the "Latest Move Date"), this shall not trigger a Compensation Event under the Project Agreement where the Move Date was delayed by:

- 13.4.1 Failure by the Contractor to meet any of the timescales set out in this Temporary Decant Protocol, unless amended in accordance with **paragraph 10.1** of this Temporary Decant Protocol; and/or
- 13.4.2 Works deemed to be incomplete or defective in accordance with **paragraph 11.16.3** of this Schedule.

14. **Services to Temporary Decant Dwellings**

14.1 The Contractor will from the Move Date provide Services to the Tenant as required in accordance with the Output Specification. The Services provided by the Contractor under this Temporary Decant Protocol will cease at on either:

14.1.1 the first day of the calendar month following the Certification of the Dwelling identified for them on the Project Site; or

14.1.2 the earlier of the date on which the Tenant returns to the Dwelling identified for them on the Project Site or the date which is two weeks after the Contractor has notified the Authority in accordance with **paragraph 14.7**,

which in either case shall be construed as the "Return Date".

14.2 Where the Temporary Decant Dwelling is outside of the Project Site, in providing these Services:

14.2.1 The Temporary Decant Availability Standards as set out in Appendix C of this Temporary Decent Protocol will be applied in lieu of those contained within **Annex II** of **Schedule 1** (Output Specification). Where the Authority has instructed works to be undertaken or otherwise that will directly cause or can reasonably be foreseen to later cause one or more of the Temporary Decant Availability Standards to be failed, then the Parties shall acting reasonably either:

14.2.1.1 agree an appropriate amended individual Temporary Decant Availability Standard(s) that would apply in respect of that Temporary Decant Dwelling; or

14.2.1.2 agree that that individual Temporary Decant Availability Standard(s) will be waived for that Temporary Decant Dwelling.

14.2.2 The Contractor shall continue to perform all housing management and repairs services to the Temporary Decant Tenancies and Temporary Decant Dwellings. Where the Temporary Decant Dwelling is located outside of the Project Site, repairs services are provided on a whole Dwelling basis for houses (i.e. all assets within, up to and including the boundary of the Temporary Decant Dwelling) and on an internal only basis for Temporary Decant Dwellings contained within Blocks (i.e. all assets up to and including the entrance door to the individual Temporary Decant Dwelling). Accordingly, the following KPIs as contained within **Annex III** of **Schedule 1** (Output Specification) are amended for Temporary Decant Dwellings outside of the Project Site:

- 14.2.2.1 All Estate Management KPIs – numbers 26 through to 46 inclusive – are excluded.
 - 14.2.2.2 The Performance Standard for customer satisfaction (KPI 13) will apply for housing management services only. In respect of the Temporary Decant Dwellings only, the satisfaction performance target will be reduced by 10%.
- 14.3 Any Tenant or Third Party Damage occurring during the Services Period (defined as the period from completion of the works in accordance with **paragraph 11.6.1** of this Schedule until the Return Date) will be treated in accordance with **Schedule 29** (Tenant and Third Party Damage).

The Return Process

- 14.4 Not more than 7 months and not less than 5 months prior to the Return Date, the Contractor will confirm with the Tenant whether they wish to return to the new dwelling or remain in the Temporary Decant Dwelling on a permanent basis. In the event that the Tenant confirms they wish to remain in the Temporary Decant Dwelling:
 - 14.4.1 the Contractor will continue to provide Services in accordance with **paragraph 14** of this Temporary Decant Protocol until the Return Date, after which Services to the Temporary Decant Dwelling will transfer back to the Authority and the Contractor will provide all Services to the new Dwelling within the Project Site.
 - 14.4.2 the Contractor will on the Return Date:
 - 14.4.2.1 transfer Dwelling and Tenancy records back to the Authority;
 - 14.4.2.2 identify all outstanding logged repairs to the Dwelling. These will transfer to the Authority, who will be entitled to reasonable payment for their completion; and
 - 14.4.2.3 provide to the Authority copies of all warranties and guarantees relevant to the property and its installations.
 - 14.4.3 the Authority will confirm to the Tenant that responsibility for the Tenancy has transferred to Lambeth Living.
 - 14.4.4 the Contractor will commence a letting process for the Dwelling within the Project Site.
- 14.5 If the Tenant elects to return to a new Dwelling:

14.5.1 the Authority will:

14.5.1.1 liaise with the Tenant to support the move process, including but not limited to:

- (a) providing general support and advice on the return process;
- (b) advice on dealing with utility providers, postal diversions, etc.

14.5.1.2 agreeing and administering disturbance payments.

14.5.2 the Contractor will:

14.5.2.1 On behalf of the Authority, serve the appropriate notices on the Tenant to require them to relocate on the Return Date;

14.5.2.2 Provide to the Tenant, copied to the Authority, reminder notices at 12 weeks, 8 weeks and 4 weeks prior to the move;

14.5.2.3 Liaise with the Tenant over any tenant choices in respect of works undertaken to the new Dwelling, complying with the process and timescales set out in the Contractors Proposals for tenant choices; and

14.5.2.4 Provide details of any commercially advantageous arrangements put in place for removals, handyman services etc to both the Authority and the Tenant at the earliest opportunity.

14.6 On the Return Date, the Contractor will ensure:

14.6.1 Compliance with the requirements of the Void Relet Standard in Annex IV of the Output Specification in respect of the new Dwelling.

14.6.2 Pass the keys of the Temporary Decant Dwelling back to the Authority.

14.6.3 The transfer of Temporary Decant Dwelling records back to the Authority.

14.6.4 Identify all outstanding logged repairs to the Temporary Decant Dwelling. These will transfer to the Authority, who will be entitled to reasonable payment for their completion.

- 14.6.5 Provide to the Authority copies of all warranties and guarantees relevant to the Temporary Decant Dwelling and its installations.
- 14.7 In the event that the Tenant does not comply with the notices served and remains in the Temporary Decant Dwelling, the Contractor will notify the Authority of such non compliance. The Authority will have a two week period in which to instruct the Contractor on how to proceed in respect of the Tenant and the new Dwelling in the knowledge that **paragraph 14.8** will apply, provided that **paragraphs 14.4.1, 14.4.2 and 14.4.3** will always apply.
- 14.8 In the event that the Authority instructs the Contractor to continue providing Services beyond the Return Date, the Authority and the Contractor shall agree a reasonable fee for such Services.
15. **Adjustments to the Temporary Decant Fund**
- 15.1 The following events shall be considered temporary exits from the project:
- 15.1.1 Where a Temporary Decant Dwelling becomes Void, it shall pass back to the Authority for reletting and subsequent management. In such circumstances the Contractor shall comply with the requirements of **paragraphs 14.6.2 and 14.6.3** of this Temporary Decant Protocol.
- 15.1.2 Where a Temporary Decant Dwelling fails to meet the requirements of **paragraph 11.1** of this Temporary Decant Protocol.
- 15.2 For the period between the date on which the event identified in **paragraph 15.1** and the Return Date (as might be amended by failure to obtain Certification for the Dwelling within the Project Site) (the "Temporary Exit Period"), the Contractor shall:
- 15.2.1 Calculate the Temporary Exit Adjustment, being the variable costs of the following in accordance with **Schedule 15** (CNDT) calculated over the duration of the Temporary Exit Period:
- 15.2.1.1 Housing Management
- 15.2.1.2 Repairs and Responsive Maintenance
- 15.2.1.3 Cyclical Maintenance
- 15.2.1.4 Insurance
- 15.2.2 Increase the Temporary Decant Fund by an amount equivalent to the Temporary Exit Adjustment.

16. **Miscellaneous**

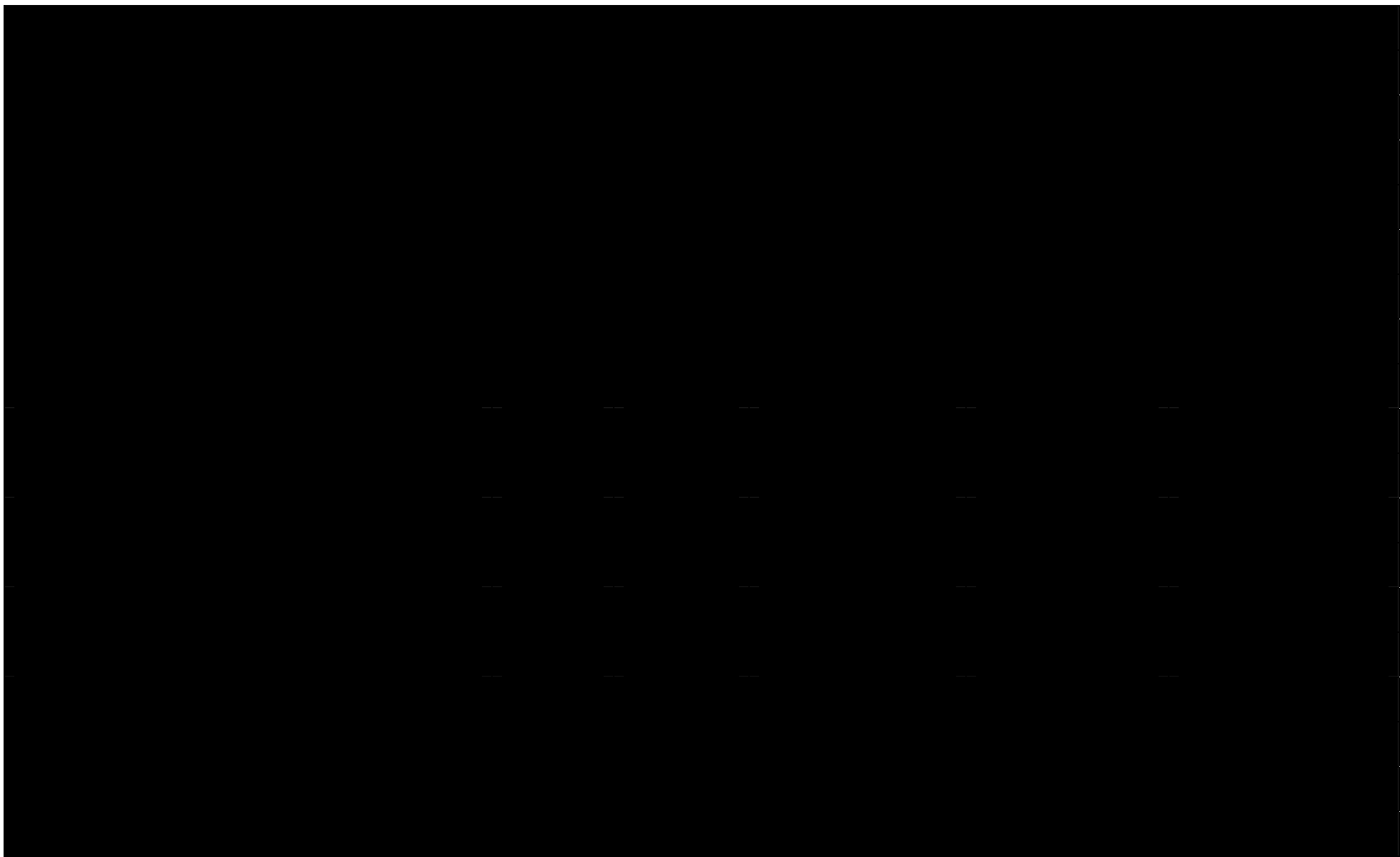
- 16.1 All timescales within Part 3 of this Temporary Decant Protocol can be extended by mutual agreement and with each party having been made aware of and having properly accepted the consequences of such extension.
- 16.2 All references to days within Part 3 of this protocol should be construed as Working Days.

Appendix A

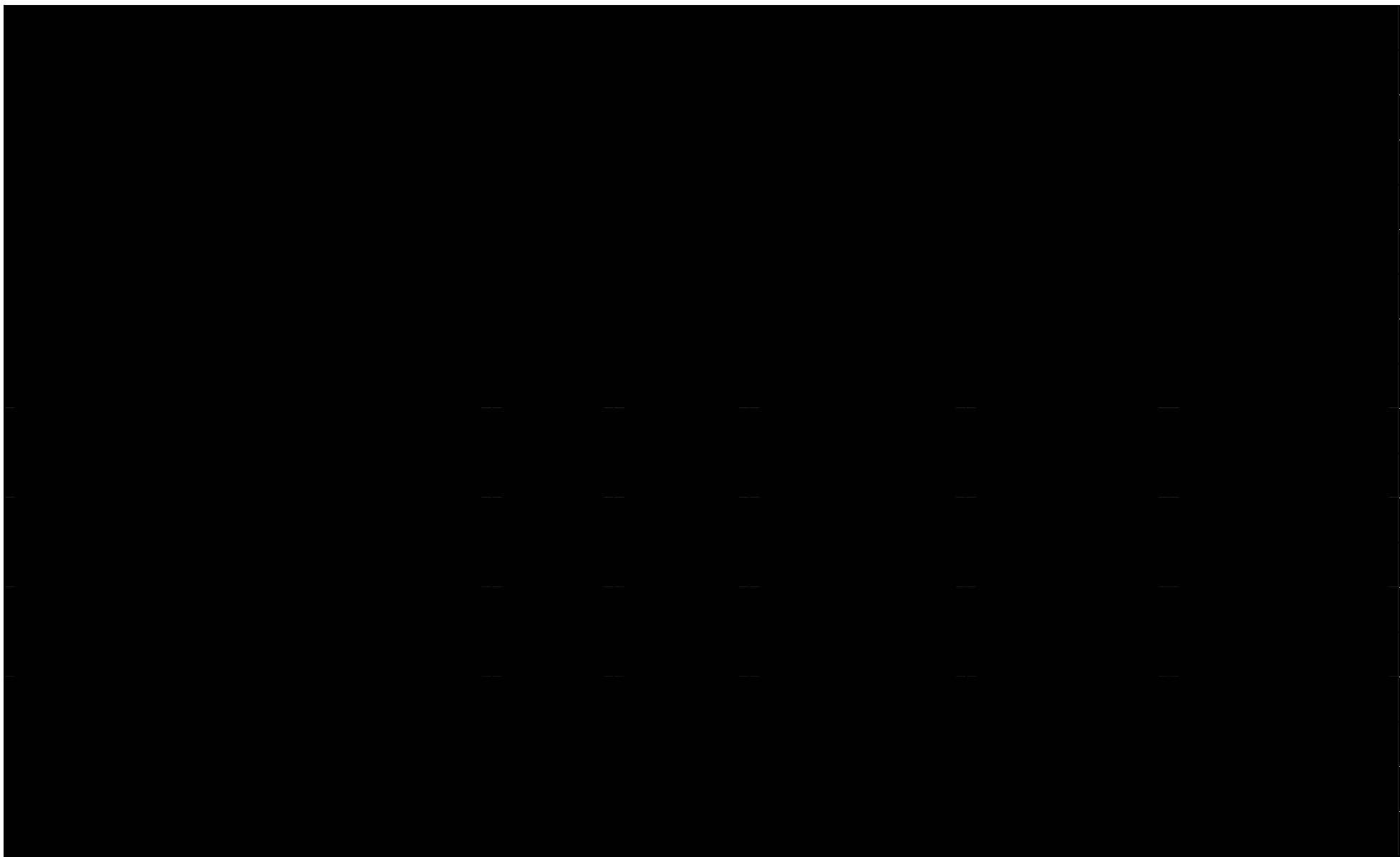
Temporary Decant Programme

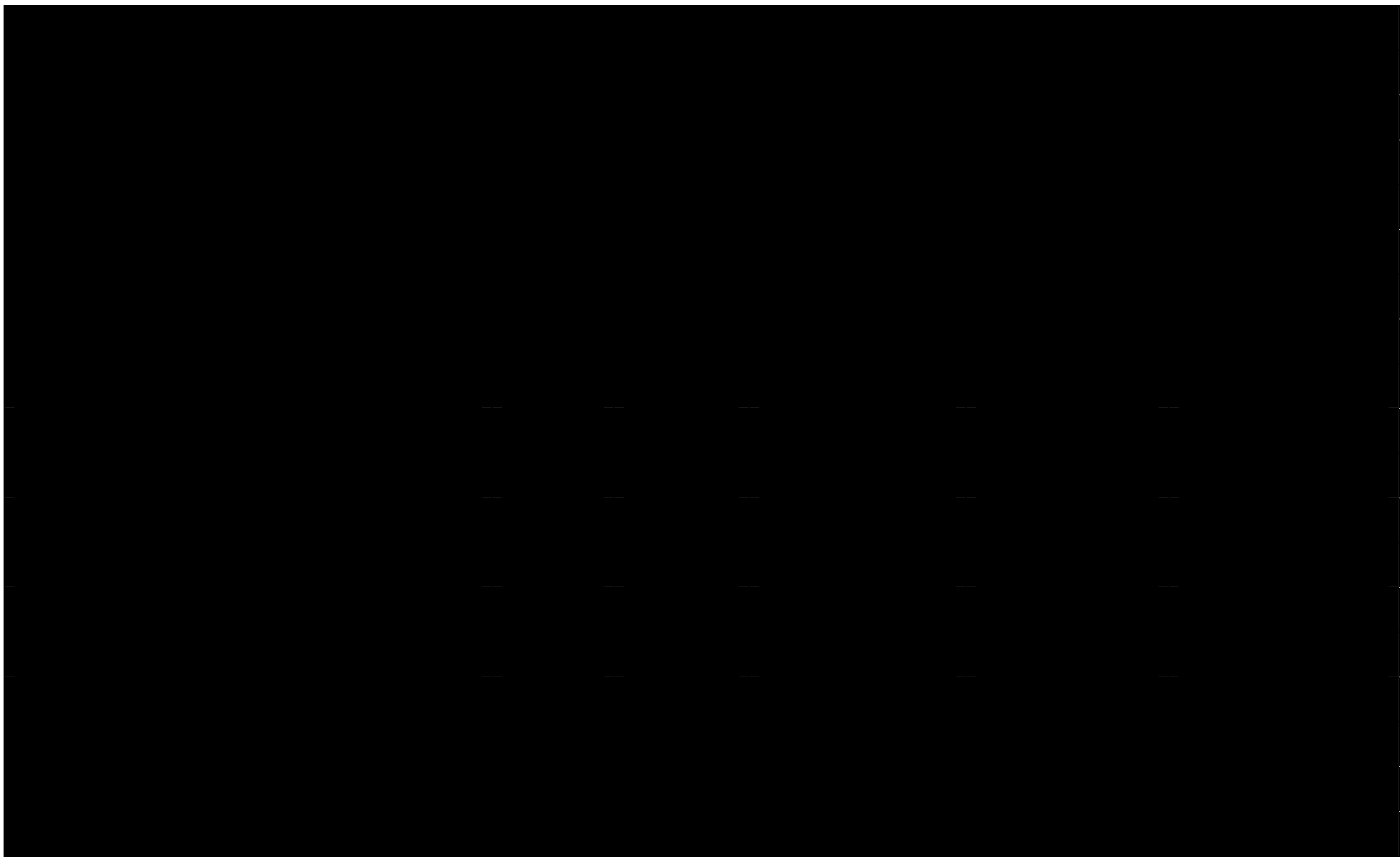
This Appendix A assumes Financial Close as of 4th May 2012. Where Financial Close occurs later than this date, all dates will be moved by the same number of days that Financial Close occurs after 4th May 2012.

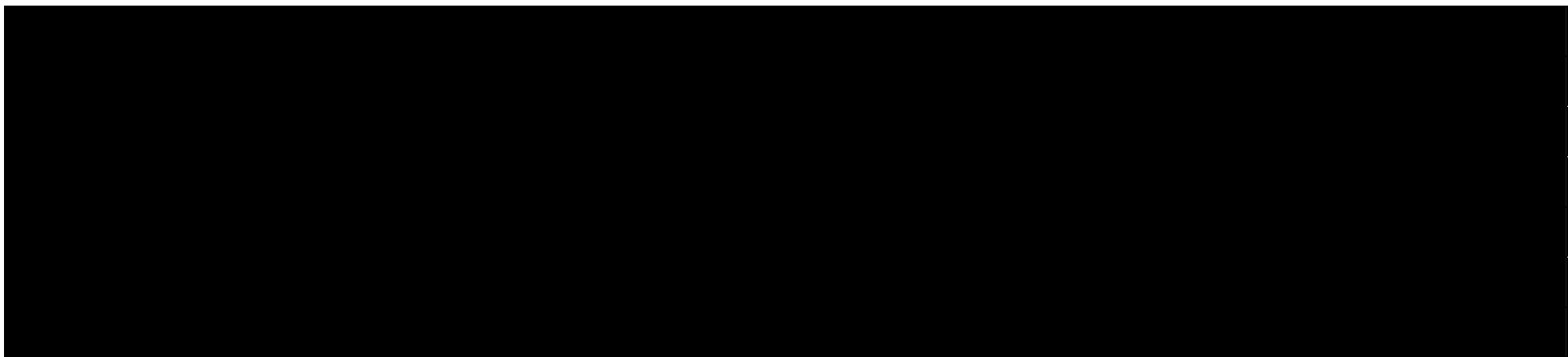












Appendix B

Agreed Schedule of Rates for Temporary Decant Works

Schedule of Rates

Sub-Contracted Work

Where sub-contractors are used, the Contractor shall be entitled to claim the full cost of the sub-contractor plus a maximum management fee of [REDACTED] on this cost.

Where sub-contractor works cover wholly or partly works that are covered in the schedule of rates above, then the cost of works falling within the schedule of rates shall be separately identified to comply with the requirements of paragraph 11.6.1.6.

Hourly Rates

Where works are not covered by the Schedule of Rates, then the following day rates shall apply:

Appendix C

Temporary Decant Availability Standards

The following table sets out the standards to which each Temporary Decant Dwelling must be maintained (the “Temporary Decant Availability Standards”).

Asset		Availability Standard	Failure Event	Rectification Period	Houses	Flats	Temporary Rectification	Unavailable but Used applicable
General	1	Every Dwelling shall meet the minimum statutory requirements	Failure to meet the standard set out in 6.2.1 of the Output Specification	1	Y	Y	None	No
	2	Not Used						
	3	Not used						
Access	4a	Every Dwelling shall be accessible to and from the public highway	Inability to gain access to/from a Dwelling from the public highway acting reasonably	4 hours	Y	N	None	No
	4b	Not Used						
Roofs, External Walls, Wall Finishes and Chimney	5a	All components of the construction are to be properly secured, fitted and functional, to provide a wind and weather tight roof, secure and free from water penetration.	External envelope and structure is not <ul style="list-style-type: none"> • secure • wind and weather tight • free from water penetration. 	1	Y	N	Permissible up to 20 days	Yes

Asset		Availability Standard	Failure Event	Rectification Period	Houses	Flats	Temporary Rectification	Unavailable but Used applicable
	5b		External envelope and structure is not free from damp (as evidenced by the presence of excessive moisture within components and/or visibility of dampness and/or substantial staining within the Dwelling) save to the extent attributable to ongoing monitoring in accordance with paragraph 6.2.3.3 of the Output Specification	1	Y	N	Permissible up to 20 days or such extension permitted by paragraph 6.2.3.3 of the Output Specification	Yes
	5c		Failure to provide or maintain fire stopping between adjoining properties within the roof void	14	Y	N	None	Yes
	5d		Visible evidence of material structural damage or defect (including but not limited to brickwork, render finishes, etc.).	14	Y	N	None	Yes

Asset		Availability Standard	Failure Event	Rectification Period	Houses	Flats	Temporary Rectification	Unavailable but Used applicable
	5e		Failure to keep timber structures, including roof construction and coverings free from rot, rust, decay and damage that materially affects function (including, without limitation, fungal, worm, beetle and other attack).	14	Y	N	None	Yes
	6a	All systems for the collection and disposal of rainwater shall be adequate and maintained in a good standard of repair and shall be free from spillage and leaking	Components missing	14	Y	N	None	Yes
	6b		Rainwater system is inadequate (undersized, etc.), leaks and/or is damaged	14	Y	N	None	Yes
Windows & External Doors	7a	All windows shall be fit for purpose and keep the window opening wind and weathertight.	Windows are not: <ul style="list-style-type: none"> structurally secure wind and weather tight free from water penetration. 	1	Y	Y	Permissible up to 20 days	Yes

Asset		Availability Standard	Failure Event	Rectification Period	Houses	Flats	Temporary Rectification	Unavailable but Used applicable
	7b		Window casements do not open, close or remain open correctly.	14	Y	Y	None	Yes
	8	Windows at ground floor levels and those accessible from upper floor deck access balconies/flat roofs shall be provided with locking devices and other means to prevent forced entry.	<ul style="list-style-type: none"> Non-installed, missing or inoperable locking devices Other missing, faulty or inoperable devices intended to prevent forced entry 	3	Y	Y	None	Yes
	9	Windows at first floor level and above shall be fitted with a means of restricting opening to prevent accidental falls	No means provided to restrict opening to upper floor windows	3	Y	Y	None	Yes
	10	Not Used						
	11	External doors shall be maintained in a serviceable condition allowing safe access to the Dwelling	External doors do not open/close correctly or are not in a condition which allows safe access to the Dwelling.	1	Y	Y (external door defined as entrance door to Dwelling)	Permissible up to 14 days	No

Asset		Availability Standard	Failure Event	Rectification Period	Houses	Flats	Temporary Rectification	Unavailable but Used applicable
	12	All external doors shall be fit for purpose, wind and weathertight.	External doors are not: <ul style="list-style-type: none"> • structurally secure • wind and weather tight • free from water penetration. 	1	Y	Y (where entrance door to dwelling opens onto the external environment)	Permissible up to 20 days	Yes
	13	External doors shall have adequate locking devices and other means of deterring unauthorized or forced access to the Dwelling	<ul style="list-style-type: none"> • Doors are not provided with adequate locks, hinges or hinge bolts or other means of deterring unauthorized entry to the Dwelling. • Installed devices do not operate correctly. 	1	Y	Y (external door defined as entrance door to Dwelling)	Permissible up to 14 days	No
	14	Doors or the adjacent structure shall have the means of allowing letters to be delivered to the Dwelling	No means of delivering letters to the Dwelling	3	Y	Y (where no communal delivery point exists within the communal area)	None	Yes

Asset		Availability Standard	Failure Event	Rectification Period	Houses	Flats	Temporary Rectification	Unavailable but Used applicable
Internal Fixture, Fittings and Finishes	15 a	All retained properties are to be maintained free from hazards	All floors and staircases: damage, decay or trip hazard to flooring, floor coverings (where responsibility of Contractor), stairs, banisters and balustrades.	1	Y	Y (where internal to the Dwelling)	Permissible up to 20 days	Yes
	15 b		<ul style="list-style-type: none"> Floor coverings to kitchens/bathrooms only: floor coverings are missing or damaged Floor coverings are not classified as "non-slip" by manufacturer or not considered such by the Authority acting reasonably. 	1	Y	Y	Permissible up to 20 days	Yes
	15 c		Glazed screens & doors: non safety glazing to screens and doors	1	Y	Y (where internal to the Dwelling)	Permissible up to 20 days	Yes
	15 d		Internal joinery: damaged or splintered joinery	1	Y	Y (where internal to the Dwelling)	Permissible up to 20 days	Yes

Asset		Availability Standard	Failure Event	Rectification Period	Houses	Flats	Temporary Rectification	Unavailable but Used applicable
	16	All landlord's fixtures and fittings will be securely and safely installed.	Fixtures & fittings: loose or insecure fixings which may pose a hazard	1	Y	Y (where internal to the Dwelling)	Permissible up to 20 days	Yes
	17	Internal finishes are serviceable and provide a sound base to receive decoration	Internal finishes: rough finish to walls/ceiling, blown/missing plaster, unplastered walls/ceiling, cracked (excluding a small number of hairline cracks) or uneven surfaces, efflorescence or similar	14	Y	Y	None	Yes
	18	All internal partitions are to be maintained in a sound and structurally stable condition.	Internal partitions are not safe, structurally stable or sound.	14	Y	Y	None	Yes
Kitchen	19	Not used						

Asset		Availability Standard	Failure Event	Rectification Period	Houses	Flats	Temporary Rectification	Unavailable but Used applicable
	20 a	<p>Minimum requirements for kitchens shall include:</p> <ul style="list-style-type: none"> • 1200mm of accessible storage base units and a total storage volume incl. wall units of 1.5m³ for 1 Bed dwelling • 1600mm of accessible storage base units and a total storage volume incl. wall units of 2.0m³ for 2 & 3 bed dwelling • 2700mm of accessible storage base units and a total storage volume of 2.4 m³ for 4 bed dwellings, 2.7 m³ for 6 bed dwellings • Space and service connections for ancillary equipment (600mm) in 6 bed dwellings only • Adequate sized sink bowl and Draining Board 	Failure to provide kitchen as specified (except where agreed to the contrary with the tenant in accordance with the agreed protocol)	14	Y (where existing or kitchen renewed under Protocol works)	Y (where existing or kitchen renewed under Protocol works)	None	Yes

Asset		Availability Standard	Failure Event	Rectification Period	Houses	Flats	Temporary Rectification	Unavailable but Used applicable
	20 b		Damaged or defective kitchen components causing them to be <ul style="list-style-type: none"> • unstable, • unsafe or • unfit for the purpose they are intended 	7	Y	Y	None	Yes
	20 c		Damage or inoperation of the sink facilities causing it to be unstable, unsafe or unfit for the purpose intended	1	Y	Y	None	Yes
	21	All kitchens must have at least one minimum functioning 500mm wide drawer within one of the base units provided.	Absence or in operation of at least one functioning drawer as specified.	14	Y (where existing or kitchen renewed under Protocol works)	Y (where existing or kitchen renewed under Protocol works)	None	Yes
	22	Two metres of worktop (excluding sink units) must be provided and maintained in each kitchen where physically possible to do so.	Less than two metres of worktop provided where physically possible to do accommodate this length.	14	Y (where existing or kitchen renewed under Protocol works)	Y (where existing or kitchen renewed under Protocol works)	None	Yes

Asset		Availability Standard	Failure Event	Rectification Period	Houses	Flats	Temporary Rectification	Unavailable but Used applicable
	23	Space and service connections for at least free standing cooker, fridge freezer and washing machine	Failure to provide space and service connections for cooker, fridge freezer, and washing machine (unless specifically agreed with the tenant to the contrary in accordance with the agreed protocol)	14	Y (where existing or kitchen renewed under Protocol works)	Y (where existing or kitchen renewed under Protocol works)	None	Yes
	24	Allowance is to be made for ventilation for appliances where such ventilation is required to allow their normal operation	Failure to provide adequate ventilation where required for the proper operation of appliances.	1	Y	Y	None	Yes
	25	Walls above worktops and sinks and around cookers shall be provided with splashback protection	Walls above worktops and sinks and around cookers lacking suitable protection to at least 450mm against splashes	14	Y	Y	None	Yes
Bathroo	26	Not used						

Asset		Availability Standard	Failure Event	Rectification Period	Houses	Flats	Temporary Rectification	Unavailable but Used applicable
m	27	Bathrooms should include as a minimum a bath, wash basin and WC (where not provided separately) all securely fixed and in an operating condition.	Non provision, inoperation or defective sanitary fittings including leaks, blockages and overflows, toilet not flushing	1	Y	Y	None	Yes
	28	Where separate WCs are provided these shall have a hand rinse basin within the WC compartment	Non provision, operation or loss of use of hand rinse basins in separate WC compartments	14	Y	Y	Permissible up to 11 days	Yes
	29	Walls adjacent to baths, showers and basins shall have suitable protection against splashing	Lack of splashbacks to baths, showers and basins.	14	Y	Y	None	Yes
	30 a	Installed shower facilities shall be maintained in safe working order	Non-operation of shower installations	7	Y (where existing or installed under Protocol works)	Y (where existing or installed under Protocol works)	None	Yes
	30 b	Not used						

Asset		Availability Standard	Failure Event	Rectification Period	Houses	Flats	Temporary Rectification	Unavailable but Used applicable
Electrics	31 a	Maintain safe electrical distribution systems to Dwellings as appropriate in accordance with paragraph 3.9.6.1 of the Output Specification	<ul style="list-style-type: none"> • Total loss of power and/or lighting • Presence of exposed live wiring • Failure to complete safety checks after water penetration 	6 hrs	Y	Y	Permissible for 7 Days	No
	31 b		<ul style="list-style-type: none"> • Partial loss of power and/or lighting • Damage/malfunction of fuse box 	1	Y	Y	Permissible for 7 days	No
	31 c		Presence of other minor electrical faults	7	Y	Y	None	Yes
	32	Not Used						
	33	Not Used						

Asset		Availability Standard	Failure Event	Rectification Period	Houses	Flats	Temporary Rectification	Unavailable but Used applicable
	34	There will be hard wired, interconnected smoke detection devices fitted and operational in each Dwelling. Smoke detectors to comply with British Standard BS 5446 (as updated from time to time).	Non provision or non operation of hard wired, interconnected smoke detectors or non-compliance of systems with relevant standards.	3	Y	Y	Permissible up to 20 days	Yes
	35	The Contractor must at all times maintain evidence that all electrical installations in a Dwelling are safe and fit for purpose, e.g. NICEIC Domestic Electrical Installation Certificate or Periodic Inspection Report.	Failure to maintain or provide upon request a valid certification that an electrical installation in a Dwelling is safe and adequate as at the date last inspected, altered or added to by the Contractor.	X	Y	Y	None	Yes
Heating Systems	36 a	Space heating and water heating are to be capable of independent operation and available 24 hours per day controlled both on a whole Dwelling basis.	Space and water heating not capable of independent operation.	3	Y	Y	None	Yes
	36	Space heating to be capable of control	Space heating not capable of control	3	Y (where existing or	Y (where existing or	None	Yes

Asset		Availability Standard	Failure Event	Rectification Period	Houses	Flats	Temporary Rectification	Unavailable but Used applicable
	aa	both on a whole Dwelling and room by room basis.	both on a whole Dwelling and room by room basis.		replaced under this Protocol)	replaced under this Protocol)		
	36 b		Space heating not working.	1	Y	Y	Permissible up to 3 days	Variable
	36 c		Water heating not working.	1	Y	Y	Permissible up to 3 days	No
	36 d	Not Used						
	37	To provide and maintain a space heating system free from leaks (whether water, liquid, gas or solid materials).	Leaks on a water pipe, tank, cylinder, boiler, or heat interface unit (HIU), fitting or valve.	1	Y	Y	Permissible up to 20 days	Yes

Asset		Availability Standard	Failure Event	Rectification Period	Houses	Flats	Temporary Rectification	Unavailable but Used applicable
	38	The installation shall be capable of achieving the internal air temperature of 21°C in habitable rooms (to include living rooms, dining rooms, kitchen/diner, all bedrooms, the bathroom and any other rooms where a radiator is fitted prior to any works being undertaken) when the external air temperature is -1°C, assuming a minimum of two air changes per hour	Failure to provide an operable heating system that meets the required capabilities.	1	Y (where boiler and radiators renewed under Protocol works)	Y (where boiler and radiators renewed under Protocol works)	Permissible up to 20 days	Yes
	39 a		Not Used					

Asset		Availability Standard	Failure Event	Rectification Period	Houses	Flats	Temporary Rectification	Unavailable but Used applicable
	39 b	The Contractor will maintain any existing fixed and independent source of heating (other than supplied by the tenant) in the main living area.	<p>Failure to remove fixed and independent sources of heating for which the landlord is responsible (i.e focal point fires), cap off and remove supply spur(s).</p> <p>NB wherever practicable supply spurs should be removed so as to avoid protrusions from wall/floor finishes.</p>	N/A	Y	Y	None	Yes

Asset		Availability Standard	Failure Event	Rectification Period	Houses	Flats	Temporary Rectification	Unavailable but Used applicable
Hot Water	40 a	<p>Every Dwelling to be provided with domestic hot water at all appropriate outlets as follows:</p> <ul style="list-style-type: none"> Where provided from a storage system, the delivery of 135 litres at a temperature of 60°C. The water heating system shall provide a maximum recovery from ambient external temperature to 60°C of 45 minutes (all as verified by manufacturer's specification). Where dwellings are smaller or larger than average, a suitably sized hot water storage tank is to be provided appropriate to the size of the dwelling. Where hot water is provided by a combi system or similar, a minimum delivery of 12 litres per minute (assuming use of a single outlet only) at a temperature increase of at least 	<ul style="list-style-type: none"> Failure to meet domestic hot water capacities at the temperatures required and for the time allowed. Failure to maintain or provide hot water storage of appropriate capacity to the size of dwelling. 	1	Y (where hot water system renewed under Protocol works)	Y (where hot water system renewed under Protocol works)	Permissible up to 4 days	No

Asset		Availability Standard	Failure Event	Rectification Period	Houses	Flats	Temporary Rectification	Unavailable but Used applicable
	40 aa	Every Dwelling to have an operable and safe supply of hot water to sink/WHB outlets within the kitchen, bathroom and separate WC (where installed)	Failure to provide a safe an operable hot water supply	1	Y	Y	Permissible up to 4 days	No
	40 b		Loss of ability to control flow of hot and cold water at outlets.	1	Y	Y	Permissible up to 4 days	Yes
	41 a	Every Dwelling to be provided with a continuous supply of drinking water at an outlet in the kitchen.	Loss of continuous supply of drinking water to kitchen and/or bathroom.	1	Y	Y	Permissible up to 4 days	No
	42	Every Dwelling to have a water distribution system which shall: - <ul style="list-style-type: none"> • be free from leaks • be suitably insulated so as to minimise risk of bursting due to frost 	Failure of the water distribution system to meet the defined requirements	1	Y	Y	Permissible up to 20 days	Yes

Asset		Availability Standard	Failure Event	Rectification Period	Houses	Flats	Temporary Rectification	Unavailable but Used applicable
Water & Drainage	43	Dwelling to have well maintained and safe access to utilities connections i.e. water, sewerage, electric and gas.	Failure to ensure safe provision of any listed utility supplies to standards required by relevant legislation.	1	Y	Y	Permissible up to 4 days	No
	44	All Dwellings to have an effective system (above and below ground within the curtilage of the Dwelling) for the removal/draining of foul, waste and surface water, so as not to be prejudicial to the health and safety of any occupants of the Dwelling or to the structural fabric of the Dwelling.	Failure of system to drain/remove foul or waste water away from dwelling which results in inability to use any bath, shower washbasin, WC or other sanitary facility.	1	Y	Y	None	No
Gas Services	45 a	Gas systems to be maintained checked and certified in accordance with good practice current Gas Safety (Installation and Use) Regulations.	Non compliance with the Gas Safety (Installation and Use) Regulations.	1	Y	Y	None	No

Asset		Availability Standard	Failure Event	Rectification Period	Houses	Flats	Temporary Rectification	Unavailable but Used applicable
	45 b		Failure to provide on request landlords/homeowner gas safety certificate demonstrating inspection and safe certification (which includes evidence of remedial works being completed where faults were identified at the point of inspection) by competent authorised persons within the previous 12 month period or at last change of tenancy whichever is the most recent.	X	Y	Y	None	No
Other Utilities	46	Not Used						
Energy	47 a	All Retained Properties will have a minimum SAP rating of 35.	In respect of retained (refurbished Dwellings) failure to satisfactorily demonstrate that the Dwelling meets a SAP rating of 35 using the 2001 edition methodology.	14			None	No

Asset		Availability Standard	Failure Event	Rectification Period	Houses	Flats	Temporary Rectification	Unavailable but Used applicable
	47 b	Not Used						
	47 c		Dwellings to have a minimum of 250mm insulation to the loft space	7	Y	Y	None	Yes

Asset		Availability Standard	Failure Event	Rectification Period	Houses	Flats	Temporary Rectification	Unavailable but Used applicable
Ventilation	48a	<p>Dwellings are required to be capable of adequate ventilation to ensure:</p> <ul style="list-style-type: none"> • prevention of condensation in the building fabric and/or in living areas • extraction of moisture from areas where it is produced in significant quantities • rapid mechanical ventilation for dilution of pollutants • background ventilation • requirements for fuel burning or other appliances for process air are met 	<p>Presence of excessive or prolonged condensation to internal surfaces not being dispersed by appropriate use of ventilation provision.</p>	14	Y	Y	None	Yes

Asset		Availability Standard	Failure Event	Rectification Period	Houses	Flats	Temporary Rectification	Unavailable but Used applicable
	48 b		Absence or inoperability of extractor fans or other means of rapid moisture dispersal to provide one air change per hour in a kitchen.	7			None	Yes
	48 c		Absence or inoperability of extractor fans or other means of rapid moisture dispersal to provide three air changes per hour in a bathroom.	7			None	Yes
Adaptations	49	Adaptations to be maintained in accordance with manufacturers and/or suppliers recommendations and Good Industry Practice and adaptations must be fit for purpose and safe	Adaptations damaged, not fit for purpose or unsafe	3	Y	Y	Permissible up to 18 days	Yes

Asset		Availability Standard	Failure Event	Rectification Period	Houses	Flats	Temporary Rectification	Unavailable but Used applicable
Instruction Books	50	The Contractor will provide each Tenant with up to date information on the operation of all mechanical and electrical systems for which the Contractor is responsible.	Failure to provide up to date information on the operation of installed systems.	14	Y (newly installed appliances only)	Y (newly installed appliances only)	None	Yes
External areas to Dwelling s	51 a	The external areas to every Dwelling to have an individual boundary treatment, encompassing front and rear gardens, providing defined boundary separation and definition of defensible space	Missing/damaged boundary treatments	7	Y	Y (where applicable)	Permissible up to 14 days	Yes
	51 b	Not Used						
	52	Where accessible to public areas rear gardens will be provided with a gate which is capable of being fastened and locked	Failure to provide a gate with an operable fastening and locking system	7	Y	Y (where applicable)	Permissible up to 14 days	Yes

Asset		Availability Standard	Failure Event	Rectification Period	Houses	Flats	Temporary Rectification	Unavailable but Used applicable
	53	Paths will be even, free from trip hazards	Presence of trip hazards of over 15mm to paths within curtilage.	3	Y	Y (where applicable and excluding any communal paths)	Permissible up to 20 days	Yes
	54	Not Used						
	55	Not Used						
	56	Bin Stores shall be maintained in a safe and functional condition	Bin stores unsafe or unfunctional	14	Y (where existing)	Y (where existing)	None	Yes
	57	Driveways to Garages must be safe and free from trip hazards	Presence of trip hazards of over 15mm to paths within curtilage	7	Y	Y (where applicable and excluding any communal paths)	Permissible up to 14 days	Yes
Garages within Dwelling curtilage	58 a	All Garage structures to be safe	Garage roofs or walls in danger of collapse.	1	Y	N/A	Permissible up to 20 days	Yes
	58 b	Not Used						

Asset		Availability Standard	Failure Event	Rectification Period	Houses	Flats	Temporary Rectification	Unavailable but Used applicable
	59	Signage must be provided denoting risk of fragile Garage roofs and risk of injury from falls.	No signage provided advising of risk of fragile roofs and risk of injury from falls.	14	Y	N/A	None	Yes

SCHEDULE 25

Home Ownership Protocol

1. RTB Processing

1.1 Initial Application and Preparation of Landlord Offer Notice

1.1.1 The Authority shall request such information from the Contractor as is in the Contractor's possession and control as may be required to assess a Tenant's eligibility under Right to Buy and at the same time such information from the Contractor as is in the Contractor's possession and/or control that it requires to comply with Section 125 of the Housing Act 1985, including information on any proposed Works and Services to the Dwelling and estimates of the cost of such Works and Services.

1.1.2 Such information shall be supplied by the Contractor to the Authority within 10 Business Days of receipt of such request.

1.1.3 Any requirement to gain access to other Dwellings within a Block may result in the provision of such information later than within the 10 Business Days required, Where it is not reasonably possible to gain such access within 10 Business Days, the Contractor will use all reasonable endeavours to expedite its survey work and supply the information.

1.2 Completion of sale

1.2.1 Prior to setting a date for completion of the sale, the Contractor shall provide to the Authority's Solicitors an apportionment of the service charge for the remainder of the Contract Year.

1.2.2 The Authority shall procure that the Authority's Solicitors shall collect such apportioned amount of any service charge on completion and shall pay such collected sum to the Contractor within 15 Business Days.

1.2.3 The Authority shall procure that the Authority's Solicitors shall notify the Contractor, of the Right to Buy sale's completion date within 10 Business Days of such completion taking place.

2. Assignments

2.1 Property Sold On

- 2.1.1 The Authority shall pass to the Contractor all solicitors' enquiries received on behalf of Leaseholders assigning the Lease of a Leasehold Dwelling. The Contractor shall supply full responses to such enquiries, including information on future service charges and the estimated cost of Works and Services to the Leasehold Dwelling.
- 2.1.2 The Authority shall procure that the Authority's Solicitor shall notify the Contractor of the assignment within 15 Business Days.
- 2.1.3 Any administration fees charged by the Authority to the Leaseholder shall be to the account of the Contractor.

2.2 Deeds of Variation

- 2.2.1 The Authority shall inform, consult with and seek to obtain the consent of the Contractor for any requests for deeds of variation, including for physical alterations to the Leasehold Dwelling or Block. The Contractor shall be responsible for reviewing and advising on the Authority's response to such requests.
- 2.2.2 Any administration fees charged by the Authority to the Leaseholder shall be to the account of the Contractor.

2.3 Deeds of Covenant

- 2.3.1 The Authority shall inform, consult with and seek to obtain the consent of the Contractor for any requests for deeds of covenant. The Contractor shall be responsible for reviewing and advising on the Authority's response to such requests.
- 2.3.2 Any administration fees charged by the Authority to the Leaseholder shall be to the account of the Contractor.

3. Collection of Leaseholder Charges

- 3.1 Payment by leaseholders to the former Authority account.
 - 3.1.1 The Contractor shall receive, weekly, from the Authority an electronic file containing financial information from the Authority leaseholder accounts system to enable it to monitor and identify potential payments due to the Contractor.
 - 3.1.2 Leaseholders shall be clearly advised by the Authority about what sums are to be paid and to whom and will be asked to certify such at time of payment, wherever possible.

- 3.1.3 Leaseholders shall be clearly advised by the Contractor about what sums are to be paid and to whom and will be asked to certify such at time of payment, wherever possible during Year 1.
- 3.1.4 Following the Services Commencement Date, in the First Contract Year at three-monthly intervals and in the second Contract Year at six-monthly intervals the Authority and the Contractor shall undertake a review of payments made by Leaseholders to the Authority and the Contractor.
- 3.1.5 Following 12 months after the Services Commencement Date, the Authority and the Contractor shall write to Leaseholders inviting them to agree that monies in credit and not for the purpose of any outstanding payment due held in their account by the Authority shall be transferred to the Contractor account, such consent to be deemed to be given if no response is given by the Leaseholder within 20 Business Days.
- 3.1.6 Further such letters and subsequent transfers of monies shall take place one Contract Month after each review of payments referred to above in the period from 12 months after the Services Commencement Date to end of the Second Contract Year.
- 3.1.7 Following 12 months after the Services Commencement Date, the Authority will terminate existing leaseholders direct debit and standing order payment arrangements except where these are explicitly retained as part of an arrears repayment agreement.
- 3.1.8 Where leaseholders are considering entering into payment by direct debit or standing order to the Contractor following contract commencement, the Contractor shall not suggest or encourage leaseholders who are in payment arrears with the Authority to terminate existing direct debit or standing order payment arrangements with the Authority but to advise them to enter into an arrears payment agreement with the Authority.
- 3.1.9 Where monies are due to the Contractor and paid to the Authority in error, the Authority shall repay the monies to the Contractor within 15 Business Days from the date on which the error has come to the Authority's attention.
- 3.1.10 Where monies are due to the Authority and paid to the Contractor in error, the Contractor shall repay the monies to the Authority within 15 Business Days from the date on which the error has come to the Contractor's attention.

- 3.1.11 The Contractor and the Authority shall exchange information on any proposed debt recovery actions against Leaseholders.

SCHEDULE 26

Disrepair Transitional Arrangements Protocol

Timetable	Case	Authority Risk and Responsibility	Contractor Risk and Responsibility
At Services Commencement Date	All existing cases relating to Disrepair Actions	<ul style="list-style-type: none"> Continue to specify all works to address Disrepair Actions. Authority is responsible for all litigation up to settlement of Disrepair Actions, including legal and compensation costs and counterclaims against the Authority Authority's sub contractor to continue with works New instructions to Authority sub contractors to cease at Services Commencement Date except in urgent or other priority cases 	<ul style="list-style-type: none"> None
At Services Commencement Date	Any other counterclaims against the Authority	<ul style="list-style-type: none"> Continue to specify all works to address Disrepair Actions. Authority is responsible for all litigation up to settlement of Disrepair Actions, including legal and compensation costs and counterclaims against the Authority Authority's sub-contractor to continue with works New instructions to Authority's sub- 	<ul style="list-style-type: none"> None

Timetable	Case	Authority Risk and Responsibility	Contractor Risk and Responsibility
		contractor to cease at Services Commencement Date except in urgent or other priority cases	
From Services Commencement Date	Existing Cases Relating to Disrepair Actions and Counter Claims	<ul style="list-style-type: none"> • The Authority takes responsibility for mitigating Contractor risks. • Any "On Notice" letters acknowledged shall be referred to the Contractor from the Services Commencement Date • Joint working on specifications from the Services Commencement Date with the Authority leading • Agree final specification for those cases where this is still outstanding with Contractor • Authority is responsible for all litigation up to settlement of Disrepair Actions, including legal and compensation costs and counterclaims against the Authority • The Authority's sub-contractor to complete all work in progress in relation to Disrepair Actions at the cost of the Authority, as identified by the 	<ul style="list-style-type: none"> • The Contractor takes responsibility for mitigating Authority risks, including legal costs and checking legal compliance during survey visits • Joint working on specifications • Reporting the works to the Authority • If a counterclaim, liaise with Authority

Timetable	Case	Authority Risk and Responsibility	Contractor Risk and Responsibility
		<p>Contractor and the Authority as outstanding at the Services Commencement Date, within a reasonable period following the Services Commencement Date</p> <ul style="list-style-type: none"> • No new works undertaken by Authority's sub-contractor to address Disrepair Actions. • Any guarantees relating to works carried out by the Authority's sub-contractor to be assigned, where possible • Where the Authority cannot assign the benefit of any guarantee, at the Contractor's request the Authority shall invoke the provisions of the guarantee 	
Post Services Commencement Date	New cases pre Disrepair Actions Cut Off Date	<ul style="list-style-type: none"> • Agree the level of specification for any works to address Disrepair Actions, depending on where Dwelling is in the refurbishment programme, with the Contractor • Agree final specification with the Contractor • Authority is responsible for all litigation up to 	<ul style="list-style-type: none"> • The legal compensation costs and counterclaims shall be a Contractor risk from the Disrepair Actions Cut Off Date and deductions from the Unitary Charge shall apply from the date following the relevant Rectification Period (as set out

Timetable	Case	Authority Risk and Responsibility	Contractor Risk and Responsibility
		<p>settlement of Disrepair Actions, including legal and compensation costs and counterclaims against the Authority</p> <ul style="list-style-type: none"> • Liaise with the Contractor • Refer "on notice" letters to the Contractor • Joint working with the Contractor on any counterclaims until settlement 	<p>in Schedule 4 (Payment and Performance Mechanism)) provided that such defect is due to failure by the Contractor to maintain Dwellings at the Availability Standards Rented (Initial)</p> <ul style="list-style-type: none"> • All new works to address Disrepair Actions to be undertaken by the Contractor • Liaise with the Authority in relation to any letters before action relating to Disrepair Actions • Negotiate the specification of works with the Authority • All risks and responsibility relating to all new works undertaken by the Contractor and their costs • Refer any "On Notice" letters to the Authority • Where the volume of Works required to be undertaken by the Contractor due to Disrepair Actions exceeds the Responsive Repairs and Cyclical Maintenance and Renewal

Timetable	Case	Authority Risk and Responsibility	Contractor Risk and Responsibility
			<p>Contractor's capacity to undertake the Works (acting in accordance with Works Delivery Plan and in a reasonable timeframe), the Contractor shall raise such volume of Works with the Authority under the Liaison Procedure or otherwise. The Contractor and the Authority shall consider the relevant Disrepair Actions and the Authority and the Contractor (acting reasonably) will agree to a programme of such Works to prioritise urgent Works and if no agreement can be reached between the parties, the matter shall be determined under the Dispute Resolution Procedure.</p> <ul style="list-style-type: none"> • Insofar as the Contractor complies with the timetable set out in any such agreed programme, it shall be deemed to have mitigated all liabilities of the Authority arising from such Disrepair Actions (in accordance with clause 31.4)

Timetable	Case	Authority Risk and Responsibility	Contractor Risk and Responsibility
			<p>of this Agreement.</p> <ul style="list-style-type: none"> At any time following the Services Commencement Date and prior to the Disrepair Action Cut-off Date, the Authority, the Contractor and the Responsive Repairs and Cyclical Maintenance and Renewal Contractor shall consider whether as part of the Responsive Repairs and Cyclical Maintenance and Renewal Contractor's programme of works further consideration can be given to the carrying out of works to address any outstanding Disrepair Actions within such programme but having at all times regard to the Responsive Repairs and Cyclical Maintenance and Renewal Contractor's obligations to achieve the Planned Refurbishment Works Completion Date. The Authority shall agree with

Timetable	Case	Authority Risk and Responsibility	Contractor Risk and Responsibility
			<p>the Contractor (such agreement not to be unreasonably withheld) a standard brief to be used by the Contractor's or sub-contractor's employees when discussing with Tenants and Leaseholders possible Works to address potential or actual Disrepair Actions.</p>
Post Services Commencement Date	New counterclaims pre-Disrepair Action Cut-off Date	<ul style="list-style-type: none"> Authority is responsible for settling contested arrears cases that form part of a counterclaim to a Disrepair Action 	<ul style="list-style-type: none"> Contractor to specify works to address Disrepair Actions to mitigate Authority losses and costs as above Contractor is responsible for ensuring payment of rent arrears, excepting any contested arrears arising from a Disrepair Action All risks and responsibility for all works to address Disrepair Actions undertaken by the Contractor and their costs Instruct Contractor's Solicitors Where the volume of Works required to be undertaken by the Contractor

Timetable	Case	Authority Risk and Responsibility	Contractor Risk and Responsibility
			<p>due to Disrepair Actions exceeds the Responsive Repairs and Cyclical Maintenance and Renewal Contractor's capacity, to undertake such Works (acting in accordance with Good Industry Practice, the Works Delivery Plan and in a reasonable timeframe), the Contractor shall raise such volume of Works with the Authority under the Liaison Procedure or otherwise. The Contractor and the Authority shall consider the relevant Disrepair Actions and the Authority and the Contractor (acting reasonably) will agree to a programme of such Works to prioritise urgent Works and if no agreement can be reached between the parties, the matter shall be determined under the Dispute Resolution Procedure.</p> <ul style="list-style-type: none"> • Insofar as the Contractor complies with the timetable set out in any such agreed programme, it

Timetable	Case	Authority Risk and Responsibility	Contractor Risk and Responsibility
			<p>shall be deemed to have mitigated all liabilities of the Authority arising from such Disrepair Actions (in accordance with clause 31.4 of this Agreement).</p> <ul style="list-style-type: none"> The Authority shall agree with the Contractor (such agreement not to be unreasonably withheld) a standard brief to be used by the Contractor's or Sub contractor's employees when discussing with Tenants and Leaseholder possible Works to address potential or actual Disrepair Actions.
Post Services Commencement Date	New cases post-refurbishment	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> All
Post Services Commencement Date	New counterclaims Disrepair Actions Cut-Off Date	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> All

SCHEDULE 27

Allocations and Nominations Protocol

1. The Parties acknowledge that the Authority has in place a Housing Allocation Scheme and Choice Based Lettings Procedure which may be amended from time to time and which governs the process of identifying suitable tenants and the administration of the allocation and acceptance of empty homes.
2. The Parties agree that the Housing Allocation Scheme and Choice Based Lettings Procedure shall apply in respect of this Agreement.
3. The parties acknowledge that those Tenants whose Dwellings are to be demolished or refurbished as part of the Project ("**Affected Tenant**") will be offered an alternative Dwelling as a priority. Affected Tenants will be identified on the Authority's housing allocation system with special status. Affected Tenants will be offered an alternative Dwelling as a priority before other individuals who have been designated with special status but are not Affected Tenants.
4. The Contractor will notify the Authority as soon as reasonably practicable that a Dwelling has become available and assist the Authority to identify a suitable Affected Tenant for that Dwelling.
5. The Contractor will arrange viewings of the Dwellings becoming available for those Affected Tenants who have been identified as suitable for those Dwellings at paragraph 4 above.
6. The arrangement outlined in paragraph 3 above will be in place for 12 months post the completion of the Works.
7. The Contractor will in partnership with the Authority and in accordance with paragraph 3 above allocate and offer Dwellings to all other individuals on the housing allocation system in accordance with the Housing Allocation and Choice Based Lettings Procedure.
8. The Contractor acknowledges that the allocation of an individual to a Dwelling shall not constitute an Authority Change for the purposes of this Agreement.

SCHEDULE 28

ICT Protocol

PART 1 – GENERAL REQUIREMENTS

Authority Data the Authority's Intellectual Property Rights and all information, data and/or statistics coming into the possession or knowledge of the Contractor (a) by virtue of those access rights granted to those systems set out in the **Part 4** of this **Schedule 28** (IT Output Specification) or any other such systems to which the Contractor is granted access to by the Authority; or (b) provided by the Authority to the Contractor in or by any other media, method or form.

1. Authority Data

- 1.1 The Contractor hereby acknowledges and agrees that the Authority Data shall be and shall remain the exclusive property of the Authority both during and after the Contract Period. The Contractor hereby assigns, and agrees to procure the assignment by all relevant sub-contractors of all right, title and interest in and to all such Authority Data, together with all Intellectual Property Rights and other proprietary rights in and to the same, to the Authority with full title guarantee and free from all encumbrances, together with all rights arising from or associated therewith and the right to sue for any past, current or future infringements thereof to hold unto the Authority absolutely.
- 1.2 The Authority hereby grants to the Contractor a non-exclusive, non-transferable (subject to the remainder of this **paragraph 1.2**), royalty-free licence to use the Authority Data in accordance with the terms of this Agreement during the Contract Period for the purposes of, and to the extent necessary for, the performance of the Services. The Contractor shall be permitted to grant sub-licences to the sub-contractors (to the extent necessary for the performance of the Services) on the same terms *mutatis mutandis* as those of the licence granted to the Contractor under this **paragraph 1.2**. The Contractor shall, and shall procure that any sub-contractor to whom a sublicense has been granted under this **paragraph 1.2** shall comply in full with the terms of this Agreement with respect to any such use.
- 1.3 The Contractor shall indemnify the Authority and keep the Authority fully and effectively indemnified against any and all losses, which the Authority may sustain or incur or which may be brought or established against the Authority or

by any of its permitted sub-licensees and which in any case arise out of or in relation to or by reason of any claim or allegation that the use or reproduction, modification, merger and adaptation by the Authority or by any of its permitted sub-licensees of the Contractor's Intellectual Property Rights, the third party Intellectual Property Rights and/or the Authority Data, in each case in accordance with the terms of the licences granted under **paragraph 1.2**, infringes any Intellectual Property Rights of any third party, provided always that:

- 1.4 the Authority promptly notifies the Contractor of any claim or allegation of infringement of any third party's Intellectual Property Rights of which it becomes aware; and
- 1.5 the Contractor has sole control over the defence of any suit or claim and over all negotiations in relation thereto (and the Authority shall not make or attempt to make any settlement or admit any liability in relation to such suit or claim); and
- 1.6 the Authority, or its permitted licensees provide, at the Contractor's cost, all such documents, information and assistance, and do such acts or things, as the Contractor may reasonably require to assist the Contractor in relation to any such suit or claim.

For the avoidance of doubt, the limitations and exclusions on liability contained in **clause 59** (Indemnities) shall not apply to the Contractor's liability under this clause.

- 1.7 The Contractor shall ensure that all Contractor's Intellectual Property Rights and third party Intellectual Property rights in documentation or electronic form is copied and back-up copies are kept and maintained at a location remote from the place where any such data, know-how, information or materials is used at such times as shall accord with Good Industry Practice. The Contractor shall further ensure it has in place and operates in accordance with appropriate security, data backup and disaster recovery procedures and plans which, at a minimum, comply with the Authority's Policies.
- 1.8 Where any of the data, documentation or software referred to in this **paragraph 1** has yet to come into existence, the provisions of this **paragraph 1** shall apply to such data, documentation and software immediately upon the same coming into existence.

2. **Use of Authority Data**

2.1 The Contractor:

- 2.1.1 acknowledges that it has no rights of ownership in the Authority Data;

- 2.1.2 shall not delete or remove any copy right notices contained within the Authority Data;
 - 2.1.3 shall not use or disclose the Authority Data, except as may be required to provide the Services or as instructed by the Authority;
 - 2.1.4 shall not disclose the Authority Data to any third party except with the prior written consent of the Authority or as required by this Agreement;
 - 2.1.5 shall undertake its obligations hereunder in such a manner as to preserve so far as possible the integrity and prevent any loss, disclosure, theft, manipulation or interception of the Authority Data; and
 - 2.1.6 information in relation to the properties outside the Project Site shall in any event be considered to be Confidential Information.
- 2.2 In the event that the Authority Data is corrupted or lost as a result of the Contractor's failure to fulfil its obligations under this **Part 1** of **Schedule 28**:
- 2.2.1 the Contractor shall, at its own expense and as soon as practicable, restore (or procure the restoration of) the Authority Data;
 - 2.2.2 where the Contractor fails (or is unable) to restore the Authority Data, the Authority may itself restore (or procure the restoration of) the Authority Data in a manner reasonably available to it (at the expense of the Contractor).

PART 2 – ADDITIONAL REQUIREMENTS

1. Relationship and service charges

- 1.1 The Contractor is a third party requiring access to the Authority's network and certain applications, as defined in **Part 4** of this **Schedule 28** (IT Output Specification). These arrangements are governed through the Authority's third party code of connection standard and "Using Systems & Data" policy.
- 1.2 The Authority's ICT services division will retain the service relationship with the Authority's Housing, Regeneration and Environment (HRE) department as the department requiring the third party site to site connection and the department responsible for managing the Contractor's delivery of services.
- 1.3 The Authority's ICT services division will deliver ICT services to the Contractor in accordance with the ICT service standards agreed by the Authority's Strategic User Group (SUG), as contained in the "ICT Services: Service Standards" document. The service standards are subject to review and change by the SUG.
- 1.4 The Authority's ICT services division will deliver ICT services to the scope contained within the ICT Transition Plan set out in **Part 3** of this **Schedule 28** (ICT Protocol).
- 1.5 The escalation of issues to stage 4 of The ICT Escalation and Complaints Procedure should be handled by the Authority's HRE department.
- 1.6 The Contractor would be represented on the SUG by the Authority's HRE department.
- 1.7 Where implementation of the Contractor's service arrangements (for example, new network connection) require additional expenditure to enable access by the Contractor to the Authority's systems the Authority's HRE department will be responsible for securing funding prior to commencement of work.
- 1.8 Where changes to the Contractor's service arrangements (for example, office relocation, increase in staff) require additional expenditure to maintain provision of access by the Contractor to the Authority's systems the Authority's HRE department will be responsible for securing funding prior to commencement of work either for the change or for the decommissioning work to terminate the connection to the Contractor.
- 1.9 Where changes to the Authority's ICT infrastructure (including but not limited to planned relocation of data centre, network upgrade and desktop software changes) require additional expenditure to maintain provision of access by the Contractor to the Authority's systems the Authority HRE department will be responsible for securing funding prior to commencement of work either for the

change or for the decommissioning work to terminate the connection to the Contractor.

2. Requests for support

- 2.1 All support is as defined in the current version of the Authority's "ICT Services: Service Standards" document.
- 2.2 In the first instance IT issues affecting Contractor staff will be investigated by the Contractor's ICT support team.
- 2.3 Where an incident or service request requires support from the Authority's named individual(s) within the Contractor's ICT support team will report this to the Authority's ICT helpdesk.
- 2.4 The Contractor will provide their internal ticket reference for all incidents and service requests that are reported to the Authority's ICT helpdesk. This internal ticket reference will be used as a cross reference within the issue logged on the Authority's helpdesk system. The Contractor will be given an issue reference from the Authority's helpdesk system.
- 2.5 The Contractor's ICT support team will liaise with Authority's ICT helpdesk to ensure that the call is handled in an efficient and seamless manner.
- 2.6 Out of hours support is defined in the current version of the Authority's "ICT Services: Service Standards" document and can be accessed by calling the Authority's ICT helpdesk and waiting for the recorded message containing the out of hours contact details.
- 2.7 The Authority's ICT helpdesk is open from 0800 to 1800 Monday to Friday (excluding bank holidays) and can be contacted online through the "DIY" self-service tool or by telephone (0207 926 9111).

PART 3 – ICT TRANSITION PLAN

1. Introduction

The ICT Transition Plan cover three phases during which ICT support will be required:

- 1.1 The Contractor will remain at the current Authority location, 40-41 Foxley Square, Myatts Field Estate, London, SW9 7RX, from go-live at the Commencement Date for up to 3 months, until moving to an interim location.

The Contractor will also operate a call centre function out of its central call centre location, located at Unit 14, Quadrant Court, Charles Park, Crossways Business Park, Dartford, Kent, DA9 9AY during core working hours and from Nelson St Studios, E16 1DS, during out of hours, from go-live. These two Contractor call centres do not require access to the Authority's systems.

- 1.2 The Contractor relocates to an interim non-Authority premises, prior to the completion of a purpose built premise.

The Contractor will continue to operate the call centres function as in paragraph 1.1. These two Contractor call centres do not require access to the Authority's systems.

- 1.3 The Contractor relocates to the purpose built premise.

The Contractor will continue to operate the call centres function as in paragraph 1.1. These two Contractor call centres do not require access to the Authority's systems.

2. Background

- 2.1 The Myatts Field North Tenant Management Organisation ("TMO"), an independent legal body, is currently responsible for housing services, operating out of the Myatts Field Estate location.

- 2.2 The Contractor will be the managing agent for the Authority properties – rent, freehold and leasehold – from the Commencement Date. The TMO will cease to exist at Financial Close. The Contractor will subcontract the role to the Housing Management Contractor. They will deliver the services using Authority applications.

- 2.3 The Contractor will take the TUPE transfer of TMO employees at Financial Close.

3. PHASE 1

Approach to provision of ICT service support

- Phase 1 commences on the Commencement Date. The Phase 1 end date is within 3 months of the Commencement Date.
- The Contractor operating out of the current Myatts Field Estate location will be supported 'as is' and be subject to the same contractual terms and conditions as Authority staff. This is on the basis that the assets in use at the location are and remain the Authority's assets.
- All assets owned by the Authority at the current Myatts Field Estate location will be returned to the Authority on completion of Phase 1 as set out in this ICT Protocol.

ICT Service scope of support – for Myatts Field Estate location

- ICT service provision will be 'as is' at the Myatts Field estate location.
- Support of two current TMO staff TUPE transfer to the Contractor and up to five additional staff from the Contractor. Current staff to retain Authority network accounts and additional staff created as new users with network accounts.
- Support of LAN within current location.
- Support of network connection between current location and the Authority network.
- Support of telephony within current location.
- Access to applications used by staff at current location (including network storage, email, SharePoint).
- Support of applications used by staff at current location.
- Support of desktop PCs and printers at current location.

Out of scope

- No additional hardware to be connected to the Authority network.
- No additional users to be connected to the Authority network other than defined in this document unless agreed through change control.
- No additional sub-contractors or locations requiring access to the network or systems other than defined in this document unless agreed through change control.

Contractor scope of support – for Myatts Field Estate location

- Any additional broadband lines run to the location (not to be connected to the Authority's network).

- Access to Contractor email via Outlook Web Access (through the following link <https://outlook.pinnacle-psg.com/owa>).
- Lead times will be determined by the contract or service level agreement with the Authority's network and telephony supplier.

Requesting support

- Helpdesk calls can be made by all staff at current location, as per current procedures.
- Helpdesk calls can be made by Contractor's ICT support team as in this ICT Protocol.

4. **PHASE 2**

- Phase 2 commences when the Contractor relocates from Myatts Field Estate office to interim office which is expected to be within three months of Phase 1 commencement.

Approach to provision of ICT service support

- The Contractor operating out of interim premise will be regarded as a third party requiring access to the Authority's network and certain applications as governed by the Authority's third party code of connection standard and Using Systems & Data policy (in the Agreed Form).

ICT Service scope of support

- Implementation of network connection between interim premise and the Authority's network (set up of site to site VPN as the preferred option by the Contractor). The scoping configuration to be agreed.
- Support of network connections between Contractor locations and Authority network as per the agreed design.
- Supply of configuration requirements for Contractor firewall.
- Access to applications in **Part 4** of this **Schedule 28** (IT Output Specification).
- Support of applications in **Part 4** of this **Schedule 28** (IT Output Specification) (support will be for access to applications using PCs matching the Authority's standard build).
- Support of up to seven staff from Contractor at interim location. All to lose network accounts but be provided with application accounts.
- Lead times will be determined by the contract or service level agreement with the Authority's network and telephony supplier.

Out of scope

- No additional sub-contractors or locations requiring access to the network or systems other than defined in this document unless agreed through change control.

Pre-requisites

- Third party code of connection worksheet completed – interim location.
- Permission from the Director of ICT Services for the Contractor to be given details of how to access the network – interim location.
- Installation of network connection between the Authority and the Contractor.
- Configuration of Contractor firewall.

Requesting support

- Helpdesk calls can be made by Contractor ICT support team, as per the ICT Protocol.

5. **PHASE 3**

Phase 3 commences when the Contractor relocates to permanent location, expected 1 March 2014.

All ICT services support as per Phase 2 the only difference being the move from interim location to permanent location in Myatts Field Estate requiring the move of the network connection to the Authority.

6. **Costs**

The Authority's HRE department to confirm funding for costs prior to commencement of changes, in line with this ICT Protocol.

Prices vary over time and as current ICT services contracts end and are replaced. The Authority's HRE department to bear the cost of any service contract price increase.

6.1 **Phase 1**

Current location – telephony, ICT services support per user and application changes are covered by current budget between Authority's ICT services division and HRE department.

6.2 **Phase 2**

Interim location – network connection implementation (through site to site VPN connection as the preferred option by the Contractor) to be installed and maintained by the Contractor. The scoping configuration to be agreed.

6.3 **Phase 3**

Permanent location – network connection implementation (through site to site VPN connection as the preferred option by the Contractor) to be installed and maintained by the Contractor. The scoping configuration to be agreed.

7. **Applications**

The applications that the Contractor requires access to are listed in **Part 4** of this **Schedule 28** (IT Output Specification).

The Contractor user access requests will be dealt with via a standard service request as defined in the current version of the Authority's "ICT Services: Service Standards" document.

The Director of ICT Services will be responsible for granting permission for the Contractor to be given details of how to access the network. Each Divisional Director business owner of the applications listed will grant permission for the Contractor to access the application to the Director of ICT Services.

8. **Application changes**

Northgate Housing application - changes to Myatts Field admin unit to include:

8.1 Before go live:

- SX3 security agreement is granted to allow the Contractor edit access to all Dwellings and view only access to all other properties.
- Security set up as agreed.
- Security on reporting set up as agreed.
- Amending the properties included in the admin unit – the Contractor will be responsible for 477 from the Commencement Date. This is a smaller number than those which are currently managed by the TMO. No other properties are to be added.

8.2 After go live

- Configure system to use third party logo on letters.
- 376 Authority tenants (247 to be demolished and files transferred to new properties over a 5 year period and 129 to remain).

- 101 leaseholders and freeholders (58 to be demolished and transferred to new properties over a 5 year period and the rest to remain).
- Agreement required on security arrangements for approximately 70 properties located outside Myatts Field area (required for off-site temporary decants).
- Robust SX3 procedures, which will be controlled by the Authority's HRE department, must be in place in order to manage the following:
 - Decants (moving a Tenant to another property within the Project Site)
 - Off-Site Decants (moving a Tenancy to another property outside the Project Site)
 - Right to Return (returning a decanted Tenant to a property on the Project Site)
 - Property Closure (for a demolished property on the Project Site)
 - Property Creation (for a new build property on the Project Site)
- Requests to the Authority's ICT services division for application changes, including those set out in this ICT Protocol, will be made by the Authority's HRE department via a work package.

9. **Change requests**

Changes to the number of users requiring access, the locations and the applications will all be subject to change control process requiring review and approval from the Authority's HRE department and ICT services division prior to changes being effected.

The Authority's HRE department to confirm funding for costs prior to commencement of changes.

10. **Delays to the programme**

The Authority shall use its reasonable endeavours to comply with the timescales in this ICT Protocol in the event that there are agreed changes to the Construction and Refurbishment Programme.

PART 4 – IT OUTPUT SPECIFICATION

Application & Function	Application Owner	Modules	Access Type	Access Form	Pre-Access Authorisation Training Requirement	User Access Administration	Application Business System Owner/Approver	Third party system access Authorisation Status/Authorisation Method
SX3 - Housing management system	Authority	Estates Allocations Rents Repairs General Enquiry Service Charges	View/Update* View/Update* View/Update* View View/Update* View *Update restricted to Myatts Field data	None	Prior completion of E-learning course to gain access to Rents Direct Debit functionality. User's Manager to raise ICT helpdesk call to request access to course. User's manager to raise ICT helpdesk call to confirm course completion and request access to Direct Debit functionality.	Request from the Contractor must be via a pre-nominated manager for the Contractor or a pre-nominated manager from the Authority's HRE department. The nominated manager for the Contractor is required to notify the Authority immediately if an officer with SX3 access leaves their post or no longer requires access for any other reason. Requests should be done by logging a call via the ICT DIY Portal (http://lambethstaffportal/selfservice/DesktopDefault.aspx), or by emailing litelpdesk@lambeth.gov.uk	Business System Owner: Earl Ray Neil Approver: Earl Ray Neil	Status: Granted
InfoView	Authority	Reporting	Run/View reports	None	None	Same as SX3 - Housing Management System	System Owner/Approver as for SX3	Authorisation status as for SX3
Uniform - Local Land and Property Gazetteer (LLPG)	Authority	LLPG data is maintained within the Uniform system. Required for use in conjunction with the SX3 application	Not applicable	"Lambeth Revenues and Benefits System Access Form" Electronic filename: PSMA_CONTRACTOR_LICENCE_LAMBETH.doc	Not applicable	Form must be completed by each Contractor organisation that requires access to Sx3 and returned before access is granted	Business Owner: Not applicable Approver: Patricia Boland Data Custodian ICT Services Finance and Resources London Borough of Lambeth telephone 020 7926 0352 email pboland@lambeth.gov.uk	Status: Granted. Form completed and PSMA licence confirmation by approver.

Academy - Housing Benefit system	Authority	Housing Benefit claim information	View	<p>"Lambeth Revenues and Benefits System Access Form"</p> <p>Electronic filename: New users-view only-Rev and Bens.doc</p>	None	<p>One form is required per user and each request requires authorisation by a member of Revenues, Benefits & Customer Services Departmental Management Team (DMT).</p> <p>1. Form to be scanned and emailed to HBSysupport@lambeth.gov.uk.</p> <p>2. Raise helpdesk call to Lambeth ICT to request the application installed for user. Log call via the ICT DIY Portal (http://lambethstaffportal/selfservice/DesktopDefault.aspx), or by emailing lithelpdesk@lambeth.gov.uk</p> <p>Access is reviewed every 3 months by the Revenues, Benefits & Customer Services Department and will require confirmation of continued access for all live users in writing (email) from user's team manager.</p> <p>Email will be sent to the user's Team Manager. If confirmation is not received from the Team Manager (within 14 days of email reminder), access is revoked.</p> <p>User's Team Manager is required to notify Revenues, Benefits & Customer Services Team immediately if an officer with Academy access leaves their post or no longer requires access for any other reason. This should be done by logging a call via the ICT DIY Portal</p>	<p>Business Owner: David Ashmore, Divisional Director, Revenue, Benefits and Customer Service</p> <p>Approver: A member of the Revenues, Benefits & Customer Services Departmental Management Team.</p>	<p>Status: Pending</p> <p>Granted on receipt of completed access form.</p>
----------------------------------	-----------	-----------------------------------	------	--	------	---	---	---

					(http://lambethstaffportal/selfservice/DesktopDefault.aspx), or by emailing HBSysystemSupport@lambeth.gov.uk		
Note 1:	During Phase 1 only, access is provided to shared data drives, email, intranet and SharePoint						
Note 2:	As outlined in the ICT Protocol, changes to the number of users requiring access, the locations and the applications will all be subject to change control process which will require review and approval from the Authority's Housing, Regeneration and Environment (HRE) department and ICT Services prior to changes being effected.						
Note 3:	As outlined in the ICT Protocol, the Authority's HRE department to confirm funding for costs prior to commencement of changes.						

SCHEDULE 29

Tenant and Third Party Damage Protocol

Definitions:

Qualifying Costs	has the meaning given to it in Paragraph 1 of Schedule 29 (Tenant and Third party Damage Protocol);
Tenant Damage	any damage wilfully, intentionally or negligently caused to a Dwelling (or Temporary Decant Dwelling) by a Tenant of that Dwelling (or Temporary Decant Dwelling), a member of his household or by a person invited into the Dwelling (or Temporary Decant Dwelling) but excluding any damage arising from fair wear and tear or damage arising from a failure to comply with the Contractor's obligations under this Agreement;
Tenant and Third Party Damage Protocol	the tenant and third party damage protocol set out at Schedule 29 ;
Third Party Damage	any damage caused to a Dwelling, Block, the Community Centre or the Park by a Tenant or third party save to the extent such damage constitutes Tenant Damage;

1. This Protocol defines the circumstances in which the Contractor may pass through costs to the Authority in the event of Tenant Damage and Third Party Damage. Such costs eligible for pass through are termed in this Protocol **"Qualifying Costs"**. Any costs attributable to either Tenant Damage or Third Party Damage that are not Qualifying Costs are a Contractor responsibility.
2. The following costs are not Qualifying Costs:
 - 2.1 any damage to Dwellings that is not Tenant Damage or Third Party Damage;
 - 2.2 any damage caused by the Contractor or any Contractor Related Party;
 - 2.3 all costs caused by Tenant Damage or Third Party Damage up to an annual cap of [REDACTED] and subject to **paragraph 3** below;

- 2.4 any costs not properly incurred or of an amount that is not reasonable in the circumstances and any costs incurred in breach of this Agreement or resulting from any failure to take proper and sufficient steps to recharge the responsible person(s) in accordance with the provisions of the Tenant's Handbook.
- 2.5 any costs (including insurance) recovered from Tenants, former Tenants or anyone else in respect of Tenant Damage or Third Party Damage.
- 2.6 any costs in respect of which insurance proceeds are recovered (or which ought to be recoverable) under the Required Insurances.
3. The Authority will be responsible for an amount equal to [REDACTED] of the Qualifying Costs in any Contract Year. Any sum due from the Authority to the Contractor shall be paid after the end of the relevant Contract Year within 20 Business Days after receipt by the Authority of full details of the damage concerned, evidence of the costs of remedying the relevant damage and the steps taken by the Contractor for recovery of such costs whether under the Tenant's Handbook or otherwise.
4. Where any recovery as described in **paragraph 2.5** is achieved after the Authority has made a payment for the Contract Year in which the relevant Tenant Damage or Third Party Damage occurred then the Contractor shall within 20 Business Days of its receipt pay to the Authority [REDACTED] of such recovery (net of any reasonable costs of recovery).
5. The Contractor will take all reasonable steps to secure empty Dwellings from Third Party Damage in accordance with Good Industry Practice and relevant prevailing circumstances. More than [REDACTED] incidents externally or more than [REDACTED] incidents internally of void damage not attributable to departing Tenants in any year will be evidence of a failure to properly secure and any further such costs in the relevant Contract Year will not be Qualifying Costs.
6. The Contractor will need to demonstrate that Third Party Damage to external property elements is not attributable to fair wear and tear with reference to the following considerations:
- 6.1 comparison with immediately adjacent or similar elements;
- 6.2 estate inspection records;
- 6.3 correspondence with Tenants in relation to their Tenancy Agreement obligations.
7. The Contractor will be entitled to relief from Performance Deductions in relation to repairs raised resulting from Tenant Damage and Third Party Damage where they are notified to the Authority within 5 Business Days of discovery:

- 7.1 such relief, would be time limited to 28 Business Days in the case of boarded-up windows or other similar incidences of Third Party Damage which would impact on the environmental quality of Project Site and the Contractor shall as soon as possible following notification to the Authority of any other Tenant Damage or Third Party Damage agree with the Authority a reasonable time period for the reinstatement, replacement or making good of such Tenant Damage or Third Party Damage and the relief from Deductions shall be limited to such period as the Authority and the Contractor shall have agreed; and
- 7.2 relief, however, will not be given where failure to complete the repair would result in the Dwelling falling below the Availability Standards Rented (Initial), or a health and safety risk would otherwise occur.
8. The Contractor must report to the Authority the quantum of Tenant Damage and Third Party Damage costs (whether or not Qualifying Costs) incurred in each calendar month.
9. If such costs exceed [REDACTED] in each and every month over any three consecutive months, the Contractor will co-operate with the Authority to produce a review plan that will investigate, identify and, as far as possible to mitigate, the causes of these incidences. The Contractor will be expected to make reasonable endeavours to implement this plan to the reasonable satisfaction of the Authority.

SCHEDULE 30

The list of Dwellings

The list of Dwellings in the Agreed Form

SCHEDULE 31

Form of Tenancy Agreement

The standard form of Tenancy Agreement in the Agreed Form

SCHEDULE 32

Form of Leasehold Leases

The standard form of Leasehold Lease in the Agreed Form

SCHEDULE 33

Tenants, Leaseholders and Freeholders

SCHEDULE 34

Section 125 Notices

None

SCHEDULE 35

Notices of Intention

Part 1 – Notices of Intention to Seek Possession



Part 2 – Court Orders



SCHEDULE 36

Dwellings without valid CP12 Certificates



SCHEDULE 37

Details of Outstanding Litigation



SCHEDULE 38

Development Works

1. Matters to which the Grant of the Leases are Subject

- 1.1 The Contractor or proposed lessee (as the case may be) shall be deemed fully to have satisfied itself on or before the date of this Agreement as to the title of the Authority to the Development Sites excluding any matters revealed by the Contractor's or proposed lessee's conveyancers' (as the case may be) pre-completion searches at the Land Charges Registry and/or the Land Registry after the date of this Agreement but before the grant of the Development Works Leases save where the same was known to or disclosed to the Contractor's or proposed lessee's conveyancers (as the case may be) prior to the date of this Agreement.
- 1.2 The Development Works Leases of the Development Sites are granted subject to all matters arising under Legislation (including but not limited to planning matters), building regulations and also to the bye-laws of the local authority or other statutory body or undertaker having jurisdiction thereover and no warranty shall be implied as to the permitted use of the land comprised in the Development Works Leases or that the land conforms with such regulations or bye-laws.
- 1.3 The Contractor shall be deemed to accept and shall procure that the proposed lessee shall be deemed to accept the Development Site in the state and condition thereof existing on the date of this Agreement and the Contractor shall be solely responsible for ensuring that there are no conditions existing in on over or under the land which could adversely affect the Development Works or the use(s) to which the Contractor intends to put the Development Site.
- 1.4 Except as otherwise provided in this Agreement, the Contractor shall make no claim or demand whatsoever against the Authority and the Authority shall have no liability to the Contractor or proposed lessee in respect of the state and condition of the Development Site (or any part thereof) howsoever arising and no allowance will be made by the Authority hereunder for any problems difficulties or delays experienced or encountered by the Contractor in the construction of the Development Works upon the land by reason thereof.
- 1.5 The Development Works Leases are granted subject to:
 - 1.5.1 all and any rights in respect of existing service media or other apparatus on, in or under the land (whether or not specifically referred to in this Agreement or in the Development Works Leases) and the Authority shall not be required to provide any evidence or further details as to the location of such items;

- 1.5.2 all local land charges, registered before the date of this Agreement and all matters which prior to the date of this Agreement are capable of registration as local land charges, whether or not actually so registered;
- 1.5.3 all notices, orders, resolutions, restrictions, agreements, directions and proposals therefore made by any local or competent authority before or after the date of this Agreement;
- 1.5.4 any matters which are unregistered interests which override registered dispositions under Schedule 3 to the Land Registration Act 2002.

2. **General Conditions**

The Standard Conditions of Sale (3rd Edition) are incorporated in this Agreement so far as the same are applicable to the grant of the Development Works Leases and are not varied by or inconsistent with the conditions contained herein.

3. **Variations to Standard Conditions**

3.1 The Standard Conditions of Sale (3rd Edition) shall be varied as follows:

- 3.1.1 in Condition 3.1.2 sub-clause (c) the words "and could not" shall be deemed to be deleted;
- 3.1.2 Condition 5.1.2 shall not apply.

3.2 The Authority shall mean the proposed lessor and the third party nominated by the Contractor as the tenant of any of the Development Works Leases shall mean the proposed lessee for the purposes of Standard Condition 8.2.2, but the Contractor acknowledges that it accepts the provisions of the Standard Conditions of Sale (3rd Edition).

4. **Dispute resolution**

4.1 Any dispute or difference between the parties as to any amendments to be made to any of the Development Works Leases shall be submitted for the determination of a Conveyancing Counsel of not less than 10 years standing experienced in landlord and tenant matters ("Counsel") who shall act as an expert and the remaining provisions of this **paragraph 4** apply to any submission and to any other matter required to be dealt with by Counsel:

- 4.1.1 Counsel shall be appointed by the parties jointly, or in default of agreement within 10 Business Days after either party has given to the other a written request requiring the appointment of Counsel by the President of the Law Society on the request of either party.

4.1.2 Counsel so appointed must:

4.1.2.1 act as an expert and not as an arbitrator;

4.1.2.2 afford the parties the opportunity within reasonable time limits to make representations to him;

4.1.2.3 inform each party of the representation of the other;

4.1.2.4 afford each party the opportunity within reasonable time limits to make submissions to him on the representations of the other; and

4.1.2.5 notify the parties of his decision with reasons as quickly as practicable;

4.1.3 the fees and expenses of Counsel including the cost of his nomination shall be borne equally by the parties who shall bear their own costs as to the submission and determination of the dispute or difference by Counsel; and

4.1.4 Counsel's determination is to be conclusive and binding on the parties except:

4.1.4.1 where there is a manifest error, and/or

4.1.4.2 on a matter of law.

4.2 The Authority or the Contractor may pay the share of Counsel's fees and expenses due from the other if such share is not paid within 10 Business Days of demand by Counsel in which case the amount so paid plus all incidental expenses shall become a debt due and immediately payable to the Authority or the Contractor (as the case may be) from the other.

5. **Landlords obligations during the Contract Period**

The Contractor shall perform the repairing obligations and obligations to provide services on the part of the Landlord set out in the Development Works Leases for the duration of this Agreement to the extent that such obligations form part of the Service Works and/or Services.

SCHEDULE 39

Development Works Leases

1. In this **Schedule 39**, the expressions set out in the left hand column below shall have the meaning appearing opposite them in the right hand column:

Development Contractor Infrastructure Contribution	the sums payable to the Contractor by the Development Contractor as set out in clause 22 (Payment Provisions) of the Development Agreement;
---	---

Grant Notice	a notice, incorporating a warranty to the Authority that Qualifying Service Works having an aggregate Value to be specified in the notice have been completed, in the Agreed Form, to be served on the Authority with a copy being sent to the Authority's solicitors;
--------------	--

Part 1 Infrastructure Works	has the meaning given to it in the Independent Certifier's Deed of Appointment;
-----------------------------	---

Qualifying Service Works	means: <ul style="list-style-type: none">(a) all infrastructure works undertaken;(b) Works undertaken to the Park, Community Centre and open spaces;(c) Designs or other intellectual property held by the Contractor (which shall have an assumed value of £1,731,417);
--------------------------	--

but excluding:

(d)	Any investment in the district heating and hot water system;
-----	--

Value	the amount established by identifying the total of the costs attributable at the relevant date to the relevant Qualifying Service Works in the Base Case and adding:
-------	--

(a)	the market value of all New Dwellings which have been the subject of a
-----	--

Certificate of Availability Rented (Full Standard)(which shall have an assumed value of £250,000 per New Dwelling), less the market value of any existing Dwellings demolished (which shall have an assumed value of £153,750 per Dwelling demolished);

and deducting:

- (b) any payments made by the Development Contractor for infrastructure works servicing the Development Sites;

2. The Planned Development Works Lease Dates shall be as follows:

Demised Premises	Development Site	Planned Development Works Lease Date
Development Phase 1	Development Site 16A as edged blue on the relevant Project Site plan	<p>The later to occur of</p> <p>(a) 10 Business Days after the service by the Contractor on the Authority of the relevant Grant Notice relating to Qualifying Service Works having an aggregate Value of at least £949,906; and</p> <p>(b) the date which is 5 months after the Commencement Date</p>
	Development Site 16B as edged blue on the relevant Project Site plan	
Development Phase 2	Development Site 19D as edged blue on the relevant Project Site plan	<p>The later to occur of</p> <p>(a) 10 Business Days after the service by the Contractor on the Authority of the relevant Grant Notice relating to Qualifying</p>
	Development Site 21 as edged blue on the relevant Project Site	

Demised Premises	Development Site	Planned Development Works Lease Date
	plan	Service Works having an aggregate Value of at least £2,737,099; and
		(b) the date which is 9 months after the Commencement Date
Development Phase 3	Development Site 23A as edged blue on the relevant Project Site plan	The later to occur of (a) 10 Business Days after the service by the Contractor on the Authority of the relevant Grant Notice relating to Qualifying Service Works having an aggregate Value of at least £3,973,334; and
	Development Site 23B as edged blue on the relevant Project Site plan	
	Development Site 23C as edged blue on the relevant Project Site plan	(b) the date which is 13 months after the Commencement Date
	Development Site 18A as edged blue on the relevant Project Site plan	
Development Phase 4	Development Site 3A as edged blue on the relevant Project Site plan	The later to occur of (a) 10 Business Days after the service by the Contractor on the Authority of the relevant Grant Notice relating to Qualifying Service Works having an aggregate Value of at least £4,966,929; and
		(b) the date which is 17

Demised Premises	Development Site	Planned Development Works Lease Date
		months after the Commencement Date
Development Phase 5	<p>Development Site 25A as edged blue on the relevant Project Site plan</p> <p>Development Site 25B as edged blue on the relevant Project Site plan</p> <p>Development Site 25C as edged blue on the relevant Project Site plan</p>	<p>The later to occur of</p> <p>(a) 10 Business Days after the service by the Contractor on the Authority of the relevant Grant Notice relating to Qualifying Service Works having an aggregate Value of at least £7,470,305;</p> <p>(b) the date which is 25 months after the Commencement Date</p>
Development Phase 6	<p>Development Site 9A as edged blue on the relevant Project Site plan</p> <p>Development Site 11A as edged blue on the relevant Project Site plan</p>	<p>The latest to occur of</p> <p>(a) 10 Business Days after the service by the Contractor on the Authority of the relevant Grant Notice relating to Qualifying Service Works having an aggregate Value of at least £8,702,245:</p> <p>(b) the date which is 31 months after the Commencement Date;</p>
Development Phase 7	<p>Development Site 17A as edged blue on the relevant Project Site plan</p> <p>Development Site 6 as edged blue on the relevant Project Site</p>	<p>The latest to occur of</p> <p>(a) 10 Business Days after the service by the Contractor on the Authority of the relevant Grant Notice relating to Qualifying</p>

Demised Premises	Development Site	Planned Development Works Lease Date
	plan	Service Works having an aggregate Value of at least £11,428,572;
	Development Site 8A as edged blue on the relevant Project Site (b) plan	the date which is 41 months after the Commencement Date;

3. In the event of termination of this Agreement prior to the date of grant of a Development Works Lease, then the obligation to grant that Development Works Lease shall no longer apply.
4. Subject to and in accordance with **clause 13.3**, the Authority shall issue or procure that its solicitors issue a dated and executed lease for each Development Site on the Planned Development Works Lease Date provided that the Contractor issues the relevant Grant Notice to the Authority copied to its solicitors at least 10 Business Days prior to the Planned Development Works Lease Date for each such Development Site.
5. The Contractor shall procure that the Development Contractor enters into a further section 106 agreement in accordance with the provisions of clause 17 of the section 106 agreement between the Mayor and Burgesses of the London Borough of Lambeth, Regenter Limited and Lambeth Primary Care Trust and dated 16 August 2010 and as varied by the Deed of Variation dated 20 December 2010 and the Deed of Variation dated 9 November 2011 (the "Section 106 Agreement") on or prior to grant of the Development Works Lease for the relevant Development Site. The Authority acknowledges that the Contractor shall have no further obligations pursuant to Schedules 3, 4, 9, 11 and 12 of the Section 106 Agreement in relation to a Development Site upon execution of the relevant second section 106 agreement.
6. The parties agree that, if the Contractor is entitled to claim a Compensation Event pursuant to the terms of this Agreement on behalf of the Development Contractor or under paragraph 5 below, then notwithstanding the provisions of **clause 19.10**, the provisions of **clause 69** shall not apply to the calculation of any resulting compensation which would ultimately be payable to the Development Contractor and **clause 19.7.2** shall solely apply instead and the parties agree that any such claim shall be treated in the same way as if it were Capital Expenditure for these purposes.

7. The parties acknowledge and agree that in the event of a Compensation Event or a Relief Event, then for the purposes of **clause 13.4** (Completion and Development Works Programme), the time periods set out in the Development Works Programme shall be extended to reflect the length of the delay so caused.
8. The parties acknowledge and agree that in the event of a Compensation Event the provisions of **clause 19.5 to 19.9** (inclusive) shall apply to calculate the Estimated Change in Project Costs and/or loss of revenue and/or relief from obligations under this Agreement required as a result of such Compensation Event. The parties acknowledge and agree that any delay in receipt by the Contractor of the relevant part(s) of the Development Contractor Infrastructure Contribution as a result of a Compensation Event shall entitle the Contractor to include such relevant part(s) of the Development Contractor Infrastructure Contribution within the Estimated Change in Project Costs for the purposes of **clause 19.7.2**.
9. Where pursuant to **paragraph 6** of this **Schedule 39** the Authority has paid to the Contractor as part of the actual Estimated Change in Project Costs an amount corresponding to any part(s) of the Development Contractor Infrastructure Contribution then following remedy of the circumstances constituting the relevant Compensation Event, upon the grant of the relevant Development Works Lease, the Contractor shall repay that amount to the Authority.
10. To the extent that, in relation to any of the Development Phases, on the date specified in paragraph (b) of the right hand column of the table set out in **paragraph 2** of this **Schedule 39** (the "Relevant Date"), the Contractor is unable to serve the relevant Grant Notice because Qualifying Service Works of the requisite Value have not been performed due to the occurrence of a Compensation Event then, provided that the parties have discharged any relevant vacant possession obligations by the Relevant Date, the Contractor shall nevertheless serve the relevant Grant Notice and the Authority shall be obliged to grant the Development Works Lease relating to that Development Phase.
11. If the relevant Development Works Lease is not granted by the Authority following the service of a Grant Notice on the Relevant Date, claims, validly made by the Development Contractor against the Contractor under the Development Agreement, on the grounds of breach of the Development Agreement because the relevant Development Works Lease was not so granted, shall be recoverable by the Contractor from the Authority pursuant to **clause 19.7.2** and the parties agree that any such claim shall be treated in the same way as if it were Capital Expenditure for these purposes.
12. For the purposes of **clause 10** (Vacant Possession Condition) and this **Schedule 39**, the parties acknowledge and agree that:

- 12.1 their respective obligations under this Agreement to obtain vacant possession and grant the relevant Development Works Leases must be discharged by the Relevant Date. To the extent that a failure to do so is attributable to a failure by the Authority, then the parties acknowledge and agree that this shall be deemed to be a Compensation Event; and
- 12.2 the Contractor shall procure that the Building Contractor completes the Part 1 Infrastructure Works in respect of a Development Phase prior to the Relevant Date and that the Development Contractor shall be under no obligation to accept the relevant Development Works Lease unless and until such works have been completed.

SCHEDULE 40

Authority's Share of Proceeds of the Development Works

SCHEDULE 41

Like for Like Properties

Part 1 -- List of Outstanding Interests

Part 2 -- Cost of Acquisition

Replacement Properties are accepted

1. The Parties agree that where a property to be offered to an Existing Owner as a replacement for a Like for Like Property (the "Replacement Property") is accepted, the Authority shall grant a new lease in the Agreed Form to each relevant Existing Owner provided that the Contractor shall have no further liability in respect of homeloss payments claimed by the Existing Owner.

Replacement Properties are not accepted

2. The remaining provisions of this Part 2 (Cost of Acquisition) shall apply on each occasion where the Existing Owner does not accept the offer of a Replacement Property.
3. The Parties agree that where the Replacement Property is not accepted, the Authority shall grant a new lease to the Development Contractor as provided in **paragraph 7** of this **Schedule 41** (Like for Like Properties).

4. Where:

- 4.1 an Existing Owner has entered, before or after the date of this Agreement, into an agreement as described in **clauses 9.2.2** and 9.2.3 (Provision relating to Negotiations) (an "Acquisition Agreement") and has elected pursuant to the Acquisition Agreement to receive a cash payment by way of consideration for the acquisition of the relevant Outstanding Interest; or

- 4.2 compensation for the acquisition of the relevant Outstanding Interest is due under the CPO,

each amount consequently due to Existing Owners shall be for the account of the Contractor and shall be paid to the Existing Owner by the Contractor on behalf of the Authority, provided that, if the due date for payment to the Existing Owner is earlier than the date shown in column (6) of the list in Part 1 of this **Schedule 41** in respect of the relevant Like for Like Property (the "Planned Replacement Property Legal Completion Date"), the Authority shall pay that amount to the Existing Owner by way of advance to the Contractor.

5. Amounts advanced by the Authority pursuant to the provisions of **paragraph 4** of this **Schedule 41** shall be repayable in full on the relevant Planned Replacement Property Legal Completion Date and shall bear interest from the date of payment to the Existing Owner by the Authority until repayment in full by the Contractor to the Authority at the rate of 5 per cent. per annum compounded quarterly on the last day of March, June, September and December in every year.

6. The Contractor shall pay all stamp duty land tax and land registry fees associated with the grant of the leasehold interest in the relevant replacement property.

Grant of Leases

7. The following provisions shall apply to the grant of leases to the Development Contractor:
 - 7.1 The Authority shall, subject to **paragraphs 1 and 4** of this **Part 2** of this **Schedule 41**, as and when required by the Contractor following the completion of each Replacement Property grant to any person or persons nominated as purchaser or purchasers by the Contractor a lease substantially in the Agreed Form subject to such amendments as may reasonably be agreed between the Authority and the Contractor (incorporating without prejudice provisions for payment of the relevant proportion of the service charge).
 - 7.2 The Contractor shall procure that its solicitors shall act on behalf of the Authority but at the Contractor's expense in the grant of the lease of each Replacement Property to the respective purchaser thereof and shall have authority to exchange contracts for the grant of that lease.
 - 7.3 Any premiums paid to the Authority on the grant of the relevant lease and any rent (excluding insurance rent) or service charge received by the Authority under the terms of the leases during the term of the Agreement shall be paid by the Authority to the Contractor forthwith upon receipt, subject to **paragraph 5** of this **Schedule 41** (Like for Like Properties).
 - 7.4 To the extent that the relevant lease imposes obligations on the Authority in respect of the provision of services to the relevant Tenant, the Contractor shall, to the extent that they form part of the Services, be solely liable during the Contract Period for the discharge of such obligations, including (without limitation) the enforcement of covenants and the Contractor shall indemnify the Authority in respect of any costs, claims or expenses incurred by the Authority or any other liability arising from the failure of the Contractor to discharge any such obligation including (without limitation) those costs incurred by the Authority as a result of stepping-in to discharge such obligation. Failure to comply with this **paragraph 7.4** shall not of itself constitute Contractor Default.
 - 7.5 Notwithstanding **paragraph 7.4** above, the Authority shall be entitled to step in at any time upon not less than seven (7) days written notice (or without notice in the case of an Emergency) in order to discharge any such obligation mentioned in **paragraph 7.4** above in circumstances where the Contractor fails to discharge an obligation of the Authority under the relevant lease.

Extensions of Time

8. The parties agree and acknowledge that if the Contractor becomes entitled to an extension of time pursuant to **clause 19.5** (Delays due to a Compensation Event) or **clause 54** (Relief Events), the relevant Planned Replacement Property Legal Completion Date shall equally be adjusted to reflect that extension so granted.

SCHEDULE 42

Grant of Housing Management Office and Site 16D Leases

1. For the purposes of this Schedule, the following words and expressions shall bear the following meanings:

"Housing Management Office" those areas of the Community Centre demised pursuant to a lease in the Agreed Form for the administration of housing management

"Site 16D" the area edged purple on the Project Site Plan

2. The Authority shall:
 - 2.1 as and when required by the Contractor following the completion of the Housing Management Office; and
 - 2.2 at the date of this Agreement in respect of Site 16D,

grant to any person or persons nominated as lessee by the Contractor of the Housing Management Office or Site 16D (as applicable) a lease substantially in the Agreed Form (subject to such amendments as may reasonably be agreed between the Authority and the Contractor (incorporating without prejudice provisions for payment of the relevant proportion of the service charge)) and the Contractor shall have the exclusive right to nominate the lessee for the Housing Management Office or Site 16D.
3. The Contractor shall procure that its solicitors shall act on behalf of the Authority but at the Contractor's expense in grant of the lease of the Housing Management Office or Site 16D to the respective lessee thereof and shall have authority to exchange contracts for the grant of the lease.
4. Any premiums paid to the Authority on the grant of the lease and any rent (excluding insurance rent) or service charge received by the Authority under the terms of the lease during the term of this Agreement shall be paid by the Authority to the Contractor forthwith upon receipt.
5. To the extent that the relevant lease imposes obligations on the Authority in respect of the provision of services to the relevant tenant, the Contractor shall during the Contract Period be solely liable for the discharge of such obligations, including (without limitation) the enforcement of covenants and the Contractor

shall indemnify the Authority in respect of any costs, claims or expenses incurred by the Authority or any other liability arising from the failure of the Contractor to discharge any such obligation including (without limitation) those costs incurred by the Authority as a result of stepping-in to discharge such obligation. Failure to comply with this paragraph 5 shall not of itself constitute a Contractor Default.

6. Notwithstanding paragraph 5 above, the Authority shall be entitled to step in at any time upon not less than seven (7) days written notice (or without notice in the case of an Emergency) in order to discharge any such obligation mentioned in paragraph 5 above in circumstances where the Contractor fails to discharge an obligation of the Authority under the relevant lease.
7. Where the grant of any lease is to a third party or nominee, the Contractor shall procure that the relevant party enters into the relevant lease.

SCHEDULE 43

Change Protocol

Part 1 - General Provisions

1. DEFINITIONS

In each part of this **Schedule 43** the following expressions (in addition to those specified in clause 1 (Definitions and Interpretation)) shall, save where the context or the express provisions of this Agreement otherwise requires or admits, have the following meanings:

“Agreed Abatement”

means:

- (a) in the case of a Low Value Change £20 indexed;
- (b) in the case of a Medium Value Change £50 indexed; and
- (c) in the case of a High Value Change £80 indexed

“Approval Criteria”

means the criteria against which any Contractor Stage 2 Response will be evaluated by the Authority and which will be specified by the Authority in the Authority Change Notice and which shall be based on:

- (a) compliance with the Authority's specifications for the Change;
- (b) evidencing value for money;
- (c) affordability to the Authority; and
- (d) compliance with all relevant Legislation, Guidance and Consents

“Authority Change”

means a Change that is initiated by the Authority by submitting an Authority Change Notice to the Contractor

“Authority Change Notice”

means a written notice submitted by the Authority requiring a Change and setting out the information specified in the

	relevant paragraph of this Change Protocol
"Authority Stage 1 Confirmation"	has the meaning given in paragraph 22.2.1 of Part 4 (High Value Changes) of this Change Protocol
"Authority Stage 2 Confirmation"	has the meaning given in paragraph 25.1.1 of Part 4 (High Value Changes) of this Change Protocol
"Benchmarking Process"	means the process set out in paragraph 27 of Part 4 (High Value Changes) of this Change Protocol
"Benchmarking Report"	means the report produced by the Contractor in accordance with the requirements of paragraph 27 of Part 4 (High Value Changes) (which shall, for the avoidance of doubt, include the information required by paragraph 27.2 of Part 4 (High Value Change)) of this Change Protocol
"Best Value Change"	means a Change required by the provisions of clause 38 (Best Value)
"Capital Expenditure"	means any expenditure which falls to be treated as capital expenditure in accordance with generally accepted accounting principles in the UK from time to time
"Catalogue of Low Value Changes" or "Catalogue"	<p>means the schedule setting out:</p> <ul style="list-style-type: none"> (a) the prices and time periods for Low Value Changes; (b) the Small Works Rates <p>as is set out in Appendix 1 to this Change Protocol, as shall be amended from time to time in accordance with paragraph 9 of Part 2 (Low Value Changes) of this Change Protocol</p>
"Change"	means any change, variation, extension or reduction in the Works and/or the Facilities and/or the Services

"Change Notice"		means an Authority Change Notice and/or Contractor Change Notice as the context shall require
"Change in Project Costs"		means a fixed and final price for carrying out the relevant Change
"Comparable Market"		means local authority housing projects operated under PFI or other forms of PPP including Private Finance Transactions as defined in Regulation 16 of the Local Authorities (Capital Finance) Regulations 1997 (as amended) provided that where there are less than five (5) such housing projects of similar content or less than three (3) contractors operating such contracts the Comparable Market shall be the market for operation of housing projects by a private sector operator
"Competitive Process"	Tendering	The process of competitive tendering of the costs of any works and/or services required in respect of a High Value Change in order to demonstrate value for money to the Authority in respect of any High Value Change
"Confirmation Notice"		means a written notice issued by the Authority pursuant to the relevant provision of this Change Protocol setting out the agreed details of the Change, including the agreed cost, method of payment and the times of its implementation which shall be in the form set out in Appendix 4 to this Change Protocol
"Contractor Change"		means a Change that is initiated by the Contractor by submitting a Contractor Change Notice to the Authority
"Contractor Change Notice"		means a written notice submitted by the Contractor requesting a change and setting out the information required by the relevant paragraph of this Change Protocol
"Contractor Response"		means the written response of the Contractor to an Authority Change Notice

which shall include the information listed in the relevant paragraph of this Change Protocol

“Contractor Stage 1 Response” shall have the meaning given in paragraph 21.1 of Part 4 (High Value Changes) of this Change Protocol

“Contractor Stage 2 Response” shall have the meaning given in paragraph 23.1 of Part 4 (High Value Changes) of this Change Protocol

“Estimated Change in Project Costs” means the aggregate of any estimated increased construction costs, operating costs and financing costs less the aggregate of any estimated reduced construction costs, operating costs and financing costs

“High Value Change” means a Change, which is not listed in the Catalogue, and which, in the reasonable opinion of the Authority, is likely to either cost more than £200,000 to implement, or require an adjustment to the Unitary Charge that is greater than 2% of the annual Unitary Charge (as the case may be);

“Independent Technical Advisor” means a person who is independent of the Authority or any Contractor Party who has not less than five (5) years experience in PFI funded projects and expertise in pricing works and/or services of the type required by the relevant High Value Change and has relevant experience in the housing sector

“Low Value Change” means:

- (a) works of a minor nature, having a cost, in the reasonable opinion of the Authority, not exceeding £10,000 (indexed linked); or
- (b) any change to the Works, having an individual cost, in the reasonable opinion of the Authority, not exceeding £10,000 (indexed linked) and which does

not effect achievement of the relevant Planned Services Commencement Date; or

- (c) any change or amendment (whether temporary or permanent) of the Services or any of them where the cost, in the reasonable opinion of the Authority, of the implementation does not exceed £10,000 (indexed linked) and does not require adjustment of the Unitary Charge; or
- (d) provision of plant or equipment by the Contractor, the cost of which (including installation), in the reasonable opinion of the Authority, does not exceed £2,000;

and, for the avoidance of doubt, includes those Low Value Changes listed in the Catalogue of Low Value Changes

“Low Value Change Request” means a request for a Low Value Change in the form set out in Appendix 3 to this Change Protocol

“Low Value Change Threshold” means where the Low Value Changes in any Contract Year exceeds 24 in number or cost in excess of the aggregate sum of £60,000

“Medium Value Changes” means a Change, which is not a Low Value Change, and which, in the reasonable opinion of the Authority, is likely to either cost less than £200,000 to implement, or require an adjustment to the Unitary Charge that is less than 2% of the annual Unitary Charge in the relevant Contract Year (as the case may be)

“Medium Value Change Threshold” means where the Medium Value Changes in any Contract Year exceeds 12 in number or cost in excess of the aggregated sum of

£1,000,000

“Original Facilities”

means the Facilities as at the Service Commencement Date (including any Changes incorporated into the Works)

“Project Management Fee”

means a fee in respect of project management services calculated in accordance with paragraph 21.2 of Part 4 (High Value Changes) of this Change Protocol

“Reference Price”

means a high level price calculated by the Independent Technical Advisor which is his estimate of the cost of implementing a proposed High Value Change and which shall include and show separately the information specified in paragraph 28.3 of Part 4 (High Value Changes) of this Change Protocol

“Small Works Rates”

means the hourly rates for specified categories of labour set out in the Catalogue

“Tendering Report”

means a report prepared by the Contractor which shall include the information required by paragraph 26.5 of Part 4 (High Value Changes) of this Change Protocol

“Whole Life Cost”

means, in relation to any High Value Change, the estimated and (to the extent that such information is available) the actual cost of operating and maintaining such High Value Change over its intended design life (consistent with the Contractor Response)

2. LIMITS ON CHANGES

2.1 Neither party may propose a Change:

- 2.1.1 which requires the Services to be performed or the Works carried out in a way that infringes any Legislation or Guidance or is inconsistent with Good Industry Practice;

- 2.1.2 which would cause any Consent to be revoked (or a new Consent required to implement the relevant Change to be unobtainable);
 - 2.1.3 which would materially and adversely affect the Contractor's ability to deliver the Services or the Works carried out (except for that part of the Service or the Works which has been specified as requiring to be amended in the Change Notice) in a manner not compensated pursuant to this Change Protocol;
 - 2.1.4 which would materially and adversely affect the health and safety of any person;
 - 2.1.5 which would require the Contractor to implement the Change in an unreasonable period of time;
 - 2.1.6 which would (if implemented) materially and adversely change the nature of the Project (including its risk profile); and/or
 - 2.1.7 whereby the Authority does not have the legal power or capacity to require the implementation of such Change.
- 2.2 The Contractor may, within ten (10) Business Days of receipt of an Authority Change Notice, state in writing whether it objects to the Authority Change Notice on any of the grounds set out in paragraph 2.1. If the Change is required as a result of a Change in Law, the Contractor shall in its notice of objection, set out proposals for a Change which shall satisfy the Change in Law without, to the extent practicable, breaching any of the grounds set out in paragraph 2.1. The Authority shall, within ten (10) Business Days of receipt of such notice provide written confirmation that either:
- 2.2.1 the Authority Change Notice is withdrawn (and where the Change required was as a result of a Change in Law, the Authority shall submit a new Authority Change Notice); or
 - 2.2.2 the objection by the Contractor shall be referred for determination in accordance with the Dispute Resolution Procedure.
- 2.3 The parties shall endeavour to make no Changes to the Works prior to the relevant Planned Services Commencement Date. In the event that the Authority requires an Authority Change to the Works, then the Authority shall, with the Authority Change Notice, submit a confirmation that the Change required by the Authority is necessary and that, in the event that the Contractor cannot obtain funding pursuant to paragraph 4 of this Part 1, the Authority will fund such Change.
- 2.4 For the avoidance of doubt the Authority has an absolute discretion to accept or reject any Contractor Change unless such Change is required as a result of a Change in Law.

- 2.5 Save in relation to the circumstances set out in **clause 10.2.2** (Consequences of Failure to Deliver Vacant Possession), which shall be dealt with as a High Value Change, the parties acknowledge and agree that the Change Protocol shall not apply to the Development Works.

3. **CHANGE PROCESS**

- 3.1 Either party may serve a Change Notice proposing a Change and such Change Notice shall be processed in accordance with the following sections of this Change Protocol:

- 3.1.1 an Authority Change to the Works, the Services or the Facilities which is a Low Value Change shall be processed in accordance with Part 2 of this Change Protocol;
- 3.1.2 an Authority Change to the Works, the Services or the Facilities which is a Medium Value Change shall be processed in accordance with Part 3 of this Change Protocol;
- 3.1.3 an Authority Change to the Works, the Services or the Facilities which is a High Value Change shall be processed in accordance with Part 4 of this Change Protocol; and
- 3.1.4 a Contractor Change to the Works, the Services or the Facilities shall be processed in accordance with Part 5 of this Change Protocol.

4. **FUNDING**

- 4.1 In the case of a High Value Change, the Authority may request in the Authority Change Notice that the Contractor shall use its reasonable endeavours to obtain funding for the whole of the estimated Capital Expenditure, on terms reasonably satisfactory to the Authority and the Senior Lenders.
- 4.2 If the Contractor has used its reasonable endeavours to obtain funding for the whole of the estimated Capital Expenditure, but has been unable to do so within forty (40) Business Days of the date that the Authority issued an Authority Change Notice making such request the Contractor shall inform the Authority in writing of what funding (if any) it has managed to obtain. The Contractor shall have no obligation to carry out the Authority Change, which shall be deemed to be withdrawn, unless the Authority confirms in writing within twenty (20) Business Days of receipt of such notice by the Contractor, that it will pay the Capital Expenditure for which funding is not available.
- 4.3 The Authority may, at any time notify the Contractor in writing that it will meet all or, to the extent the Contractor has obtained funding for part of the Capital Expenditure, the remaining part of the Capital Expenditure.

4.4 For the avoidance of doubt, subject to **clause 55** (Change in Law), the Authority shall pay the Capital Expenditure incurred in carrying out any Low Value Change required by the Authority.

4.5 In the case of a Contractor Change, any funding shall (unless otherwise agreed) be provided by the Contractor except to the extent a Qualifying Change of Law applies in which case the provisions of **clause 55** (Change in Law) shall apply.

5. **DUE DILIGENCE**

5.1 The Senior Lender may carry out legal, financial, technical and insurance due diligence on any proposal for an Authority Change:

5.1.1 in the case of a Low Value Change, when the Low Value Change Threshold has been exceeded; or

5.1.2 in the case of a Medium Value Change where the Medium Value Change Threshold has been exceeded; or

5.1.3 in the case of a High Value Change, as required.

5.2 In the event that the Senior Lender needs to procure legal, technical, financial or insurance due diligence, the parties shall agree a budget and capped cost for the due diligence provided that the costs for the due diligence shall not exceed 3% of the overall value of the relevant Authority Change or such other amount as the parties agree acting reasonably.

5.3 The Contractor shall procure that:

5.3.1 the Senior Lenders shall promptly give any consents which are required pursuant to the Financing Agreements to any Change and shall only withhold its consent on one (or more) of the grounds set out in paragraph 2.1;

5.3.2 the Insurance Broker shall be notified by the Contractor promptly of any material Change (materiality being judged in relation to the size and nature of the scope of the Change and any necessary authorisation obtained).

6. **IMPLEMENTATION**

6.1 Where the Authority has issued a Confirmation Notice in respect of a Change:

6.1.1 where applicable, the parties shall execute any deed of amendment to this Agreement;

6.1.2 the Contractor shall promptly implement any Change within the timescales set out in the Confirmation Notice and shall do so in a manner which minimises any inconvenience to the Authority;

- 6.1.3 the Contractor shall notify the Authority when it believes the Change has been completed;
- 6.1.4 in the case of a Medium Value Change or a High Value Change only, and where applicable, the Unitary Charge shall be revised in accordance with **clause 69** (Financial Adjustments).
- 6.2 No amendments of this Agreement shall be made as a result of a Low Value Change unless otherwise agreed between the parties.
- 6.3 If the Contractor does not:
 - 6.3.1 respond to an Authority Change Notice (in the case of a High Value Change either at Stage 1 or Stage 2); or
 - 6.3.2 complete or implement the Change within the specified timescales,then the Unitary Charge shall be abated at the rate of the Agreed Abatement for every day of delay from the date the Contractor Response should have been submitted or the Change should have been completed or implemented until the date the Contractor Response is submitted or the Change is completed or implemented (as the case may be).
- 6.4 All Changes shall be implemented under the terms of this Agreement and in particular all provisions applying to the Works shall apply to the carrying out of any additional works or changes to the Works.
- 6.5 The Contractor shall keep a record of all Changes (both completed and outstanding) and provide the Authority with these records whenever reasonably required by the Authority.

7. PAYMENT

- 7.1 The Authority shall pay the Contractor the agreed cost for carrying out or implementing any Authority Change:
 - 7.1.1 which is a Low Value Change, in accordance with paragraph 13 of Part 2 (Low Value Changes); or
 - 7.1.2 which is a Medium Value Change or a High Value Change either by way of:
 - 7.1.2.1 an adjustment to the Unitary Charge, by incorporating the Change in Project Costs in accordance with clause 69 (Financial Adjustments); or
 - 7.1.2.2 subject to paragraph 7.2, within twenty (20) Business Days of receipt of an invoice submitted by the Contractor for the agreed amount.

- 7.2 Where the Authority agrees to pay any Capital Expenditure incurred in carrying out a Change:
- 7.2.1 the Authority and Contractor shall agree:
- 7.2.1.1 a payment schedule in respect of the payment of the Capital Expenditure reflecting the amount and timing of the costs to be incurred by the Contractor in carrying out the Authority Change, to the extent borne by the Authority; and
- 7.2.1.2 where payment for part of the Authority Change reflects the carrying out of, or specific progress towards, an element within the Authority Change, an objective means of providing evidence confirming that the part of the Authority Change corresponding to each occasion when payment is due under the payment schedule has been duly carried out,
- and such payment schedule and evidence shall be determined in accordance with the Dispute Resolution Procedure in the event of the Authority and Contractor failing to agree as to its terms;
- 7.2.2 the Authority shall make a payment to the Contractor within twenty (20) Business Days of receipt by the Authority of invoices presented to the Authority (complete in all material respects) in accordance with the agreed payment schedule (as may be varied by agreement from time to time) accompanied by the relevant evidence (where applicable) that the relevant part of the Authority Change has been carried out; and
- 7.2.3 if payment is not made in accordance with paragraph 7.2.2, the Authority shall pay interest at the Prescribed Rate to the Contractor on the amount unpaid from the date twenty (20) Business Days after receipt of the relevant invoice until the date of payment.
- 7.3 Where, pursuant to paragraph 5.1, due diligence has been carried out by the Senior Lender, then the Authority shall reimburse the Contractor for the actual costs of the Senior Lender carrying out due diligence of a proposed Authority Change, provided that
- 7.3.1 in the case of a Low Value Change, the Low Value Change Threshold has been exceeded; or
- 7.3.2 in the case of a Medium Value Change, the Medium Value Change Threshold has been exceeded; and
- 7.3.3 the sums due shall never exceed the lower of the cap set out in paragraph 5.2 and the caps or fixed sum set out in the relevant

Contractor Response and where the costs of the due diligence have not been included in the Change in Project Costs, the Authority shall pay such costs within twenty (20) Business Days of receipt of an invoice submitted by the Contractor for the agreed amount.

- 7.4 Notwithstanding any other provision of this Change Protocol, the provisions of clause 55 (Change of Law) shall apply to the payment of any costs incurred or any savings made in carrying out or implementing any Change which is required as a result of a Qualifying Change in Law.

8. **DISPUTES**

Any dispute arising in respect of this Change Protocol will be resolved in accordance with the Dispute Resolution Procedure.

Part 2 - Low Value Changes

9. NOTIFICATION AND SPECIFICATION

- 9.1 The Contractor shall carry out any Low Value Change requested by the Authority.
- 9.2 If a Low Value Change is required by the Authority, it shall submit to the Contractor a Low Value Change Request.

10. CONTRACTOR RESPONSE

- 10.1 Within ten (10) Business Days of receipt of the Low Value Change Request, the Contractor shall in writing either:
 - 10.1.1 where the Low Value Change is set out in the Catalogue, confirm the cost of implementing the required Low Value Change which shall not exceed the price specified in the Catalogue and the time period for completing or implementing the Low Value Change which shall not exceed the period specified in the Catalogue; or
 - 10.1.2 where the Low Value Change is not set out in the Catalogue, provide a fixed price for implementing the required Low Value Change which shall be calculated in accordance with paragraph 10.2 together with a period for completion or implementation.
- 10.2 The cost of implementing any Low Value Change which is not set out in the Catalogue shall be calculated on the basis that:
 - 10.2.1 wherever practicable the Contractor shall procure that such works are carried out by an existing on-site and suitably qualified employee of a Sub-Contractor and no labour element shall be charged to the Authority in respect of such works. Where the Low Value Change can not be carried out by an existing on-site and suitably qualified employee of a Sub-Contractor, the cost of the labour element shall be calculated in accordance with the Small Works Rates or, where such rates are not applicable, in accordance with rates which are fair and reasonable; and
 - 10.2.2 the materials element shall be charged at the cost of materials to the Contractor or to the contractor carrying out the work (net of all discounts) and there shall be no management fee, margin, overhead, contingency or other cost applied to such costs.
- 10.3 The Contractor shall make no additional charge to the Authority for processing, implementing or managing a Low Value Change unless the number of Low Value Changes in any Contract Year exceeds 12. Any Low Value Changes in excess of this limit, shall be charged at a fee of £50 (indexed) for each Change.

- 10.4 The Authority may, within five (5) Business Days of receipt, object in writing to the Contractor's response given pursuant to paragraph 10.1 and in such circumstances the parties shall act reasonably to agree, as soon as practicable, how the Low Value Change is to be priced and/or implemented. If the parties cannot agree the Low Value Change, the Authority may withdraw the Low Value Change Request and (if the Authority chooses) carry out the Low Value Change itself or refer the matter to the Dispute Resolution Procedure in which case paragraph 12.3 shall apply.

11. **DUE DILIGENCE**

- 11.1 The provisions of paragraph 5 of Part 1 (General Provisions) shall apply.

12. **IMPLEMENTATION**

- 12.1 If the Authority has not objected pursuant to paragraph 10.4, the Contractor shall, within ten (10) Business Days of receipt of the Low Value Change Request, proceed to implement the required Change within the timescales specified in the Catalogue. Where no timescales are specified in the Catalogue, the Contractor shall implement the required Low Value Change within ten (10) Business Days or such other period agreed between the parties.
- 12.2 The Contractor shall implement the required Low Value Change so as to minimise any inconvenience to the Authority and shall notify the Authority when it believes the Low Value Change has been completed.
- 12.3 Paragraph 6 of Part 1 shall apply and any dispute pursuant to this Part 2 may be referred by either party to the Dispute Resolution Procedure. Provided that the Contractor shall, where such dispute concerns the cost of the Low Value Change and if instructed so to do by the Authority, carry out or implement the Low Value Change within the prescribed timescales notwithstanding the dispute.

13. **PAYMENT**

- 13.1 Following the implementation of a Low Value Change, the Contractor shall include the costs of any Low Value Change in the next monthly report (to be provided in accordance with **clause 36.2**) following completion or implementation of the relevant Low Value Change.
- 13.2 No adjustment of the Unitary Charge shall be made as a result of any Low Value Change unless agreed between the parties. Where it is agreed that an adjustment of the Unitary Charge is required, the Base Case shall be adjusted to give effect to such Low Value Changes once each Contract Year and all relevant Low Value Changes that have occurred in the preceding Contract Year shall be aggregated together into a single cumulative adjustment as set out in clause 69 (Financial Adjustments).

14. **UPDATE OF CATALOGUE**

- 14.1 From the Contract Date the Catalogue shall be that set out in Appendix 1 to this Change Protocol and, subject to paragraph 14.2, the rates set out therein shall be indexed on each anniversary of the Contract Year.
- 14.2 On each third anniversary of the Contract Date, the parties shall review the Catalogue with the intention of:
- 14.2.1 including in the Catalogue unit prices for any Low Value Change or any Change which does not affect the risk profile of the Project which the parties anticipate could occur during the life of the Project;
 - 14.2.2 including time periods for the carrying out of any works or implementation of any Change referred to in paragraph 14.2.1;
 - 14.2.3 reviewing the unit pricing for the works and services specified in the Catalogue to ensure that unit rates continue to provide value for money with reference to prices prevailing for similar items in the market at the time;
 - 14.2.4 reviewing the rates for any administrative services required to process a Change;
 - 14.2.5 reviewing any labour rates included in the Catalogue;
 - 14.2.6 taking account of any Low Value Changes which took place in the preceding Contract Year and which may occur again and should properly be included in the Catalogue.
- 14.3 No later than March of each relevant Contract Year, the Contractor shall submit to the Authority any amendments to the Catalogue as required by the Authority or agreed by the parties pursuant to paragraph 14.2 together with evidence that the unit pricing set out in the Catalogue (or proposed as an amendment to the Catalogue) offers the Authority value for money;
- 14.4 The parties shall meet and endeavour, in good faith, to agree any amendments to the Catalogue. Any dispute shall be referred to the Dispute Resolution Procedure and any price determined as providing good value for money with reference to prices prevailing for similar items in the market at the time of determination shall be included in the Catalogue.
- 14.5 No later than April of each relevant Contract Year, the Contractor shall issue to the Authority an updated Catalogue which shall set out the agreed or determined amendments and shall constitute the Catalogue for the purposes of this Agreement.

Part 3 - Medium Value Changes

15. NOTIFICATION AND SPECIFICATION

- 15.1 If an Medium Value Change is required by the Authority, it shall serve an Authority Change Notice on the Contractor.
- 15.2 The Authority Change Notice shall, where applicable, include, but not be limited to, the following information:
- 15.2.1 a statement that it is a Medium Value Change and whether or not the Change is required as a result of a Change in Law or is a Best Value Change;
 - 15.2.2 a description of any works (or change to the Works) required in sufficient detail to allow the design and pricing of the Medium Value Change by the Contractor;
 - 15.2.3 whether, in respect of any additional works, the Contractor is expected to provide maintenance and lifecycle services in respect of such additional works;
 - 15.2.4 the location for the works or services required;
 - 15.2.5 the timing of the works or services required;
 - 15.2.6 in respect of additional or varied services, a description of such service or variation to a Service together with the anticipated date of implementation of the variation or commencement of the new service in sufficient detail to allow the pricing of the Medium Value Change by the Contractor;
 - 15.2.7 the date by which the Contractor shall provide the Contractor Response to the Authority (which shall be appropriate to the complexity of the Change required and shall not be less than ten (10) Business Days from the date of the Authority Change Notice);
 - 15.2.8 either confirmation that the Authority will fund the Medium Value Change itself and its proposals for payment (whether in stages or otherwise) or a request that the Contractor raises finance for the Authority Change as required by paragraph 7 of Part 1) (Payment) of this Change Protocol.

16. CONTRACTOR RESPONSE

- 16.1 Subject to paragraph 2 of Part 1) (Limits on Changes) of this Change Protocol, within the period specified in the Authority Change Notice (or such other period as the parties may agree acting reasonably), the Contractor shall provide the

Authority with a Contractor Response which shall include (where applicable) the following information:

- 16.1.1 a detailed programme for the design, Authority review of the design, construction and/or installation of the Medium Value Change (including the procuring of any Consents);
 - 16.1.2 a detailed programme for commissioning and implementing any change in, or addition to the Services, including the provision and/or training of any staff;
 - 16.1.3 the proposed method of certification of any construction or operational aspects of the Medium Value Change if not covered by the procedures set out in this Agreement.
 - 16.1.4 the proposed consultants, sub-contractors and suppliers the Contractor intends to appoint to process the Medium Value Change;
 - 16.1.5 details of any impact of the Medium Value Change on the carrying out of the Works or the provision of the Services and in particular, details of any relief from compliance with any obligations of this Agreement required during the implementation of or as a consequence of the Medium Value Change;
 - 16.1.6 any Estimated Change in Project Costs that result from the Medium Value Change, taking into account any Capital Expenditure that is required or no longer required as a result of the Medium Value Change;
 - 16.1.7 where the Authority has specified in the Authority Change Notice that the Contractor shall raise finance for the Authority Change, the steps the Contractor has or will take to secure such finance;
 - 16.1.8 any loss of or increase in third-party revenue that may result from the Medium Value Change;
 - 16.1.9 an estimate of any third-party costs and the details of the third-party activity that will be incurred in providing the Contractor Response including (where applicable pursuant to paragraph 5 of Part 1) the anticipated cost of the Senior Lender carrying out due diligence (which shall be a fixed sum) together with a proposed process for approval of such costs by the Authority before they are incurred;
 - 16.1.10 any amendment to this Agreement or any Project Document or any Financing Agreement required as a result of the Medium Value Change.
- 16.2 In calculating the Estimated Change in Project Costs and/or Capital Expenditure the Contractor shall apply the following principles wherever applicable:

- 16.2.1 the unit cost of any construction or installation works (excluding any temporary or demolition works, professional fees, contingencies, overheads and profit margins) required to implement the Medium Value Change shall be the equivalent unit rates set out in Part 1 of Appendix 2 of this Change Protocol. If the Contractor can demonstrate to the reasonable satisfaction of the Authority that such works are designed to a higher quality as compared to the Works, then the unit rates may be increased to reflect such increase in quality;
- 16.2.2 any lifecycle maintenance associated with additional works (or changes to the Works) shall be consistent with the maintenance profile of the Original Facilities (for example, but without limitation, in terms of the replacement cycles for equipment). Provided that the Contractor shall reflect improvements in technology that can optimise whole life costs for the Authority. The unit costs to be applied to the pricing of the lifecycle maintenance shall be the equivalent unit rates set out in Part 2 of Appendix 2 of this Change Protocol. If any additional works are designed to a higher quality as compared to the Works, then the unit lifecycle maintenance costs shall be (in real terms) lower;
- 16.2.3 any professional fees, contingencies, overheads and/or profit margins charged by the any consultant, sub-contractor or supplier in respect of construction and/or installation and/or lifecycle and/or service provision shall be the equivalent rates set out in Part 3 of Appendix 2 of this Change Protocol. If the Contractor can demonstrate to the reasonable satisfaction of the Authority that the fees, overheads and profit margins being charged by consultants, sub-contractors and/or suppliers in current market conditions have changed significantly from those set out in Part 3 of Appendix 2 of this Change Protocol, then the Authority shall agree to amend the rates set out in Part 3) of Appendix 2 of this Change Protocol to reflect current market rates;
- 16.2.4 the unit cost of any extension of, or change to, any Service (either in scope or area) shall be consistent with the equivalent unit rates set out in Part 4 of Appendix 2 of this Change Protocol. If the Contractor can demonstrate, to the reasonable satisfaction of the Authority, that as a result of the Medium Value Change, the relevant Service will be of a higher quality than required by the relevant Service Specification then the Authority may agree to increase such rates to reflect any increase in quality;
- 16.2.5 the cost of Contractor time, reasonably incurred in preparing the estimate for the Medium Value Change (or proposed Medium Value Change) may be charged for at the rates set out in Part 4 of Appendix 2 of this Change Protocol (and no additional mark-up or management

fee shall be charged by the Contractor over and above the costs it will be liable to pay its sub-contractors in carrying out the works and/or services (as the case may be));

- 16.2.6 where the parties agree that paragraph 16.2.1 to 16.2.6 are not applicable the value of any Medium Value Change shall be calculated in accordance with rates which are fair and reasonable and reflect market rates.

16.3 Agreement of Contractor Response

As soon as practicable after the Authority receives the Contractor Response, the parties shall discuss and endeavour to agree the issues set out in the Contractor Response, and the Contractor shall:

- 16.3.1 provide evidence that the Contractor has used reasonable endeavours (including, where practicable, and without prejudice to the provisions of paragraph 26 of Part 4) (Competitive Tendering) of this Change Protocol, the use of competitive quotes) to oblige sub-contractors and suppliers to minimise any increase in costs and maximise any reduction in costs;
- 16.3.2 demonstrate how any Capital Expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred, foreseeable Changes in Law at that time would be taken into account by the Contractor; and
- 16.3.3 demonstrate that any expenditure that has been avoided, which was anticipated to be incurred that has been affected by the Authority Change, has been taken into account in the Estimated Change in Project Costs.
- 16.4 If the Contractor fails to provide the information required by paragraph 16.2 or satisfy the provisions of paragraphs 16.3.1 - 16.3.3(inclusive) the Authority may (in writing) reject the Contractor Response, in which event the parties shall meet within ten (10) Business Days of the notice of rejection to discuss the reason for the Authority's rejection of the Contractor Response. The Contractor shall use all reasonable endeavours to address the Authority's concern about the quality and content of the Contractor Response. In particular, the Contractor shall provide any additional information or documentation that the Authority shall reasonably require which relates to the contents of the Authority Change Notice and/or the Contractor Response and/or the information required by paragraphs 16.3.1 - 16.3.3 (inclusive). The Authority may require the Contractor to resubmit the Contractor Response amended to take account of, and address, the Authority's concerns and the Contractor shall submit such revised Contractor Response within twenty (20) Business Days of such request.

16.5 If the parties cannot agree on the contents of the Contractor Response (as may be amended pursuant to paragraph 16.4), then either party may refer the dispute to the Dispute Resolution Procedure, provided that no determination shall oblige the Authority to issue an Authority Confirmation in respect of the disputed Medium Value Claim.

16.6 **Authority Confirmation**

The Authority shall, in writing, either confirm or withdraw the Authority Change Notice or reject the Contractor Response and in the event that the Authority:

16.6.1 confirms the Authority Change Notice then the Authority shall issue a Confirmation Notice which shall set out the Change in Project Costs and agreed timescales for implementation and attach the agreed Contractor Response; or

16.6.2 withdraws an Authority Change Notice, paragraph 16.8 shall apply; or

16.6.3 rejects the Contractors Response, paragraph 16.9 shall apply.

16.7 If the Authority does not issue a written notice pursuant to paragraph 16.6 within twenty (20) Business Days of the contents of the Contractor Response having been agreed in accordance with paragraph 16.4 or determined pursuant to paragraph 16.5 then the Authority Change Notice shall be deemed to have been withdrawn.

16.8 Where an Authority Change Notice is withdrawn pursuant to paragraph 16.6 or deemed to have been withdrawn pursuant to paragraph 16.7 or paragraph 4.2 of Part 1) (General Provisions), the Authority shall pay to the Contractor the reasonable additional third-party costs incurred by the Contractor in preparing such Contractor Response provided that:

16.8.1 the Contractor has used all reasonable endeavours to submit a reasonably priced Contractor Response;

16.8.2 the Contractor included in the Contractor Response a cost breakdown of the estimate of third-party costs to be incurred by the Contractor in preparing the Contractor Response and the Authority has:

16.8.2.1 approved such estimate of third-party costs and the type of third-party prior to any third-party costs being incurred; and

16.8.2.2 agreed that, given the nature of the proposed Medium Value Change, it was reasonable for the relevant third-party to incur costs in preparing the Contractor Response on the basis of the extent of the proposed Medium Value Change and the work required in submitting an accurate

Contractor Response in compliance with this Change Protocol;

16.8.2.3 provided with such evidence as it may reasonably require in order to verify such third-party costs;

16.8.2.4 no cap or fixed fee given by the Contractor (whether in the Contractor Response or otherwise) in respect of any third-party cost has been exceeded.

16.9 The Authority shall not be responsible for payment of any costs incurred by the Contractor in preparing the Contractor Response where the Authority has rejected the Contractor Response on the grounds of non-compliance with the requirements of this Protocol.

16.10 Where the Authority Change is withdrawn or the Contractor Response is rejected, the Authority shall be entitled to implement the Change itself.

17. **DUE DILIGENCE**

17.1 The provisions of paragraph 5 of Part 1 (General Provisions) shall apply.

18. **IMPLEMENTATION**

18.1 The provisions of paragraph 6 of Part 1 (General Provisions) shall apply.

18.2 Where the Medium Value Change:

18.2.1 is implemented at a Dwelling, Communal Area and/or Exterior Common Area before the issue of a Certificate of Availability for that Dwelling, Communal Area and/or Exterior Common Area, and constitutes additional or varied Works, the procedure set out at **clause 23** (Certification of Availability) shall apply to the Works which are the subject of the Medium Value Change at the same time as the relevant Dwelling, Communal Area and/or Exterior Common Area is subject to that procedure;

18.2.2 is implemented at a Dwelling, Communal Area and/or Exterior Common Area after the issue of a Certificate of Availability for that Dwelling, Communal Area and/or Exterior Common Area, and constitutes works, the procedure set out and agreed in the Contractor Response for certifying the completion of the Medium Value Change shall apply to determine whether the Medium Value Change has been completed appropriately.

18.2.3 constitutes additional or varied Services, the Payment Mechanism shall apply to determine whether the Medium Value Change has been properly implemented.

19. **PAYMENT**

19.1 The provisions of paragraph 7 of Part 1 (Payment) shall apply.

Part 4 - High Value Changes

20. **NOTIFICATION AND SPECIFICATION**

20.1 The Authority and the Contractor shall co-operate and collaborate to ensure that each party has early notification of the prospect of a High Value Change. Without prejudice to paragraph 20.2, the Authority shall involve the Contractor as early as is practicable in the specification of the High Value Change to ensure that the developed specifications reflect input from the Contractor and/or the relevant Contractor Parties.

20.2 The Authority may, at any time, issue a Authority Change Notice which shall state:

20.2.1 that it is a High Value Change and whether it is required as a result of a Change in Law or is a Best Value Change; or

20.2.2 that the High Value Change shall be valued either:

20.2.2.1 by means of the Competitive Tendering Process (subject to paragraph 20.3);

20.2.2.2 by means of the Benchmarking Process; or

20.2.2.3 by means of valuation by an Independent Technical Adviser;

20.2.3 if applicable, affordability thresholds for the proposed works or services comprising the relevant High Value Change;

20.2.4 if applicable, an output specification of the proposed works, in the same format and with similar detail as that provided in the Output Specification wherever possible, and where not possible, in sufficient detail to allow the design and pricing of a solution to the High Value Change;

20.2.5 if applicable, a specification of the proposed services (or any change to the Services), in the same format with similar detail as that provided in the Service Specifications wherever possible and, where not possible, in sufficient detail to allow the pricing of the required additional service (or change to a Service);

20.2.6 the location for the works or services required;

- 20.2.7 the timing of the works or services required;
 - 20.2.8 whether the Contractor is expected to provide maintenance and/or lifecycle services in respect of any additional works;
 - 20.2.9 an outline risk allocation matrix setting out the Authority's preferred risk profile in respect of the High Value Change ;
 - 20.2.10 a time period for submission of the Contractor Stage 1 Response which shall be reasonable, taking into account the complexity of the High Value Change and, in any event, shall not be less than thirty (30) Business Days; and
 - 20.2.11 in the event that the Authority Change will require Capital Expenditure, whether the Authority intends to pay the Capital Expenditure involved in implementing the Change or whether the Authority requires the Contractor to use its reasonable efforts to obtain funding in accordance with paragraph 4 of Part 1 (Funding) of this Change Protocol.
- 20.3 The Contractor shall not be obliged to carry out a Competitive Tendering Process where works carried out as part of the High Value Change will be carried out as part of the Works being undertaken, before a Certificate of Availability for each of the Dwellings, Communal Areas and/or Exterior Common Areas, in the Project has been issued, at the part of the Site affected by the High Value Change.

21. **CONTRACTOR STAGE 1 RESPONSE**

- 21.1 Subject to paragraph 2 of Part 1 (Limits on Changes) of this Change Protocol, within the period specified in the Authority Change Notice (or if no time is specified within thirty (30) Business Days) the Contractor shall submit a report (a **Contractor Stage 1 Response**), which shall (where applicable) include, but not be limited to, the following information which shall contain sufficient detail to enable the Authority to make an informed decision pursuant to paragraph 11 and shall take account of the Authority's affordability thresholds set out in the Authority Change Notice:
- 21.1.1 an outline programme for implementation of the Change including time periods for design development, Authority review of the design, anticipated dates of any applications for Consents (including planning applications) and time periods for the provision and training of staff;
 - 21.1.2 a broad indication of the impact of carrying out and implementing of the High Value Change on the provision of the Works and/or the Services and in particular whether relief from compliance with any obligations set out in this Agreement is likely to be required, including the obligations of the Contractor to meet the performance regime

during the implementation of or as a consequence of the High Value Change;

- 21.1.3 an outline of the Estimated Change in Project Costs that will result from implementing the High Value Change, taking into account any Capital Expenditure that is required or no longer required as a result of the High Value Change;
 - 21.1.4 any Capital Expenditure that is required or no longer required as a result of the High Value Change and where the Authority has specified in the Authority Change Notice that the Contractor shall raise financing for the Authority Change, the steps the Contractor has or will take to secure such financing;
 - 21.1.5 an estimate of any loss of, or increase in, third-party revenues that may result from the High Value Change;
 - 21.1.6 the proposed Project Management Fee which shall be a capped fee calculated in accordance with paragraph 21.2;
 - 21.1.7 a budget (or budgets) together with a capped or fixed fee for third-party costs and details of the third-party activity likely to be incurred by the Contractor, such as, third-party advice, the carrying out of surveys, obtaining Consents, the Senior Lender carrying out due diligence and independent certification that may be required to be completed prior to agreement of the High Value Change together with a proposed process for approval of such costs by the Authority before they are incurred;
 - 21.1.8 a summary of any amendments required to this Agreement or any Project Document or the Financing Agreements as a result of the Change; and
 - 21.1.9 a value for money assessment explaining why the Contractor's proposals represent value for money taking into account both the proposed Capital Expenditure and Whole Life Cost.
- 21.2 The Contractor may charge a Project Management Fee for the time incurred by its employees in project managing the development, procurement and implementation of the High Value Change. The Project Management Fee shall:
- 21.2.1 be based on actual time spent (validated by timesheet records);
 - 21.2.2 be calculated at the daily rates as set out in Appendix 2 (Project Management Fee) of this Change Protocol but capped at the sum set out in the Contractor Stage 1 Confirmation;
 - 21.2.3 not include the time of any person who is not an employee of the Contractor; or

21.2.4 not include any mark-up or profit cost or additional overheads;

21.2.5 be paid in two stages as follows:

21.2.5.1 on the Authority issuing an Authority Stage 1 Confirmation pursuant to paragraph 22.2.1; and

21.2.5.2 on the Authority issuing an Authority Stage 2 Confirmation pursuant to paragraph 25.1.1 or withdrawing the High Value Change pursuant to paragraph 25.1.2.

and at each stage, the Contractor shall charge (subject to the applicable cap) only for the time incurred by its staff up to completion of that stage.

21.3 In preparing the outline Estimated Change in Project Costs, including the calculation of any Capital Expenditure, the Contractor shall, as specified by the Authority in the Authority Change Notice) either comply with the:

21.3.1 provisions of paragraph 26 if the Competitive Tendering Process is to apply;

21.3.2 provisions of paragraph 27 if the Benchmarking Process is to apply; or

21.3.3 provisions of paragraph 28 if an Independent Technical Advisor has been or will be appointed.

21.4 The Contractor shall ensure that the performance risk involved in implementing the High Value Change and any interface risks involved in linking new facilities or services with a building on the Site and/or the Services are reflected (depending on the risk profile of the High Value Change) in the Estimated Change in Project Costs and not priced separately over and above the Estimated Change in Project Costs. The Contractor shall not include any separate charge or fee payable to the Contractor or any sub-contractor of the Contractor in the costs included in the Estimated Change in Project Costs.

21.5 In developing a Contractor Stage 1 Response the Contractor shall liaise with the Authority and relevant end users (being such persons or organisations as the Contractor in consultation with the Authority considers appropriate). The Authority shall provide to the Contractor such information as to its requirements as the Contractor may reasonably require and shall assist the Contractor in the review of any draft designs in relation to the Contractor Stage 1 Response. Any and all information and other input or feedback provided by the Authority to the Contractor shall, unless expressly stated otherwise by the Authority, be provided without warranty and shall be without prejudice to the Authority's rights under this Change Protocol.

22. AUTHORITY STAGE 1 CONFIRMATION

- 22.1 The Authority shall consider in good faith, the Contractor Stage 1 Response. If the Authority finds that any material aspects of the Contractor Stage 1 Response are unsatisfactory to it, it shall notify the Contractor of the same and offer reasonable assistance to the Contractor to enable it to address such deficiencies and resubmit the Contractor Stage 1 Response as soon as reasonably practicable.
- 22.2 The Authority shall, within thirty (30) Business Days of receipt of the Contractor Stage 1 Response (as may be amended pursuant to paragraph 22.1), confirm in writing to the Contractor that either:
- 22.2.1 the Contractor should proceed with developing a Contractor Stage 2 Response and shall confirm the agreed Project Management Fee, specify the Approval Criteria and set out the date by which the Contractor Stage 2 Response shall be submitted (which date shall reflect the complexity of the High Value Change and shall not be less than sixty (60) Business Days) (an **Authority Stage 1 Confirmation**); or
 - 22.2.2 the Authority withdraws the Authority Change Notice. No compensation (including payment of any part of the Project Management Fee) shall be paid to the Contractor by the Authority if the Authority Change Notice is withdrawn at this Stage 1;
- 22.3 If the Authority serves an Authority Stage 1 Confirmation, the Authority shall pay the Contractor the Project Management Fee due at Stage 1 within twenty (20) Business Days of receipt of an invoice for the agreed sum submitted by the Contractor.
- 22.4 Where paragraph 4.2 of Part 1 (General Provisions) applies and the Authority Change Notice is deemed withdrawn, then no compensation (including payment of any part of the Project Management Fee) shall be paid to the Contractor by the Authority.

23. **CONTRACTOR STAGE 2 RESPONSE**

- 23.1 Within the time period specified in the Authority Stage 1 Confirmation (or if no time is specified within sixty (60) Business Days of receipt of the Authority Stage 1 Confirmation), the Contractor shall submit a report (a **Contractor Stage 2 Response**) which shall where applicable, include but not be limited to the following information:
- 23.1.1 (where applicable) a detailed design solution (at the minimum to RIBA Stage D);
 - 23.1.2 the proposed consultants, sub-contractors and suppliers which the Contractor intends to appoint to process the High Value Change;

- 23.1.3 details of any Consents required in order to implement the High Value Change;
- 23.1.4 details of any impact (stoppage or changes) on the carrying out of the Works and/or the provision of the Services and in particular whether (and what) relief from compliance with obligations set out in this Agreement is required, including the obligations to meet the performance regime during the implementation of or as a consequence of the High Value Change and the duration of such relief;
- 23.1.5 the proposed method of certification of any construction or operational aspects of the High Value Change if not covered by the procedures in this Agreement;
- 23.1.6 a detailed timetable for implementation of the High Value Change;
- 23.1.7 any surveys and investigations and associated reports that are reasonably necessary to ascertain (in relation to a High Value Change which involves the construction of additional buildings) information as to the nature, location and condition of the relevant land (including hydrological, geological, geotechnical and sub-surface conditions) together with information relating to archaeological finds, areas of archaeological, scientific or natural interest and (in relation to the refurbishment of any existing buildings) information on the condition and quality of existing structures and, in particular, the presence of any latent defects;
- 23.1.8 a completed risk register showing the potential risks identified in relation to the delivery of the High Value Change the occurrence of which are capable of adversely affecting the time for completion, cost and/or quality of the Project, the probability of such risks occurring and a financial estimate of the most likely consequences of each risk occurring together with the prioritisation of all continuing risks and an action plan in respect of, and risk owners for, all risks prioritised as serious risks;
- 23.1.9 any approval required from the insurers and/or the Senior Lenders together with details of the capped sum for the due diligence costs incurred or to be incurred in obtaining the same;
- 23.1.10 details of any third-party costs incurred in preparing the Contractor Stage 2 Response and/or to be incurred in implementing the High Value Change together with details of Authority approvals given to sums already expended and confirmation that costs to be incurred are included in the Change in Project Costs.

- 23.1.11 a draft deed of amendment setting out any amendment(s) to this Agreement and/or any Project Document and/or any Financing Agreement required as a result of the High Value Change;
 - 23.1.12 the amount of any loss of or increase in third-party revenues that may result from the High Value Change and confirmation that the effect is included in the Change in Project Costs;
 - 23.1.13 if requested by the Authority, details of any funding obtained and the adjustments required to the Unitary Charge together with a proposed revised financial model including the detailed price estimates;
 - 23.1.14 a final Change in Project Costs that result from the High Value Change, taking into account any Capital Expenditure that is required or no longer required as a result of the High Value Change, all reasonable third-party costs incurred or likely to be incurred by the Contractor and any increase or decrease in operating costs and any loss of or increase in third-party revenue that results from the High Value Change;
 - 23.1.15 evidence that the Contractor has used reasonable endeavours (including, where practicable and without prejudice to the provisions of paragraph 25.4, the use of competitive quotes) to oblige sub-contractors and suppliers to minimise any increase in costs and maximise any reduction in costs;
 - 23.1.16 a demonstration of how any Capital Expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred, foreseeable Changes in Law at that time would be taken into account by the Contractor;
 - 23.1.17 a demonstration that any expenditure that has been avoided, which was anticipated to be incurred that has been affected by the High Value Change, has been taken into account in the Capital Expenditure and/or Estimated Change in Project Costs;
 - 23.1.18 a value for money assessment explaining why the Contractor's proposals represent value for money taking into account both the proposed Capital Expenditure and Whole Life Cost; and
 - 23.1.19 an explanation (together with appropriate supporting evidence) as to why the Contractor Stage 2 Response meets the Approval Criteria.
- 23.2 The Contractor shall also include in the Contractor Stage 2 Response the following information:
- 23.2.1 if the Authority specified in the Authority Change Notice that paragraph 26 will apply, the Tendering Report;

- 23.2.2 if the Authority specified in the Authority Change Notice that paragraph 27 will apply, a benchmarking report demonstrating that the unit rates for construction, lifecycle and maintenance services used to calculate the final and fixed Change in Project Costs fall within reasonable ranges compared to industry benchmarks obtained from a reputable, independent source or the Comparable Market; or
 - 23.2.3 if the Authority specified in the Authority Change Notice that paragraph 28 will apply, the Reference Price with details of how the Reference Price was used to calculate the Change in Project Costs and any comments made by the Independent Technical Adviser on the Change in Project Costs.
 - 23.3 In developing a Contractor Stage 2 Response, the Contractor shall continue to liaise with the Authority and relevant end users (being such persons or organisations as the Authority in consultation with the Contractor considers appropriate).
 - 23.4 Without prejudice to paragraph 23.3, the Authority shall co-operate with the Contractor in relation to any Contractor Stage 2 Response being developed by the Contractor, including (without limitation) promptly providing:
 - 23.4.1 written confirmation of any change to the affordability thresholds and any amendment to the Authority's requirements both as set out in the Authority Change Notice;
 - 23.4.2 changes to funding which the Authority receives or to the way in which funding may be applied, either or both of which may affect whether a High Value Change is affordable;
 - 23.4.3 any information reasonably required by the Contractor to enable the Contractor to submit a full and complete Contractor Stage 2 Response and any such other information as the Contractor may reasonably require and shall assist the Contractor in the review of any draft designs and in the development of other aspects of the Contractor Stage 2 Response (but not where this would involve the Authority incurring additional material expense); and
 - 23.4.4 reasonable assistance to the Contractor in relation to procurement by the Contractor of all relevant Consents
- provided that any and all information and other input or feedback provided by the Authority to the Contractor shall be provided without warranty and shall be without prejudice to the Authority's rights under this Change Protocol.
- 23.5 The Contractor shall notify the Authority as soon as it becomes aware of any matter which may have a reasonably foreseeable material adverse effect on the viability of any High Value Change including any planning issues likely to cause a

material delay in the anticipated programme for the High Value Change or material cost increases.

24. AGREEMENT OF CONTRACTOR RESPONSE

24.1 As soon as practicable after the Authority receives the Contractor Stage 2 Response, the parties shall discuss and endeavour to agree the issues set out in the Contractor Stage 2 Response. The Authority may require (and the Contractor shall provide) further information it reasonably requires to enable the Authority to evaluate the Contractor Stage 2 Response and, in particular, decide whether the Contractor Stage 2 Response meets the Approval Criteria. In particular, the Contractor shall:

24.1.1 provide evidence that the Contractor has used reasonable endeavours (including, where practicable (and without prejudice to the provisions of paragraph 25.4), the use of competitive quotes) to oblige sub-contractors and suppliers to minimise any increase in costs and maximise any reduction in costs;

24.1.2 demonstrate how any Capital Expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred, foreseeable Changes in Law at that time would be taken into account by the Contractor; and

24.1.3 demonstrate that any expenditure that has been avoided, which was anticipated to be incurred that has been affected by the High Value Change, has been taken into account in the Change in Project Costs,

and the Contractor shall reply promptly and fully to all requests by the Authority for further information.

24.2 The Authority may modify the Authority Change Notice (which modification shall be in writing). The Contractor shall, as promptly as reasonably practicable taking into consideration the complexity of the modification required after receipt of such modification, notify the Authority of any consequential changes to the Contractor Stage 2 Response (which shall be deemed accordingly amended).

24.3 If acting reasonably, the Authority is of the view that any material aspect of the Stage 2 Response fails to meet the Approval Criteria and/or otherwise fails to satisfy any requirement of this Change Protocol the Authority shall notify the Contractor of the same and shall specify in writing and explain to the Contractor in what respects the Contractor Stage 2 Response does not meet the Approval Criteria and/or fails to comply with this Change Protocol. The Contractor shall, within twenty (20) Business Days (or such other period as is agreed by the parties) of such notification, revise and re-submit the Contractor Stage 2 Response.

24.4 If the revised Contractor Stage 2 Response does not address the shortcomings notified by the Authority pursuant to paragraph 24.3 and the revised Contractor Stage 2 Response does not satisfy the Approval Criteria or other requirement of this Change Protocol then paragraph 25.1.3 shall apply.

24.5 If the parties cannot agree on the contents of the Contractor Stage 2 Response, then either party may refer the dispute to the Dispute Resolution Procedure, provided that no determination shall oblige the Authority to issue a Stage 2 Confirmation in respect of the disputed High Value Change.

25. **AUTHORITY STAGE 2 CONFIRMATION**

25.1 As soon as reasonably practicable after receipt of the Contractor Stage 2 Response or the revised Contractor Stage 2 Response (as the case may be) the Authority shall either:

25.1.1 issue written confirmation (an **Authority Stage 2 Confirmation**) and shall pay the Contractor the Project Management Fee due at Stage 2 within twenty (20) Business Days of the date of issue of the Authority Stage 2 Confirmation or, if later, receipt of a valid invoice for the agreed amount; or

25.1.2 issue a written notice withdrawing the Authority Change Notice in which case provisions of clause 25.3 shall apply; or

25.1.3 issue a written notice rejecting the Contractor Stage 2 Response in which case the Authority shall not be responsible for any costs incurred by the Contractor in preparing the Contractor Stage 2 Response (including any outstanding part of the Project Management Fee or any due diligence costs incurred by the Senior Lender). Provided that the Authority may only reject the Contractor Stage 2 Response on the grounds that the Contractor Stage 2 Response has failed to meet one or more of the Approval Criteria.

25.2 If the Authority does not issue a written notice pursuant to paragraph 25.1 within twenty (20) Business Days of receipt of a written notice served by the Contractor (which notice may only be served after expiry of a period of 3 months from the date the Authority receives the Contractor Stage 2 Response) requiring the Authority either to confirm the Contractor Stage 2 Response or withdraw the Authority Change Notice then the Authority Change Notice shall be deemed to have been withdrawn.

25.3 Where an Authority Change Notice is withdrawn pursuant to paragraph 25.1.2 or deemed to have been withdrawn pursuant to paragraph 25.2, the Authority shall pay to the Contractor within twenty (20) Business Days of receipt of an invoice for such amount, the reasonable third-party costs (including any costs incurred by the Senior Lender in carrying out due diligence) incurred by the Contractor in

preparing the Contractor Stage 2 Response together with the outstanding balance of the Project Management Fee provided that:

25.3.1 the Contractor has satisfied the Approval Criteria and other requirements of this Change Protocol;

25.3.2 the Contractor has included in the Contractor Stage 1 Response a cost breakdown of the estimate of third-party costs to be incurred by the Contractor in preparing the Contractor Stage 2 Response and the Authority has:

25.3.2.1 approved such estimate of third-party costs and the type of third-party prior to any third-party costs being incurred;

25.3.2.2 agreed that, given the nature of the proposed High Value Change, it was reasonable for the relevant third-party to incur costs in preparing the Contractor Stage 2 Response on the basis of the extent of the proposed High Value Change and the work required in submitting an accurate Contractor Stage 2 Response in compliance with this Change Protocol;

25.3.2.3 been provided with such evidence as it may reasonably require in order to verify such third-party costs; and

25.3.2.4 no cap or fixed fee given by the Contractor (whether in the Contractor Stage 1 Response or otherwise) in respect of any third-party costs has been exceeded.

25.4 Where the Authority Change is either withdrawn or rejected, the Authority shall be entitled to implement the Change itself.

26. **COMPETITIVE TENDERING**

26.1 Where this paragraph 7 applies, the Contractor shall, in preparing the Contractor Stage 2 Response, structure the works and/or services required by the High Value Change into a number of discrete work packages, and shall invite at least three (3) competitive tenders for each work package.

26.2 The Contractor and the Authority shall agree:

26.2.1 the work packages to be priced through competitive tendering based on what is judged to provide best value for money;

26.2.2 the evaluation criteria;

- 26.2.3 any additional interface risks between the carrying out of any additional works and/or services, and the Facilities and/or carrying out of the Works and/or the delivery of the Services; and
 - 26.2.4 that the preferred tenderer shall be selected on the basis of the most economically advantageous tender.
- 26.3 The Contractor shall be responsible for:
- 26.3.1 running the competition for the work packages;
 - 26.3.2 evaluating and selecting the preferred tenderers;
 - 26.3.3 negotiating and finalising appointment of the preferred tenderers; and
 - 26.3.4 managing the implementation of the works and services required as part of the High Value Change,
- provided that the Authority shall approve the preferred tenderer(s) following the conclusion of the tendering process but no sub-contractor shall be appointed, until or unless, an Authority Stage 2 Confirmation is issued.
- 26.4 On conclusion of the tendering process, the Contractor shall submit with the Contractor Stage 2 Response a Tendering Report and the Change in Project Costs shall be based on the prices determined through the tendering process.
- 26.5 The Tendering Report shall include, but not be limited to, the following information.
- 26.5.1 details of the companies which were asked to tender for each work package, indicating whether a compliant bid was in fact submitted;
 - 26.5.2 the basis upon which each company was invited to tender including their appropriate experience and expertise;
 - 26.5.3 how details of how the evaluation process was carried out including the scoring for each tenderer;
 - 26.5.4 the basis of the recommendation of the successful tenderer for each work package;
 - 26.5.5 confirmation that the tendered price is a fixed price which includes all costs, overheads, risks and contingencies and will not be liable to change or adjustment; and
 - 26.5.6 any other relevant information.

27. **BENCHMARKING PROCESS**

- 27.1 Where this paragraph 27 applies, the Contractor shall benchmark all construction, facilities management and lifecycle costs (including professional fees, contingencies, overheads and profit margins) using benchmarks available from a reputable independent source that are generally recognized in the industry.
- 27.2 The Contractor shall submit with the Contractor Stage 2 Response a detailed Benchmarking Report which shall set out details of how the benchmarking exercise was carried out and providing evidence that the construction costs, operating costs and financing costs included in the Change in Project Costs supported by actual input from a reputable independent source or the Comparable Market (as specified in the Authority Change Notice). In particular the Benchmarking Report shall include full supporting evidence of the assumptions, source of market price and information's and conclusions reached including:
- 27.2.1 the methodology and all assumptions by which the Estimated Change in Project Costs was determined;
 - 27.2.2 assumptions made in respect of the Comparable Market;
 - 27.2.3 full details of sources of the information used including evidence as to reputation and independence of such sources;
 - 27.2.4 such other details as the parties may agree.

28. **INDEPENDENT TECHNICAL ADVISER**

Joint Appointment of Independent Technical Adviser

- 28.1 Where this paragraph 28 applies, upon issue of an Authority Change Notice or the parties agreeing that an Authority Change Notice will shortly be issued in respect of a High Value Change, the Authority and the Contractor shall jointly appoint an Independent Technical Adviser to assist in the processing of the High Value Change. The terms of reference for the Independent Technical Adviser shall include:
- 28.1.1 developing a Reference Price; and
 - 28.1.2 commenting on the Estimated Change in Project Costs and the Change in Project Costs.
- 28.2 Upon appointment of the Independent Technical Advisor (or if later, upon service of the Authority Change Notice pursuant to paragraph 20.2), the Authority and the Contractor shall instruct the Independent Technical Adviser to develop a Reference Price.
- 28.3 The Independent Technical Adviser shall develop a Reference Price in consultation with the Contractor and the Authority. The Reference Price shall

include (as applicable) all finance, design development, construction, lifecycle, maintenance and operating costs and savings (including professional fees and charges, overheads, profits and contingencies and explicitly including the pricing for any performance risks associated with implementing the change based on the outline risk allocation matrix included in the Authority Change Notice). The parties agree that the Reference Price shall include the pricing of performance risk and that no separate Contractor mark up should be included in the Estimated Change in Project Cost or the Change in Project Costs.

- 28.4 The Independent Technical Adviser shall provide to the Contractor and the Authority the Reference Price. The Contractor shall use the Reference Price to produce the Estimated Change in Project Costs and, subsequently, the Change in Project Costs. The Independent Technical Adviser shall comment on the Estimated Change in Project Costs and the Change in Project Costs within the time periods to be agreed by the Contractor and the Authority and specified in the appointment of the Independent Technical Adviser.

29. **FUNDING**

- 29.1 The provisions of paragraph 4 of Part 1 (General Provisions) shall apply.

30. **DUE DILIGENCE**

- 30.1 The provisions of paragraph 5 of Part 1 (General Provisions) shall apply.

31. **IMPLEMENTATION**

- 31.1 The provisions of paragraph 6 of Part 1 (General Provisions) shall apply.

32. **PAYMENT**

- 32.1 The provisions of paragraph 7 of Part 1 (General Provisions) shall apply.

Part 5 - Contractor Change

- 33. If the Contractor wishes to introduce a Contractor Change, it shall serve a Contractor Change Notice on the Authority.
- 34. The Contractor Change Notice shall:
 - 34.1 set out the proposed Contractor Change in sufficient detail to enable the Authority to evaluate it in full;
 - 34.2 specify whether the Contractor Change is:
 - 34.2.1 a Low Value Change;
 - 34.2.2 a Medium Value Change;
 - 34.2.3 a High Value Change; and/or
 - 34.2.4 is required as a result of a Change in Law;
 - 34.3 specify the Contractor's reasons for proposing the Contractor Change;
 - 34.4 indicate any implications of the Contractor Change;
 - 34.5 indicate what savings, if any, will be generated by the Contractor Change:
 - 34.5.1 whether a revision of the Unitary Charge is proposed (and, if so, give details of such proposed revision); or
 - 34.5.2 whether such savings will be paid by a lump sum;
 - 34.6 if the Contractor Change is required as a result of a Qualifying Change of Law, what sums, if any, will be payable by the Authority;
 - 34.7 indicate if there are any critical dates by which a decision by the Authority is required; and
 - 34.8 request the Authority to consult with the Contractor with a view to deciding whether to agree to the Contractor Change and, if so, what consequential changes the Authority requires as a result.
- 35. The Authority shall evaluate the Contractor Change Notice in good faith, taking into account all relevant issues, including whether:
 - 35.1 a revision of the Unitary Charge will occur;
 - 35.2 the Contractor Change may affect the quality of the Services and/or the Works or the likelihood of successful completion of the Works and/or delivery of the Services (or any of them);

- 35.3 the Contractor Change may interfere with the relationship of the Authority with third parties;
- 35.4 the financial strength of the Contractor is sufficient to perform the Services after implementation of the Contractor Change;
- 35.5 the value and/or life expectancy of any of the Facilities and/or Assets is reduced; or
- 35.6 the Contractor Change materially affects the risks or costs to which the Authority is exposed.
- 36. If the Contractor Change causes, or will cause, the Contractor's costs or those of a sub-contractor to decrease, there shall be a decrease in the Unitary Charge such that any cost savings (following deduction of costs reasonably incurred by the Contractor in implementing such Contractor Change) shall be shared on the basis of fifty per cent (50%) of the saving being retained by the Contractor and fifty per cent (50%) of the saving being paid to the Authority.
- 37. As soon as practicable after receiving the Contractor Change Notice, the parties shall meet and discuss the matters referred to in it. During discussions the Authority may propose modifications to, or accept or reject, the Contractor Change Notice.
- 38. If the Authority accepts the Contractor Change Notice (with or without modification) the parties shall consult and agree the remaining details as soon as practicable and upon agreement of the Contractor Change, the Authority shall issue an Authority Confirmation which shall set out the agreed Contractor Change and:
 - 38.1 the parties shall enter into any documents to amend this Agreement or any relevant Project Document which are necessary to give effect to the Contractor Change;
 - 38.2 if applicable, the Unitary Charge shall be revised in accordance with **clause 69** (Financial Adjustments);
 - 38.3 if applicable, the Contractor shall pay to the Authority a sum equal to the amount calculated in accordance with paragraph 36 within twenty (20) Business Days of receipt of an invoice for such amount; and
 - 38.4 the Contractor Change shall be implemented within the period specified by the Authority in its notice of acceptance.
- 39. If the Authority rejects the Contractor Change Notice, it shall not be obliged to give its reasons for such a rejection and the Contractor shall not be entitled to reimbursement by the Authority of any of its costs.

40. Unless the Authority Confirmation expressly agrees to an increase in the Unitary Charge, there shall be no increase in the Unitary Charge as a result of a Contractor Change and, subject to **clause 55** (Change in Law), any funding shall be provided by the Contractor.
41. The Authority shall not reject a Contractor Change which is required:
- 41.1 in order to conform to a Change in Law; or
- 41.2 as a result of a failure to obtain a satisfactory planning permission for a Project Phase or where such planning permission is obtained but in a form that requires amendment to the Works and/or Services to be provided.

The costs of introducing a Contractor Change resulting from a Qualifying Change in Law (including any resulting revision of the Unitary Charge) shall be dealt with in accordance with **clause 55** (Change in Law) and to the extent not dealt with therein, all costs shall be borne by the Contractor.

APPENDIX 1

Catalogue Of Low Value Change

APPENDIX 2

Pricing Information

Part 1 - Construction Unit Rates

Part 2 - Lifecycle Maintenance Unit Rates

Part 3 - Fees and Profit Margins

Part 4 - Contractor Management Costs

Part 5 - Project Management Fee

APPENDIX 3

Low Value Change Request

CATALOGUE ORDER FORM	
Low Value Change Request	Dated
To be completed by Authority Representative	
Change no:	
Brief description of the Change	
Change of Law/Best Value Change	
Catalogue reference number (if applicable)	
Catalogue price of Change (if applicable)	
Budget for the Change (if not Catalogue)	
Date for completion/implementation	
To be completed by Contractor Representative	
Confirmation of Catalogue Price/Time (if applicable)	
If not Change in Catalogue:	
(i) cost of labour rates	
(ii) lifecycle cost (if appropriate)	
(iii) additional FM cost (if appropriate)	
(iv) plant/equipment costs (if appropriate)	
Total cost	

APPENDIX 4

Confirmation Notice

CONFIRMATION NOTICE LAMBETH MYATTS FIELD NORTH PFI	
PART A - To be completed by Authority's Representative	
Change no:	
Approval to proceed	Yes/No (Delete as appropriate)
Agreed description of the Change	
Change of Law/Best Value Change	
Catalogue reference number (if applicable)	
Agreed Catalogue price of Change (if applicable)	
Agreed budget for the Change (if not Catalogue)	
Agreed Change in Project Costs (if applicable)	
Agreed Method of Payment	
Date for completion/implementation	
Part B - To be completed by Authority's Representative Signature..... Position..... Date..... NOTE: <ul style="list-style-type: none"> A copy of the agreed Contractor's Response should be appended to this Notice The Contractor shall upon receipt of a signed Part B authorising works to proceed, confirm the works commencement or implementation date with the Authority and/or Tenant/Leaseholder in accordance with the Change Protocol. 	
Part C - To be completed by Contractor's Representative Date Low Value Change completed Signature..... Position..... Date.....	

THE COMMON SEAL of THE LONDON)
BOROUGH OF LAMBETH was affixed)
in the presence of:)

Authorised Signatory

EXECUTED as a deed by REGENTER)
MYATTS FIELD NORTH LIMITED)
acting by one director/its duly)
appointed attorney in the presence)
of:)

Director/Attorney

Witness signature:

Name:

Address:

Occupation: